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WHEN: Tuesday, September 17, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Title 3—

The President

Presidential Determination No. 2013–8 of April 11, 2013—Drawdown Pursuant to Section 552(c)(2) of the Foreign Assistance Act of 1961 of up to $10 Million in Commodities and Services From Any Agency of the United States Government to the Syrian Opposition Coalition (SOC) and the Syrian Opposition's Supreme Military Council (SMC)

Correction

In Presidential document 2013–09860 beginning on page 24317 in the issue of Wednesday, April 24, 2013, make the following correction:

On page 24318, in the Signature block, the date line should read ''April 11, 2013''.

[FR Doc. C1–2013–09860
Filed 09–09–13; 8:45 am]
Billing code 1505–01–D

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION

5 CFR Chapter LXXXII

Removal of Standards of Ethical Conduct Regulations

AGENCY: Special Inspector General for Iraq Reconstruction.

ACTION: Final rule.

SUMMARY: On September 22, 2010, the Special Inspector General for Iraq Reconstruction (SIGIR), with the concurrence of the Office of Government Ethics (OGE), issued a final rule for employees of the SIGIR that supplemented the executive-branch-wide Standards of Ethical Conduct (Standards) issued by OGE. With certain exceptions, this supplemental regulation, required SIGIR employees, except special Government employees, to obtain approval before engaging in outside employment. This is the only rule SIGIR has published in the **Federal Register** and codified in the Code of Federal Regulations. The SIGIR is due to terminate its operations on September 30, 2013. Accordingly, there is no need for this Chapter or any SIGIR regulation in the Code of Federal Regulations (CFR) after that date because SIGIR will not exist and will therefore have no employees subject to this rule.

DATES: This rule is effective on September 30, 2013.

FOR FURTHER INFORMATION CONTACT: Michael H. Mobbs, Deputy General Counsel, Telephone- 703–604–0429; email- *michael.h.mobbs2.civ@mail.mil.*

SUPPLEMENTARY INFORMATION:

Background

SIGIR's enabling legislation, Public Law 108–106, 5 U.S.C. app 8G note, as amended, at section 3001(o), requires SIGIR to terminate within 180 days after the date on which amounts appropriated or otherwise made available for the reconstruction of Iraq that are unexpended are less than $250,000,000. SIGIR has determined this date to be September 30, 2013. Accordingly, this issuance removes SIGIR's rule and existing text from the **Federal Register**.

The SIGIR is due to terminate its operations on September 30, 2013. Accordingly, there is no need for this Chapter or any SIGIR regulation in the Code of Federal Regulations (CFR) after that date because SIGIR will not exist and will therefore have no employees subject to this CFR chapter.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) SIGIR finds good cause exists for waiving the general notice of proposed rulemaking and opportunity for public comment as to this rule.

Notice and comment before the effective date are being waived because this rule concerns matters of agency organization, practice and procedure.

Executive Orders 12866 and 12988

Because this rule relates to SIGIR personnel, it is exempt from the provisions of Executive Orders Nos. 12866 and 12988.

Regulatory Flexibility Act

SIGIR has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. chapter 6, that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects SIGIR employees.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply because this rulemaking does not contain information collection requirements subject to the approval of the Office of Management and Budget.

Congressional Review Act

SIGIR has determined that this rule is not a rule as defined in 5 U.S.C. 804, and thus, does not require review by Congress.

List of Subjects in 5 CFR Part 9201

Conflict of interests, Government employees.

Accordingly, for the reasons set forth in the preamble, under the authority of 5 CFR 2635.105 and the agency's general rulemaking authority, the Special Inspector General for Iraq Reconstruction, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by removing chapter LXXXII, consisting of part 9201.

Dated: September 3, 2013.

Stuart W. Bowen, Jr.

Special Inspector General for Iraq Reconstruction.

[FR Doc. 2013–21770 Filed 9–9–13; 8:45 am]

BILLING CODE 3710–8N–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–12–0001]

RIN 0563–AC37

Common Crop Insurance Regulations; Processing Sweet Corn 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, Processing Sweet Corn Crop Insurance Provisions. The intended effect of this action is to provide policy changes that better meet the needs of insured producers. The changes will be effective for the 2014 and succeeding crop years.

DATES: This rule is effective October 10, 2013.

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

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the 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, 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 action by FCIC directing 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 or 7 CFR part 400, subpart J for determinations 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), Processing Sweet Corn Crop Insurance Provisions that were published by FCIC on May 11, 2012, as a notice of proposed rulemaking in the **Federal Register** at 77 FR 27658–27659. The public was afforded 30 days to submit comments after the regulation was published in the **Federal Register**.

FCIC received a total of 22 comments from 4 commenters. The commenters were insurance providers, an insurance services organization, and a Regional Office of the Risk Management Agency (RMA). The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

Order of Priority Statement

Comment: Commenters recommended deleting the order of priority statement, as the order of priority is contained in the Common Crop Insurance Policy, Basic Provisions and the order of priority statement has been removed from other recently updated policies.

Response: No changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision. No change has been made to the final rule.

Section 1—Definitions

Comment: Commenters recommended eliminating unnecessary repetition of language contained in the definition of ''practical to replant''.

Response: No changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision. Further, such a change would be substantive in nature and the public has not been provided an opportunity to comment. No change has been made to the final rule.

Comment: Commenters stated that the proposed change to the ''price election'' definition makes no distinction between the ''base contract price'' and the ''price election''. Commenters further stated that the proposed definition could be read to mean that the producer must insure at 100 percent of the base contract price and cannot choose a lesser percentage. Commenters recommended adding language to the proposed definition to clarify that a producer may elect to insure a percentage of the base contract price.

Response: FCIC considered this change but has determined that a revision to section 3 of the policy is more appropriate to address the issue raised by the commenters because this is more than a definitional change because it concerns an obligation of the policyholder to make the selection. No change has been made to the definition of ''price election''.

Comment: One commenter recommended that FCIC add language to

the definition of ''price election'' stating the definition of ''price election'' may be otherwise defined by FCIC in the Special Provisions.

Response: FCIC disagrees with the proposed change. In accordance with the order of priority contained in the Common Crop Insurance Policy, Basic Provisions, FCIC has the authority to provide the definition of ''price election'' in the Special Provisions, in lieu of the definition in the Basic Provisions. Therefore, no change has been made to the final rule.

Comment: Commenters recommended that FCIC clarify the definition of ''processor contract'' regarding different base contract prices on multiple contracts with the same processor that specify amounts of production.

Response: FCIC agrees with the suggested change and recognizes that it addresses a conflict created by FCIC's proposed revision to the definition of ''price election''. FCIC has revised the definition to clarify how multiple contracts are handled under the policy.

Section 2—Unit Division

Comment: Commenters recommended that FCIC clarify policy provisions regarding the availability of unit structures under sections 2(a) and 2(b).

Response: No changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision. Further, such a change would be substantive in nature and the public has not been provided an opportunity to comment. No change has been made to the final rule.

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

Comment: Commenters recommended that FCIC adjust the provision in 3(a) that limits the producer to selecting only one price election for all the processing sweet corn in the county to be consistent with the definition of ''price election'' proposed by FCIC. Commenters stated that the provision should instead limit the producer to selecting only one percentage of the price election for all the processing sweet corn in the county.

Response: FCIC agrees with the suggested change and recognizes that it addresses a conflict created by FCIC's proposed revision to the definition of ''price election''. FCIC has revised the provision accordingly.

Comment: One commenter recommended that FCIC review 3(b) in relation to the Dry Bean Crop Provisions to determine if similar language is appropriate for processing sweet corn.

Response: No changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision because the provision is question is specific to dry beans and is not applicable here. Further, such a change would be substantive in nature and the public has not been provided an opportunity to comment. No change has been made to the final rule.

Section 6—Report of Acreage

Comment: One commenter recommended that FCIC revise section 6 to require the producer to report the base contract price on the acreage report.

Response: No changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision. Further, such a change would be substantive in nature and the public has not been provided an opportunity to comment. No change has been made to the final rule.

Section 11—Duties in the Event of Damage or Loss

Comment: Commenters recommended that FCIC clarify terminology in 11(c).

Response: Without more information FCIC is unable to determine what needs clarification. Further, no changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision, and any such change could be substantive in nature and the public has not been provided an opportunity to comment. No change has been made to the final rule.

Section 12—Settlement of Claim

Comment: Commenters recommended that FCIC revise instructions and examples for settling claims due to the proposed change to the ''price election'' definition.

Response: No changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision. Further, such a change would be substantive in nature and the public has not been provided an opportunity to comment. No change has been made to the final rule.

Section 14—Prevented Planting

Comment: Commenters recommended eliminating the increased prevented planting coverage options for sweet corn.

Response: No changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision. Further, such a change would be substantive in nature and the public has not been provided an opportunity to comment. No change has been made to the final rule.

List of Subjects in 7 CFR Part 457

Crop insurance, Processing sweet corn policy, Price elections.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2014 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 § 457.154 as follows:

■ a. Amend the introductory text by removing ''1998'' and adding ''2014'' in its place;

■ b. Amend section 1 by adding a definition for ''price election'' in alphabetical order and revising the definition of ''processor contract'';

■ c. Amend section 3 by revising paragraph (a).

The revised and added text reads as follows:

§ 457.154 Processing Sweet Corn crop insurance provisions.

* * * * *

1. Definitions.

* * * * *

Price election. In lieu of the definition of price election in the Basic Provisions, the price election will be the base contract price stated in your processor contract.

* * * * *

Processor contract. A written agreement between the producer and a processor, containing at minimum:

(a) The producer's commitment to plant and grow sweet corn, and to deliver the sweet corn production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract; and

(c) A base contract price.

Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract, unless the contracts are for different types. Your base contract price will be the weighted average of all applicable base contract prices.

* * * * *

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

* * * * *

(a) You may select only one price election percentage for all the processing sweet corn in the county insured under this policy. The percentage of the maximum price election you choose for one type will be applicable to all other types insured under this policy.

* * * * *

Signed in Washington, DC, on August 29, 2013.

Brandon Willis,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2013–21826 Filed 9–9–13; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF ENERGY

10 CFR Part 1046

[Docket No. DOE–HQ–2012–0002]

RIN 1992–AA40

Medical, Physical Readiness, Training, and Access Authorization Standards for Protective Force Personnel

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or Department) is amending its regulations governing the standards for medical, physical performance, training, and access authorizations for protective force (PF) personnel employed by contractors providing security services to the Department.

Since the publication of the existing regulations in 1984, and particularly since 9/11, the DOE has totally transformed its approach to dealing with a much-evolved terrorist threat. This transformation has been informed by repeated analysis and testing since 9/11. The primary changes are: a move to more sophisticated weapons and detection and targeting systems, an increased reliance on hardened positions and armored response vehicles, and increased use of barriers to channel adversaries. The result is a defensive strategy designed to take full advantage of the fact that the terrorist must fight through the protective force to reach our SNM and other targets. This contrasts directly with the posture in the 1980s and 1990s. Today we expect the terrorist to fight his way through a pre-positioned, layered defense, which places a premium on operating sophisticated weapons and detection and tracking systems. The proposed revisions bring DOE protective force firearms qualification, training, medical and physical readiness requirements in line with these tactical and organizational priorities of 2013. It removes barriers to maintaining the desired experience levels of our protective forces while maintaining established qualification standards.

The revised regulations: emphasize firearms training and proficiency testing that reflect current military practice and simulations technology, maximizing training time and decreasing cost; implements the Mission Essential Task List (METL) training framework adapted from the military, which allows for more effective use of training resources by aligning them with validated mission performance priorities, eliminate medical disqualifications for conditions which have become completely treatable since the 1980s, refines a physical readiness testing regimen that currently diverts time and training emphasis from tasks more directly supportive of mission success; and above all, encourage protective force personnel to stay sharp and mission-focused. Furthermore, this shift in emphasis has placed a greater premium upon the retention of mature, tactically experienced, and technically sophisticated personnel, particularly since these personnel represent a considerable investment by DOE in security background investigations and training. The revisions bring DOE PF medical and physical readiness requirements in line with these tactical and organizational priorities. The revisions reduce the exposure of the PF population to injuries related to physical readiness testing. The revisions further ensure that PF personnel are evaluated on a case-by-case basis on their ability to perform the essential functions of their positions without posing a direct threat to themselves or site personnel, the facility, or the general public. The revisions further ensure that reasonable accommodations are considered before a determination is made that an individual cannot perform the essential functions of a particular position. The rule also provides for new medical review processes for PF personnel disqualified from medical certification. The rule ensures that DOE PF medical and physical readiness requirements are compliant with the Americans with Disabilities Act (ADA) of 1990, as amended by the Americans with Disabilities Act Amendments Act of 2009 (ADAAA), the Privacy Act and DOE implementing regulations, and changes in DOE policy regarding PF operations made since the publication of the last version of this rule. Finally, the revision updates the regulation to reflect organizational changes in the Office of Health, Safety and Security and the creation of the National Nuclear Security Administration (NNSA) as a semi-autonomous agency within the Department of Energy.

DATES: This rule is effective March 10, 2014. Compliance with the provisions of this rule is required March 10, 2014 consistent with the conditions set forth in § 1046.2(e).

ADDRESSES: *Docket:* For access to the docket to read background documents, comments received or transcript of the public hearing, go to *http://;www.regulations.gov* or contact John Cronin at (301) 903–6209 prior to visiting Department of Energy, Office of Security Policy, (HS–51), 19901 Germantown Rd., Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Mr. John Cronin, Office of Security Policy at (301) 903–6209; *John.Cronin@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Section by Section Analysis Including the Disposition of Public Comments
III. Regulatory Review and Procedural Requirements
A. Review under Executive Order 12866
B. Review under the Regulatory Flexibility Act
C. Review under Paperwork Reduction Act
D. Review under the National Environmental Policy Act
E. Review under Executive Order 13132
F. Review under Executive Order 12988
G. Review under the Unfunded Mandates Reform Act of 1995
H. Review under Executive Order 13211
I. Review under the Treasury and General Government Appropriations Act of 1999
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K. Congressional Notification
IV. Approval of the Office of the Secretary

I. Background

Pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) and DOE Organization Act of 1977 (42 U.S.C. 7101 *et seq.*), DOE owns and leases defense nuclear and other facilities in various locations in the United States. These facilities are operated by contractors (including subcontractors at all tiers) with DOE oversight or are operated by DOE. Protection of the DOE facilities is provided by armed and unarmed PF personnel employed by Federal Government contractors. These PF personnel are required to perform both routine and emergency duties, which

include patrolling DOE sites, manning security posts, protecting government and contractor employees, property, and sensitive and classified information, training for potential crisis or emergency situations, and responding to security incidents. PF personnel are required to meet various job-related minimum medical and physical readiness qualification standards designed to ensure they are capable of performing all essential functions of normal and emergency PF duties without posing a direct threat to themselves or others.

DOE proposed modifications to 10 CFR part 1046 on March 6, 2012 (77 FR 13206). DOE proposed these modifications to update training and qualification criteria, clarify remediation requirements, ensure compliance with the Privacy Act (5 U.S.C. 552a) and DOE regulations implementing the Privacy Act (10 CFR part 1008), and ensure that medical and readiness qualifications for DOE PF personnel established in these regulations are in compliance with the ADA as amended by the ADAAA. The ADA, as amended by the ADAAA, and its implementing regulations provide that an individual with a disability is qualified for a position if he or she satisfies the skill, experience, education and other job-related requirements of the position and can perform the essential functions of the position with or without reasonable accommodation. An employer must make reasonable accommodation for the known physical or mental limitations of a qualified individual with a disability, unless the employer can demonstrate that a particular accommodation would impose undue hardship on the operation of its business. Further, an employer may require, as a qualification standard, that an individual not pose a direct threat to that individual or others. DOE set forth in the proposal the minimum medical and physical readiness performance standards for PF personnel, and the criteria required to develop, record, and communicate a medical opinion of each individual's ability to perform, with or without accommodation, all essential functions of normal and emergency PF duties without posing a direct threat to that individual or to others.

After considering comments on the proposed rule, DOE issues today's final rule to amend the physical readiness requirements at 10 CFR part 1046. The modifications are described below in the Section by Section Analysis in section II.

II. Section by Section Analysis Including the Disposition of Public Comments

The heading for this part has been revised to be *Medical, Physical Readiness, Training, and Access Authorization Standards for Protective Force Personnel.* The revision more accurately reflects the contents of the regulation. Note that references to other DOE processes and procedures are intended to recognize the existence of these processes and procedures rather than to incorporate them into these regulations.

Subpart A—General

1. Changes to § 1046.1, Purpose. DOE revised the language of this section for clarity, but did not change it substantively.

No comments were received during the public comment period on this section. DOE did not make any changes to the text of this section as set out in the proposed rule. (77 FR 13206, Mar. 6, 2012)

2. Changes to § 1046.2, Scope. DOE revised the text for clarity, but did not change it substantively except to provide the process for Department-approved exemptions from the requirements of these regulations. Language has been added to indicate that part 1046 would encourage the use of a single physician to fill multiple roles as required by this part and title. In addition, the requirements of part 1046 could be fulfilled in the course of compliance with other DOE regulations. This is intended to facilitate efficiency, avoid duplicative examinations, reports, and testing, and to facilitate the appropriate sharing of medical information related to PF personnel.

Commenters expressed concern that the rule could require duplicative reporting. DOE modified the language in section 1046.2 to clarify that duplicative reporting is not required for this part as long as all required elements for this part are included in a comprehensive report.

Commenters also requested further clarification on the compliance date for these amended regulations. DOE modified the language by adding 1046.2(e) to clarify that compliance with the provisions of these regulations is required by March 10, 2014. DOE also provides for requests for extension of the compliance date if contractual conflicts or resource issues may prevent compliance by this date.

The National Nuclear Security Administration added the following text during the final period of internal Departmental concurrence and approval. ''Nothing in this part shall prohibit NNSA from enhancing the requirements set forth in 1046.16, SPO Physical Readiness Qualification Standards and Procedures, as necessary to further the interests of national security.''

3. Changes for § 1046.3, Definitions, added the following.

The terms ''direct threat'' and ''essential functions of the job'' have been defined consistent with the definitions of these terms in the ADAAA.

The terms ''defensive combative standard'' and ''offensive combative standard'' have been replaced with ''basic readiness standard'' (BRS) and ''advanced readiness standard'' (ARS) to better identify the requirements of these standards. Additionally, a new physical readiness standard which identifies requirements for personnel staffing stationary posts, the ''fixed post readiness standard'' (FPRS) has been added.

The terms ''guard'' and ''security inspector'' have been replaced with ''security officer (SO)'' and ''security police officer (SPO)'' respectively to conform to current usage for the names of these positions. The term ''PF personnel'' has also been added to encompass SOs, SPOs and special response team (SRT)-qualified personnel.

The term ''Designated Physician'' and its definition have been updated.

The term ''field organization'' has been replaced with ''field element'' to conform to current usage.

The term ''applicant'' as pertains to PF personnel has been added as a result of the use of this term in § 1046.2 and § 1046.13.

The term ''corrective device'' as pertains to reasonable accommodation has been added as a result of the use of this term in § 1046.13.

The term ''emergency conditions'' as an aspect of PF personnel performance requirements has been added due to the use of this term in § 1046.17.

The terms ''medical certification'' and ''medical certification disqualification'' have been added as a result of the use of these terms in § 1046.13, 1046.14, and 1046.15.

The term ''medical examination'' is added and its related requirements are described in § 1046.13.

The terms ''Chief Medical Officer'' and ''Physical Protection Medical Director'' (PPMD) have been added to § 1046.3 and related requirements are described in the new § 1046.4.

The term ''semi-structured interview'' associated with examining PF personnel

has been added to § 1046.3 and related provisions provided in § 1046.13.

The terms ''Independent review'' and ''Final review'' have been added to § 1046.3 and the process associated with medical certification has also been added to § 1046.15 in this update of the regulations.

The term ''medical condition'' is outdated and therefore no longer used in the regulations.

Several comments expressed concern regarding a site's authority to add site-specific measures of physical readiness. Therefore, the definitions for ''Advanced Readiness Standard,'' ''Basic Readiness Standard,'' and ''Fixed Post Readiness Standard'' were modified to emphasize that such additional tests are required to be applicable measures of site-specific essential functions.

Commenters also requested clarification in the definition of ''corrective device'' to specify who has authority to make the determination of reasonable accommodation. The revised definition clarifies that the front-line supervisor does not have the authority to determine whether a reasonable accommodation is appropriate. Instead, the contractor makes the determination that the use of the device is compatible with all actions associated with emergency and protective equipment without creating a hardship for the contractor. The Designated Physician and PPMD must determine that the reasonable accommodation is consistent with the medical certification standards without creating a direct threat to the individual or to others. Additionally, the definition of ''reasonable accommodation'' was revised to emphasize the link to the ADAAA.

Commenters also requested that DOE include a definition of the term ''work hardening.'' This term is used in section 1046.16. In response, DOE defines ''work hardening'' in this final rule as that term is used by the Department of Labor.

4. Changes for § 1046.4, renamed Physical Protection Medical Director, include addressing the PPMD.

DOE deleted the previous § 1046.4, Use of Number and Gender, as unnecessary. Standard rules of construction acknowledge that words in the singular also include the plural and words in the masculine also include the feminine, and vice versa, as the use may require. The new § 1046.4 establishes the required qualifications of the PPMD, and outlines the responsibilities of the PPMD to oversee site physical protection medical activities, to nominate individuals for the position of Designated Physician, and to evaluate the performance of these individuals. The qualifications for Designated Physicians, which are required for nomination, are also established in this section. This section also enhances DOE oversight of the PPMD and Designated Physicians at DOE facilities. The current ''NNSA organization responsible for occupational health and safety'' referenced in this section is NNSA's Office of Safety and Health, though this designation is subject to any reorganizational changes within NNSA.

One comment was received requesting specificity of required reporting requirements under this section. DOE intends to provide additional specificity in the appropriate DOE Order, DOE Order 473.3, *Protection Program Operations.* As a result, no change was made to the text in this section.

A suggestion was made to allow accreditation for physicians covered under this part to be provided by the Accreditation Association for Ambulatory Health Care. The DOE has not incorporated this suggestion because this accreditation is voluntary, and the opportunity to participate is provided only every two years. This could mean that a physician could be hired and work for two years prior to accreditation review.

Another suggestion was to verify information about physicians by using state licensing agencies. The DOE has not adopted this suggestion because applicable requirements for history of acceptable performance and/or conduct vary from state to state.

Commenters requested clarification on whether a site could have more than one PPMD. In response, DOE clarifies that there is to be only one PPMD per site. DOE also included additional language to emphasize the Department's intent that the PPMD is to provide oversight of all associated Designated Physicians who provide protective force related services pursuant to this part.

Commenters also requested clarification regarding the certification process associated with nomination and approval of PPMDs. DOE included a specific requirement that nominees provide documentation of their standing with licensing and specialty boards. As the oversight authority for Designated Physicians, the PPMD is responsible for nominating Designated Physicians, so similar language clarifying the Designated Physicians' nomination process was also provided in this section (and referenced in § 1046.5).

Commenters also questioned whether the PPMD could fulfill multiple roles at a particular site. The regulation allows for the PPMD to fulfill multiple roles at a particular site, but DOE provides clarification to ensure the Office of Health, Safety and Security is notified if a PPMD is fulfilling multiple roles (e.g., is also the Designated Physician for this part and/or is fulfilling a role under another part, e.g., 712 or 851).

Commenters requested clarification on whether the PPMD is required to review the current credentials of the Designated Physician(s) and recommend either retention or replacement to the employer. DOE clarified in section 1046.4(e), Annual Activity Report, that the PPMD is required to perform these functions. In addition, the employer is required to report any changes to the Office of Health, Safety and Security.

5. Changes for § 1046.5 Designated Physician.

This new section establishes the roles and responsibilities for the position of Designated Physician. Among other duties, the Designated Physician is responsible for the medical examination of SOs and SPOs and determines whether portions of each certification examination could be performed by other qualified personnel. As in section 1046.4, the current ''NNSA organization responsible for occupational health and safety'' referenced in this section is NNSA's Office of Safety and Health, though this designation is subject to any reorganizational changes within NNSA.

Several commenters requested clarification that the Designated Physician would be responsible for the supervision of physician extenders, e.g., physician assistants, certified occupational health nurses, or nurse practitioners. DOE has included language making it clear that Designated Physicians are responsible for the supervision of physician extenders, as required by state and local law.

Commenters also requested clarification regarding the certification process associated with nomination and approval of Designated Physicians as required in § 1046.4. In response, DOE added clarifying language that the requirements of section 1046.4(b) must be satisfied when a PPMD nominates a Designated Physician.

Commenters also questioned whether the Designated Physician could fulfill multiple roles (e.g., also the Designated Physician for this part and/or is fulfilling a role under another part, e.g., 712 or 851). In response, DOE clarifies that the Designated Physician may fulfill more than one role and requires that the Office of Health, Safety and Security must be notified in such circumstances.

A commenter questioned why the Designated Physician is not required to self-report adverse actions taken by state medical licensing entities, being named

as a defendant in criminal proceedings or other events detailed in 1046.4, in the same way the PPMD is required to self-report such events. As a result, DOE added language requiring Designated Physicians to self-report when an event set forth in § 1046.4 takes place. This change now ensures programmatic consistency.

Subpart B—PF Personnel

1. Changes for § 1046.11 Essential functions of PF personnel.

This new section establishes the essential functions for SOs, SPOs and SRT-qualified PF personnel. Specific requirements for FPRS, BRS, and ARS SPO personnel are established.

Commenters stated that the expression ''in conditions of darkness'' in 1046.11(e)(1) was unclear. As a result, DOE revised the language associated with essential functions of BRS personnel to require BRS SPOs to be able to read placards and street signs while driving or to see and respond to imminently hazardous situations, including during low light conditions.

Additionally, DOE made editorial changes to this section for clarity.

2. Changes for § 1046.12 Medical, physical readiness, and training requirements for PF personnel.

This section establishes the medical certification requirements for PF personnel to support their meeting the physical readiness qualification requirements in § 1046.16; to have the required knowledge, skills and abilities; and to meet the requirements of a physical training program as identified in § 1046.16.

No comments were received expressing concern with the substance of this section. DOE made minor editorial changes for greater clarity in this section.

3. Changes for § 1046.13 Medical certification standards and procedures.

This section updates language in the existing Appendix A to Subpart B and requires all applicant and incumbent PF personnel to satisfy the applicable medical certification standards; establishes the medical standards for SOs and SPOs; and establishes that Field Elements may develop more stringent medical qualification requirements or additional medical or physical tests, in consultation with the PPMD, where special assignment duties may require such additional testing.

The required frequency of medical certification remains unchanged. Incumbent SOs will be reexamined by the Designated Physician every two years (24 months) after beginning work. Incumbent SPOs will be reexamined by the Designated Physician every 12 months. The recertification requirement for both SOs and SPOs has been clarified to require recertification within thirty days of the 24-month or 12-month anniversary, respectively, of the previous qualification. In addition, this section establishes a requirement that the medical examination include a review by the Designated Physician of essential functions of the position, as provided by PF management, and a requirement that a semi-structured interview with a psychologist who meets standards established by DOE be conducted for SOs and SPOs, as part of the initial medical evaluation and periodically thereafter. The changes in this section also will allow the Designated Physician to require any other medical examination, test, consultation or evaluation he/she deems necessary.

To comply with the ADA, as amended by the ADAAA, DOE made several changes to this section. The ADA, as amended by the ADAAA, does not permit blanket medical disqualification standards based on the presence of a particular medical condition. Individuals must be evaluated on a case-by-case basis to determine their ability to perform the essential functions of the job without posing a direct threat to themselves or others. Moreover, the ADAAA requires employers to make ''reasonable accommodations'' for individuals with disabilities unless it would create an undue hardship for the employer. Language has been added to paragraph (a) referring to ''essential functions'' as set forth in § 1046.11 and ''direct threat.'' The section also requires, consistent with ADAAA, that each member of the PF be medically certified as able to perform the essential functions of that individual's job. Finally, as a result of the changes in § 1046.13, the reference to waivers of medical qualification standards has been deleted from the existing § 1046.11, because each individual will be evaluated on a case-by-case basis to determine the individual's ability to perform the essential functions of the individual's specific position. This section also adds a requirement that a health status exit review be offered to all employees leaving PF service.

This section also amends the language regarding the use of corrective devices and reasonable accommodations that must be made to modify emergency and protective equipment to be compatible with these devices. Paragraph (g)(3) establishes that a determination regarding the compatibility of such devices with emergency and protective equipment be made by the contractor, with determination by the Designated Physician that the accommodation is consistent with the medical standard without creating a direct threat to the individual or to others. Paragraph (g)(4) requires that management personnel take reasonable steps to accommodate protective equipment for individuals with corrective devices.

The ability of PF personnel to engage in physical training and testing without undue risk, and to safely and efficiently perform essential job functions, with or without reasonable accommodation, and without posing a direct threat to their own or others' safety, depends on the ability of those individuals to meet physical and medical standards (medical certification). Failure to comply with these medical standards will result in denial of medical certification for employment.

A commenter challenged the Department's reliance on electrocardiogram and stress electrocardiogram tests and suggested that the Computed Tomography Angiogram would be a better suited tool. DOE determined, however, that Computed Tomography Angiogram technology looks at the heart only while it is not under stress, and that given the nature of the essential functions set forth in section 1046.11, the medical certification of PF personnel should include information about the heart while it is under stress. Additionally, the studies which support use of the commenter's proposed technology were based upon looking at individuals with preexisting conditions, which is not necessarily representative of the DOE PF population. Therefore, the Department did not adopt this suggested change.

A comment suggested using the medical standards for commercial driver's licensure (CDL) for medical certification under this part. The Department determined, however, that the CDL standards do not adequately address the unique protective force mission within the DOE because the CDL standards address only one small element (driving) of the PF mission of: Normal duties, emergency response during all lighting and weather conditions, and the physical and mental readiness to employ deadly force if necessary. Therefore, DOE did not adopt this suggested change.

Several commenters indicated that strengthening the language associated with reasonable accommodation pursuant to the ADAAA was needed based upon unnecessary work restrictions being placed on PF members. In response to these comments, DOE added a statement in this section requiring reasonable

accommodation to be made pursuant to ADAAA requirements.

Commenters also expressed lack of understanding regarding the hearing standards and the reasons for having an identified decibel loss limit as measured between ears. In response to these comments, DOE provided clarification regarding the hearing standard of a maximum difference of 15db between ears which is associated with the ability to localize sounds. This ability to localize sounds is viewed by DOE as a critically important capability for emergency responders. It is an appropriate measure of capability, because of the need to locate the source of sounds as part of timely and effective resolutions of emergency situations.

Commenters also requested clarification regarding evaluations of cardio respiratory function. In response to these comments, DOE added ''with an established index of suspicion'' when referring to a past history of sleep apnea to clarify when review and approval of the PPMD is required. DOE also replaced ''continuous or continual'' with ''ongoing'' regarding use of medications to support cardio respiratory function. DOE made the revision for clarity; no change in meaning is intended. Also in response to these comments, DOE clarified that appropriate evaluation by the Designated Physician of the cardiovascular system includes consideration of the results of the two semiannual assessments of the SPO's physical readiness as required in section 1046.16. DOE also clarified that the Framingham Point System can be used to determine evidence of cardiovascular abnormality or significantly increased risk for coronary artery disease. This system is a recognized method for making such determinations.

Commenters also objected to required use of tuning forks to evaluate peripheral neuropathy. In response to these comments, DOE removed specificity regarding the method of evaluation for peripheral neuropathy to provide future flexibility in testing methods.

Commenters also expressed concern that sites could establish unreasonable physical readiness testing requirements. DOE determined that it was necessary to allow sites to establish additional medical standards when site-specific essential functions are established. As a result of these comments, DOE added language linking any site-specific testing to ability to perform essential protective force functions.

Commenters also requested clarification regarding the intended and authorized durations of qualification and testing periods. As a result of these comments, DOE modified text in this section and throughout the document to better identify the windows when qualification or testing has to be completed.

Commenters also requested clarification requiring the mandatory exit health reviews. They wanted to know if the review was mandatory or voluntary, what actions needed to be taken if one was refused, and if duplicative reviews were intended to be required. As a result of these comments, DOE clarified the requirement for contractors to offer exit health reviews to protective force members. DOE noted that this review could be conducted in conjunction with the requirements of other DOE regulations but must include all of the medical standards for the PF position being vacated, to avoid the need for duplicative reviews. The fact that a PF member declines an exit health review must be documented.

In response to comments requesting clarification on whether the first-line supervisor has the ability to determine whether a corrective device is a reasonable accommodation, and for consistency with the change to the definition of ''corrective device'' in 1046.3, DOE clarifies in 1046.13(g)(3) that the front-line supervisor does not have the authority to determine whether a reasonable accommodation is compatible with all required actions associated with emergency and protective equipment. Instead, the contractor makes the determination that the use of the device is compatible with all actions associated with emergency and protective equipment without creating a hardship for the contractor. The Designated Physician and PPMD must determine that the reasonable accommodation is consistent with the medical standard without creating a direct threat to the individual or to others. DOE made editorial changes in other sections of the rule to clarify this intent.

4. Changes to § 1046.14 Medical certification disqualification.

This new section establishes the process for medical certification disqualification. Such disqualification is the determination by the PPMD that an individual, with or without reasonable accommodation, is unable to perform the essential functions of an SO or SPO job position, including the required physical fitness training and physical readiness qualifications (for SPOs), without creating a direct threat to that individual or others.

A new provision has been added that would require responsible employers to offer an SPO medical removal protection if the Designated Physician determines in a written medical opinion that it is medically appropriate to remove the SPO from PF duties as a result of injuries sustained while engaging in required physical fitness or training activities. The provision would require that the Designated Physician's determination, approved by the PPMD, be based on an examining physician's recommendation or any other signs or symptoms that the PPMD deems medically sufficient to remove an SPO.

Several commenters indicated that greater specificity should be provided regarding which physical readiness activities are covered from the perspective of providing for medical removal protection benefits if an SPO is injured. Therefore text, in this section and throughout the document, has been revised to reflect that only those activities identified under the provisions of this part and those which have been specified by the site as being covered by medical removal protection benefits are covered. Covered activities must also be associated with training for or attempting to meet a physical readiness standard qualification, or training for security and emergency response (e.g., participating in force-on-force exercises for training, inspection, or validation purposes).

Commenters also asked whether the contractor is mandated to provide alternative duties for temporary removal from duties associated with a physical readiness standard. Text was modified to clarify DOE's intent that the employer is not obligated to create a new position for an employee who qualifies for medical removal protection. However, the employer may assign temporary alternative duties or place the individual on administrative leave. The employer may not remove the employee from active payroll (e.g., in lieu of removing the employee from the payroll an alternative would be to place the employee on administrative leave) unless available alternative duties for which the worker is qualified are refused or performed unsatisfactorily.

Commenters raised additional questions regarding the intent behind maintenance of pay and benefits during periods of removal. In response, DOE added language to 1046.14(b)(1) to indicate that site-specific worker rights and benefits are to be maintained for up to the maximum of one year. This new language reiterates the one-year limitation stated in section 1046.14(b) in the proposed rule (77 FR 13206, Mar. 6, 2012).

Commenters questioned to what extent the PPMD was responsible for discussing medical removal provisions.

In response, DOE modified text at 1046.14(b)(3)(ii) to clarify that the PPMD is responsible for discussing with the SPO only the medically-related issues associated with medical removal provisions.

Commenters raised questions regarding the limits of medical removal benefits as expressed in the rule. DOE modified the text in section 1046.4(c)(3) to clarify that pay benefits provided by medical removal must be reduced in like amount by those funds received from any other benefit sources, to include workers' compensation programs and those negotiated through collective bargaining agreements. This new language reiterates the limitation stated in section 1046.14(c)(3) in the proposed rule (77 FR 13206, Mar. 6, 2012).

Commenters also raised questions regarding whether it was the intent for employers to be responsible for providing payments for related medical treatments. DOE added clarifying language to 1046.14(c)(2) to indicate that any such payments are excluded from the provisions of this part.

5. Changes to § 1046.15 Review of medical certification disqualification.

This new section permits an individual denied medical certification for employment in a particular position to request in writing that the DOE Office of Health, Safety, and Security conduct an Independent Review of the individual's case. If the Independent Review of an individual's case results in an unfavorable decision, the individual may petition the DOE Office of Hearings and Appeals for a Final Review. Procedures for the review process are described in detail in this section.

Commenters expressed concern about the role of the independent review process. As a result of these concerns, DOE added language to clarify that even if an independent review were to result in the reinstatement of an SPO, subsequent annual medical and physical readiness standards still must be met.

DOE also made several editorial changes to this section for clarity.

6. Changes to § 1046.16 SPO physical readiness qualification program requirements.

This section establishes the program requirements (FPRS, BRS, and ARS) for individual SPO fitness assessments, physical readiness maintenance, remedial physical fitness training, and safety. The FPRS level has been added. Qualification for the FPRS level must be physically demonstrated every year by all SPOs, but it does not include a running standard. Having the Designated Physician make a determination of reasonable expectation regarding an SPO's ability to meet a given standard will result in an overall 90 percent reduction in exposure to potential injuries associated with physical readiness qualification running tests for the population of BRS and ARS SPOs. While the previous physical readiness running standards will be retained for the BRS and ARS levels, the number of officers annually required to demonstrate that readiness is reduced. Greater reliance will be placed on evaluation to determine physical readiness of BRS and ARS SPOs. In addition to the evaluation process, which is analogous to that used as the physical readiness evaluation by law enforcement agencies, the DOE evaluation program will be validated by testing of randomly selected BRS and ARS SPOs.

Several commenters requested that DOE change the running requirements associated with physical readiness standards for BRS and ARS SPOs. DOE has determined that it is necessary to maintain the running requirements associated with the physical readiness standards for BRS and ARS SPOs in today's final rule. Demonstrating the ability to rise from a prone position and run the specified distance within a certain time frame is still needed to ascertain the physical readiness of these PF personnel. DOE continues to welcome information on existing physical readiness standards in use by another agency or standards that DOE could develop as requirements for BRS and ARS SPOs.

A commenter suggested that it would be more cost effective and better for the environment to ensure SPOs are provided access to their physical readiness standards and this regulation rather than to require each SPO have a copy of the information. DOE edited the text to support this approach because SPOs will still be able to access the requirements of the regulation, and a paper copy is not necessary.

Second, as identified earlier, several commenters asked for clarification regarding the window of opportunity available for conducting annual physicals and physical readiness evaluations. Text was modified to allow these activities to be conducted within a window starting 30 days prior to and extending 30 days beyond the SPO's anniversary date to allow necessary flexibility for scheduling the physicals and evaluations.

Commenters expressed concern that selecting a sample of SPOs to run each year instead of requiring 100 percent of the SPOs to physically demonstrate running standards might result in a tendency for some SPOs to neglect maintaining their physical readiness. DOE added language to emphasize the requirement that SPOs are required to maintain their ability to meet the physical readiness standard on a year round basis.

Commenters questioned the need for PPMDs to approve physical readiness training and maintenance programs. In response to these comments, DOE believes that while PPMD approval of physical readiness training and maintenance programs is not required, the PPMD should ensure such programs are consistent with associated medical standards. Therefore, DOE modified the text to require that the PPMD be consulted regarding site physical readiness training and maintenance programs instead of approving those programs.

Commenters asked whether all training associated with this part has to be accomplished on site. In response to these comments, DOE added language clarifying that training can be conducted off-site.

Commenters asked about the timing and content of the required semiannual assessments of SPOs. In response, DOE modified language to require that the assessment be conducted semiannually instead of every six months. This modification is intended to provide sites greater scheduling flexibility. DOE also added the requirement that aerobic capacity be assessed against standard values as a part of the assessment. While other assessment values may be used, metabolic equivalents (METS) levels (which would be positive indicators of reasonable expectancy for meeting the BRS and ARS physical readiness categories) were provided. It is the Department's intent that these assessments provide feedback to the individual SPOs. The assessments are not to be viewed as a qualification. Additionally, the assessments are not required to include any running. The assessments are meant to provide an indication that either the SPO's physical condition is commensurate with being able to meet the required physical readiness standard, or that the SPO needs to take corrective action in order to have a reasonable expectation of being able to demonstrate the applicable standard.

Commenters also expressed concern that the rule seemed to allow an SPO who failed to meet a physical readiness standard to remain armed for some additional period of time. As a result of these concerns, DOE revised language in several places to provide clarity. When an SPO is called upon to demonstrate the ability to meet a physical readiness

standard and fails to do so, the regulations require the SPO to be removed from duties associated with that physical readiness standard. This removal will remain in place until the SPO satisfactorily demonstrates the ability to meet the standard. These changes are intended to make it clear that whenever and for whatever reason an SPO fails to physically demonstrate the required physical readiness standard, the SPO must be removed from duties which require the ability to meet that standard.

Commenters indicated that additional clarity was needed for several elements associated with meeting the requirements for the fixed post readiness standard. In response, DOE modified language regarding the fixed post readiness standard. All SPOs, whether FPRS, BRS, or ARS, must physically demonstrate the FPRS every year (and additionally, if called upon to do so during surveys and inspections). Additional language was added to require that while a standalone FPRS qualification test has to be developed at each site (incorporating any site-specific requirements), demonstration of all elements of the FPRS standard does not have to be accomplished on the same day. Meeting the individual elements of the standard can be aggregated. For example, ability to place a suspect under restraint can be documented during annual refresher training. The ability to take required positions of cover can be demonstrated during semiannual weapons qualification activities conducted at a different time.

As a result of the clarification regarding meeting the FPRS, DOE also modified the BRS and ARS sections to require that the running elements and other site-specific requirements of these standards have to be attempted on the same day during anniversary qualifications. Ability to meet both elements on the same day is viewed as an indicator of overall conditioning. It is not DOE's intent, however, that should an SPO pass the mile and fail the 40-yard dash, that the SPO then would have to redo the mile run when making subsequent attempts to pass the 40-yard dash.

Commenters also expressed confusion regarding future revision of the physical readiness standards according to the requirements of the Administrative Procedure Act and other applicable law. DOE emphasizes that it is required to follow all legal requirements in revising these regulations; DOE determined that no changes were needed for this provision.

Several commenters expressed concerns regarding the Designated Physician's new responsibility under this rule for making a determination of whether or not an SPO has a reasonable expectation of being able to meet the applicable BRS or ARS standard. Some stated that this evaluation should not fall under the purview of the Designated Physician. In this rule, Designated Physicians fulfill an occupational medicine role. Making determinations of ability to perform work-related functions is an occupational medicine function. Also, some stated that this would result in an additional medical malpractice exposure for the Designated Physicians. In response, DOE added language to clarify that two distinct evaluations are required by the Designated Physician for each SPO. The first evaluation is no different from the type of medical evaluation being performed under previous regulatory requirements. In this evaluation the Designated Physician must determine from a medical perspective if the SPO can fulfill the mission essential requirements of the applicable physical readiness category without being a risk to self or others. In other words, is the SPO healthy enough to perform mission essential requirements which include ability to physically demonstrate the appropriate physical readiness standard? If the Designated Physician determines the SPO is not healthy enough, the SPO is removed from status unless and until intervention is successful. Once the Designated Physician has determined the SPO is healthy enough to attempt to demonstrate the standard, the next step in the process is for the Designated Physician to make a second occupational medicine evaluation. In this new, second determination, the Designated Physician must determine whether the SPO has a reasonable expectation of being able to physically demonstrate the standard. In other words, is the SPO in good enough physical condition to physically demonstrate the standard? When conducting this second evaluation, the Designated Physician has already determined that the SPO is healthy enough to attempt to demonstrate the standard. If the answer to the second evaluation is yes, then the SPO is allowed to return immediately for duty without being required to physically demonstrate the standard unless the SPO has been selected as part of the random selection process. If the answer is no, then the SPO may request to demonstrate the physical readiness standard.

Some commenters expressed concern that the rule's language precludes the use of physician extenders and exercise physiologists during the SPO's annual physical and determination of reasonable expectation that the SPO would be able to physically demonstrate the standard. DOE added language to specifically authorize their use. It is the Designated Physician's responsibility, however, to make the formal evaluation of the SPO's expectation of being able to meet the applicable standard.

Commenters also suggested that acceptable values for aerobic capacities associated with the BRS and ARS standards should be provided to assist the Designated Physician in making determinations regarding an SPO's ability to physically demonstrate the readiness standard. In response, DOE added text to this section identifying METS values. It should be noted that DOE is not mandating the use of METS data, nor does it intend that METS data be used as the single pass/fail criteria. The Department intends that all related elements of the SPO's condition be considered by the Designated Physician while making the reasonable expectation determination.

Several commenters expressed concern regarding which physical readiness standard would have to be met should an incumbent SPO fail to demonstrate a standard and then go through remedial training. DOE clarifies that the incumbent would have to meet the standard which had not been demonstrated successfully.

A number of comments also indicated confusion about the process for random testing of SPOs. As a result of these comments, DOE made several changes to this section regarding testing of 10 percent of the physical readiness standard SPO populations. These changes were made to ensure a consistent process is used throughout the DOE. Clarification includes the timing of the selection process, the result should an insufficient number of SPOs fail to meet their required standard, and the process and timing for return to sampling.

Commenters requested clarification regarding the requirements associated with SPOs who are returning from absence (e.g., due to illness/injury or military service) on their anniversary date. In response, DOE clarifies that should an SPO be absent during the period of their anniversary date, the SPO will be required to physically demonstrate the applicable physical readiness standard prior to return to SPO duties. A physical demonstration is required since there would be no obligation for the SPO to maintain ability to meet the applicable physical

readiness standard during such an absence.

A commenter noted potential scheduling difficulties because of the requirement to have a physical readiness assessment completed within 30 days of the SPO attempting the physical readiness standard. DOE revised the regulation to require the assessment be completed no more than 30 days prior to or after the annual physical examination with the Designated Physician. This change creates a maximum 60-day window during which the physical readiness assessment, the annual physical, and an attempt to demonstrate the applicable physical readiness standard could be scheduled.

Commenters requested clarification in section 1046.17 regarding the acceptable number of consecutive weapons qualification remediations. DOE also has examined similar requirements in section 1046.16 for ability to meet applicable physical readiness standards and added text to provide consistency for allowable remediations to demonstrate the appropriate physical readiness standard to be consistent with those regarding ability to qualify with firearms. Only three successive remedial trainings will be provided for failure to meet either an applicable physical readiness standard or weapons qualification. The fourth successive failure will result in loss of status. Some commenters questioned how rescheduling of an attempt would be authorized. As a result, DOE added clarifying language to emphasize that when rescheduling occurs, it will be at the discretion of the employer. The intent of making the change is to ensure that pursuant to the other requirements of this section, the employer is not placed under an undue burden to accommodate conducting an additional attempt.

DOE added text in paragraph (c)(5) to clarify that additional time to meet the physical readiness standard may be granted only in unusual circumstances based on temporary medical conditions or physical injuries as certified by the Designated Physician. DOE determined that this clarification is appropriate because lack of proper physical conditioning is not a reason to grant additional time to meet the standard. DOE also edited the text in paragraph (g)(10) to ensure consistency with the previous paragraph.

DOE also made a number of editorial changes to provide greater clarity as to the requirements in this section.

7. Changes to § 1046.17 Training standards and procedures.

DOE modified the language of this section from the previous § 1046.15, incorporating standards currently set forth in Appendix B to Subpart B, and DOE Order 473.3, *Protection Program Operations, https://www.directives.doe.gov/directives/current-directives/473.3-BOrder/view.* Specific training requirements and knowledge, skills, and abilities have been replaced with the requirement that PF personnel and their supervisors possess the knowledge, skills and abilities necessary to protect DOE security interests. The knowledge, skills and abilities required will be developed based on the applicable Job Analysis (JA) or Mission Essential Task List (METL). This ensures training requirements comport readily to existing conditions and essential job functions as dictated by the site-specific JA or METL.

Firearms qualification requirements were modified to address SPO qualification with individually-issued and primary weapons required by their duty assignment (i.e., specialty weapon, long gun and/or handgun). These requirements also stipulate that to operate post-assigned site-specific specialized or crew-served weapons, the SPO must be trained and demonstrate proficiency in the safe use of such weapons in a tactical environment.

DOE also clarified the procedure for developing site-specific and/or specialized courses of fire.

Commenters requested clarification that the Officially Designated Federal Security Authority (ODFSA) approves only the site-specific criteria for training programs. In response, DOE affirms the commenters' statement and adds the term ''site-specific'' in 1046.17(a).

A commenter also suggested that DOE use the broader term ''instructional guidelines'' instead of the more specific term ''lesson plans.'' DOE adopted this change in today's final rule to provide DOE field sites greater flexibility in their approach to provide required PF training.

Commenters questioned whether or not a previous DOE SPO basic course of instruction is not sufficient for rehired SPOs. In response to these comments, DOE clarifies that the full retraining of former SPOs may be required if a site-specific assessment of the individual indicates the need for retaking the full course. Language addressing SO initial training requirements also was adjusted to clarify that SOs must take the initial training requirement unless they were previously employed at the same facility. DOE determined that previous employment at the facility means that the individual would have already satisfied the initial training requirements.

Several commenters requested that clarification be provided regarding the required number of training sessions to be provided for SRT maintenance training. In response to these comments, and to ensure that all elements of training are conducted during appropriate timeframes, DOE revised language addressing SRT maintenance or refresher training. Annual training requirements must be completed over a minimum of two training sessions and all elements of the site-specific JA or METL must be covered annually.

Commenters expressed concern that earlier proposed language could be interpreted to allow durations of excessive length between required requalifications. Additionally, DOE determined clarification should be provided that the intent is to require both daylight and reduced light demonstrations of proficiency or qualifications. Today's final rule requires that semiannual firearms proficiency or qualifications be conducted under both daylight and reduced light conditions, and that such qualifications may occur within 30 days (either before or after) of six months from the previous semiannual qualification or proficiency demonstration date. Additionally, language was added to allow employers to change the semiannual qualification dates as long as no more than seven months pass between the last qualification and the new date to be established.

Commenters requested clarification regarding the acceptable number of consecutive weapons qualification remediations. DOE also has examined the requirements for ability to meet applicable physical readiness standards and ensures consistency for allowable remediations to demonstrate the appropriate physical readiness standard and to qualify with firearms. Only three successive remedial trainings will be provided for failure to meet either an applicable physical readiness standard or weapons qualification. The fourth successive failure will result in loss of status.

DOE also made editorial changes to provide greater clarity as to the requirements in this section.

8. Changes to § 1046.18 Access authorization.

The language of this section modifies the previous 1046.14 rule for clarity and to eliminate the requirement for all armed PF members to have a minimum ''L'' access authorization. The revised provision instead requires that, at a minimum, a favorably adjudicated

background investigation including national agency check with local agency and credit check (NACLC) be conducted to ensure the individual's suitability for arming. A ''Q'' access authorization continues to be required under certain circumstances.

Several comments were received on this section. Some of the commenters made statements without specific requests for change; no changes were made as a result of these statements. Other commenters suggested adding language already included in this section of the proposal. For instance, one commenter requested language in the final rule to establish that, at a minimum, a favorably adjudicated background check must be conducted prior to arming. Such a requirement is already set forth in this section. The text also requires that appropriate access authorization may be required under other circumstances. Therefore DOE made only editorial changes to enhance clarity to this section.

9. Changes to § 1046.19 Medical/fitness for duty status reporting requirements.

This new section restates the reporting requirements for PF personnel but has not changed substantially from the requirements in Appendix A of the previous rule. The section clarifies the requirement that PF personnel advise their supervisors when they have an unspecified change in their health status that might impair their ability to perform PF duties. PF personnel are also required to provide a detailed report identifying the change to the Designated Physician. This section also requires PF personnel to advise their supervisors when a corrective device associated with a reasonable accommodation is not functioning properly.

In addition, this section restates the requirement that the contractor report to the Designated Physician any physical, behavioral, or health changes or deterioration in work performance in PF personnel under their jurisdiction. The section contains new language requiring the Designated Physician to be informed of all anticipated job transfers involving either upward or downward recategorization (e.g., from SO to armed status, from armed status to SO, or from PF to other assignments).

DOE did not receive comments requesting changes to this section. No substantive changes were made to this section.

10. Changes to § 1046.20 Medical record maintenance requirements.

This section clarifies record retention and confidentiality requirements contained in Appendix A, section C, of the previous version of the rule. This rule substitutes language on the inability to perform the essential functions of the job for the term ''disqualifying defects.'' Language has been added to make it clear that access to medical information developed pursuant to the requirements of this part can be appropriately shared to satisfy the requirements of other parts of this or other titles. Thus, duplicative testing or examinations can be avoided. Additionally, a more explicit discussion of medical records confidentiality has been added for consistency with the requirements of the Privacy Act and DOE's implementing regulations.

One commenter made a comment on separate storage of psychological records based upon their current site-specific implementation of medical record maintenance and apparent use of an external psychologist. DOE recognizes that medical records are modular. Therefore, no substantive changes were made to this section.

11. Changes to § 1046.21 Materials incorporated by reference.

This section addressed industry standards to be incorporated by reference in DOE's PF regulations.

This section has been deleted because DOE did not incorporate any materials by reference in today's final rule.

III. Rulemaking Requirements

A. Review Under Executive Order 12866

This action does not constitute a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' (67 FR 53461, Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*www.gc.doe.gov*).

DOE has reviewed today's rule under the Regulatory Flexibility Act and certifies that the rule does not have a significant impact on a substantial number of small entities. This action amends an existing rule which establishes medical and physical training requirements and standards for DOE PF personnel. The rule affects approximately twenty private firms (e.g., integrated Management and Operating contractors, security services contractors and subcontractors) at the Department's facilities around the United States. Some of those firms which provide protective services are classified under NAICS Code 561612, Security Guards and Patrol Services. To be classified as a small business, they must have average annual receipts of $18.5 million or less. Some of the private firms affected by these standards and requirements would be classified as small businesses.

The rule updates the medical certification and physical readiness requirements for PF personnel and requires PF contractors to make reasonable accommodations to modify emergency and protective equipment for qualified individuals. The rule also sets forth the essential functions that PF personnel would be required to meet, with or without such reasonable accommodation. Medical certification and physical readiness requirements are currently set forth in Appendix A to Subpart B of 10 CFR part 1046. The updates, which are applicable to individual PF personnel rather than their employer, are not expected to impose a significant cost impact. While these essential functions for PF personnel have not previously been specified by regulation, DOE has determined that PF personnel must already be able to perform these functions to adequately perform their job responsibilities. In addition, while the reasonable accommodation provisions are not currently specified by the current regulation, such accommodations are already required by the ADA, as amended by the ADAAA.

The rule also establishes a process for review of a medical certification disqualification and for medical removal protection benefits in certain circumstances. The review process will be conducted by the DOE Office of Health, Safety and Security (independent review) and the DOE Office of Hearings and Appeals (final review), and as such are therefore not expected to result in a significant impact on affected small businesses. Any medical removal protection benefits would be reduced to the extent worker's compensation is provided and other collectively bargained benefits are paid for the same purposes, and will be reimbursable to the contractor under the applicable contract with DOE.

The rule also updates the training standards and procedures for PF officers, and makes minor updates to existing reporting and records maintenance requirements. The training standards and procedures are currently set forth at Appendix B to Subpart B of 10 CFR part 1046. The updates, intended to tailor training requirements to existing conditions and essential job functions specified in a site-specific JA or METL, are not expected to result in significant increases in costs to meet these requirements. Medical records are maintained by the Designated Physician and the evaluating psychologist, and the updates require PF personnel management to develop plans to ensure the confidentiality of medical information. Such confidentiality is already required by other existing regulations.[1]

Because these standards and requirements are primarily clarifications and updates to existing standards and requirements, DOE does not believe that the impact on these firms is significant. DOE emphasizes that these firms are under contract to DOE either directly or indirectly, so any costs incurred while meeting the standards and requirements in this rule would be invoiced and may be reimbursable in accordance with the terms of the contract and applicable law.

DOE received no comments on this certification in response to the proposed rule (77 FR 13206, Mar. 6, 2012). DOE addresses comments related to the economic impact of the proposed rule elsewhere in the preamble. Those comments did not result in changes to the certification.

For the above reasons, DOE certifies that the rule will not have a significant economic impact on a substantial number of small entities. DOE transmitted the certification to the Small Business Administration as required by 5 U.S.C. 605.

[1] DOE notes that the rule would also set forth qualification requirements for the PPMD and designated physicians. While many Management and Operations contractors may have medical professionals on staff, subcontractor firms that employ physicians, psychologists, and psychiatrists may be classified under NAICS Codes 621111, Offices of Physicians (except Mental Health Specialists), 621112, Offices of Physicians, Mental Health Specialists, and 621330, Offices of Mental Health Practitioners (except Physicians). To be classified as small businesses, these firms must have average annual receipts of $10 million, $10 million, and $7 million, respectively. Because individuals employed by these firms likely meet the proposed qualification requirements already in order to practice in the field, DOE does not believe that these requirements would result in a significant impact on any small firms employing these individuals.

C. Review Under Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* are imposed by this regulatory action.

D. Review Under the National Environmental Policy Act

This rule amends existing policies and procedures establishing medical and physical readiness standards for DOE PF personnel and has no significant environmental impact. Consequently, the Department has determined that this rule is covered under Categorical Exclusion A–5, of Appendix A to D, 10 CFR part 1021, which applies to a rulemaking that addresses amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism'' (64 FR 43255, August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to develop a formal process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have ''federalism implications.'' Policies that have federalism implications are defined in the Executive Order to include regulations that 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.'' On March 7, 2011, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735, March 14, 2000).

DOE has examined the rule and has determined that it does not have 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. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Section 3 of Executive Order 12988, (61 FR 4729, February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 3(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. The Department has determined that this regulatory action meets the requirements of section 3(a) and (b) of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory action on state, local and tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. UMRA also requires Federal agencies to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate.'' In addition, UMRA requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820, March 18, 1997). (This policy is also available at *http://www.gc.doe.gov*). Today's rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply. While the rule requires certain private sector employers and employees (i.e., DOE security contractors and certain PF personnel employed by them) to meet certain job-related medical and physical training standards and requirements, the impact is not likely to result in the expenditure of $100 million or more in any year. In addition, any costs incurred by employers in meeting these requirements would be

invoiced and may be reimbursable in accordance with the terms of the contract and applicable law.

H. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternates to the action and their expected benefits on energy supply, distribution, and use.

This rule is not a significant energy action, nor has it been designated as such by the Administrator of OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's rule does not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 1046

Government contract, Reporting and recordkeeping requirements, Security measures.

Issued in Washington, DC, on August 29, 2013.

Daniel B. Poneman,

Deputy Secretary of Energy.

For the reasons set out in the preamble, the Department of Energy (DOE) amends Chapter X of Title 10 of the Code of Federal Regulations by revising part 1046 to read as follows:

PART 1046—MEDICAL, PHYSICAL READINESS, TRAINING, AND ACCESS AUTHORIZATION STANDARDS FOR PROTECTIVE FORCE PERSONNEL

Subpart A—General

Sec.
1046.1 Purpose.
1046.2 Scope.
1046.3 Definitions.
1046.4 Physical Protection Medical Director (PPMD).
1046.5 Designated Physician.

Subpart B—Protective Force (PF) Personnel

1046.11 Essential functions of PF positions.
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Authority: 42 U.S.C. 2011, *et seq.;* 42 U.S.C. 7101, *et seq.;* 50 U.S.C. 2401, *et seq.*

Subpart A—General

§ 1046.1 Purpose.

This part establishes the medical, physical readiness, training and performance standards for contractor protective force (PF) personnel who provide security services at Department of Energy (DOE or Department) facilities including the National Nuclear Security Administration (NNSA). DOE and NNSA may choose to incorporate elements of these standards into Federal protective force programs.

§ 1046.2 Scope.

(a) This part applies to DOE, including NNSA, contractor employees and applicants for contractor protective force positions at government-owned or government leased facilities, regardless of whether the facility is privately operated. This part provides for the establishment of physical security programs based on uniform standards for medical, physical performance, training, and access authorizations for PF personnel providing physical security services to the Department.

(b) Use of a single, suitably qualified individual is encouraged when it is operationally, fiscally, or otherwise appropriate to perform multiple roles as required in this part (e.g., Designated Physician and Physical Protection Medical Director (PPMD)). Similarly, when appropriate medical, psychological, or other examinations, evaluations, testing, or reports required by other DOE regulations can be used to satisfy the requirements of multiple parts of this title, nothing in this part is intended to require duplicative examinations, evaluations, testing, or reports as long as the requirements of this part are met.

(c) The Department is authorized to grant such exemptions from the requirements of this part as it determines are authorized by law. Exemptions may not be granted from the requirement to meet any essential function of a position notwithstanding that reasonable accommodation must be granted as required by this part and the Americans with Disabilities Act of 1990 (ADA), as amended by the Americans with Disabilities Act Amendment Act of 2009 (ADAAA), and its implementing regulations. Exemptions from requirements other than the medical certification standards are allowed only on a case-by-case basis for a specific requirement covered under this part. The Department must document that the exemption will not endanger life or property or the common defense and security, and is otherwise in the public interest. Consistent with the exemption process specified by DOE, exemptions must be made from this part in consultation with the Chief Health, Safety and Security Officer and approved by the Secretary, Deputy Secretary, or for the National Nuclear Security Administration, the Administrator. Granting of equivalencies is not authorized. Nothing in this part shall prohibit NNSA from enhancing the requirements set forth in § 1046.16, SPO Physical Readiness Qualification Standards and Procedures, as necessary to further the interests of national security.

(d) Requests for technical clarification of the requirements of this part by organizations or individuals affected by its requirements must be made in writing through the appropriate program or staff offices of the Department. Such requests must be coordinated with the

Office of Health, Safety and Security or its successor organization. The Office of Health, Safety and Security is responsible for providing a written response to such requests. Requests for interpretations of the requirements of this part may be made to the General Counsel. The General Counsel is responsible for providing responses to such requests.

(e) This part is effective March 10, 2014. Requirements of this rule that cannot be implemented by March 10, 2014 due to contractual conflicts or within existing resources must be documented by the officially designated federal security authority (ODFSA) and submitted to the relevant program officers: the Under Secretary; the Under Secretary for Science or the Under Secretary for Nuclear Security, NNSA; and the Chief Health, Safety and Security Officer. The documentation must include timelines and resources needed to fully implement this part.

§ 1046.3 Definitions.

The following definitions apply to this part:

Active shooter means an individual actively engaged in the unauthorized killing or attempting to kill a person or persons in a confined and populated area.

Advanced Readiness Standard (ARS) means a qualification standard that includes the requirements of the Fixed Post Readiness Standard (FPRS), but also requires the completion of a one mile run with a maximum qualifying time of 8 minutes 30 seconds, a 40-yard dash from the prone position in 8.0 seconds or less, and any other measure of physical readiness necessary to perform site-specific essential functions as prescribed by site management and approved by the respective program office. This standard applies to SPOs who staff security posts that normally require extensive tactical movement on foot or are assigned Special Response Team duties.

Applicant means a person who has applied for and been conditionally offered a position as a Security Officer (SO) or a Security Police Officer (SPO), but who has not yet begun the active SO or SPO duties for which the person has applied.

Basic Readiness Standard (BRS) means a qualification standard that includes the requirements of the FPRS, but also requires the completion of a one-half mile run with a maximum qualifying time of 4 minutes, 40 seconds, a 40-yard dash from the prone position in 8.5 seconds or less, and any other measure of physical readiness necessary to perform site-specific essential functions as prescribed by site management and approved by the respective program office. This standard applies to SPOs with mobile defensive duties in support of facility protection strategies.

Chief Medical Officer means a Federal employee who is a doctor of medicine (MD) or doctor of osteopathic medicine (DO) who is licensed without restriction and qualified in the full range of occupational medicine services employed by the Department's health, safety, and security programs. This individual provides technical support for these programs and must be identified in writing.

Contractor means a contractor for the Department and includes subcontractors at all tiers.

Corrective device means a device, such as eyeglasses or hearing aid, necessary to enable an examinee to meet medical qualification standards and have been determined to be a reasonable accommodation compatible with the performance of the essential functions of the position. The contractor responsible for the performance of the examinee must determine that the use of the device is compatible with all actions associated with emergency and protective equipment without creating a hardship for the contractor. The Designated Physician and PPMD must determine that the reasonable accommodation is consistent with the medical certification standards without creating a direct threat to the individual or to others.

Designated Physician means an MD or DO, licensed without restriction in the state of practice, who has been approved by the PPMD. The Office of Health, Safety and Security must be consulted regarding an individual's suitability prior to appointment as a Designated Physician.

Direct threat means a significant risk of substantial harm to the health or safety of the individual or others. The risk must be based on an assessment of the individual's present ability to perform safely the essential functions of the job, and it must be determined that the risk cannot be eliminated or reduced by reasonable accommodation.

DOE facility means any facility required by DOE to employ PF personnel and used by DOE, including NNSA, and its contractors for the performance of work under DOE jurisdiction.

Emergency conditions are those conditions that could arise at a DOE facility as a result of a breach of security (e.g., sabotage or terrorism), accident (e.g., fire or explosion), or naturally occurring event (e.g., storm or earthquake) and threaten the security or integrity of DOE facilities, assets, personnel, the environment or the general public. For the purposes of this rule, emergency conditions include PF drills and exercises relating to search, rescue, crowd control, fire suppression and special operations, including response to the scene of the incident, and all applicable PF functions performed at the scene.

Essential functions of the job are the fundamental job duties of PF members as set out in § 1046.11.

Field element means the management and staff elements of DOE, including NNSA, with delegated responsibility for oversight and program management of major facilities, programs, and site operations.

Final review means the process for an individual disqualified from medical certification to have a second and ultimate review of the individual's case conducted by the DOE Office of Hearings and Appeals.

Fixed Post Readiness Standard (FPRS) means a standard that requires an SPO to demonstrate the ability to assume and maintain the variety of cover positions associated with effective use of firearms at entry portals and similar static environments to include prone, standing, kneeling, and barricade positions; to use site-specific intermediate force weapons and weaponless self-defense techniques; to effect arrest of suspects and place them under restraint, e.g., with handcuffs or other temporary restraint devices; and any other measure of physical readiness necessary to perform site-specific essential functions as prescribed by site management and approved by the respective program office.

Independent Physician means a physician who possesses an MD or DO degree, is licensed without restriction and board certified, and has experience in a relevant field of medicine. The Independent Physician must not have served as the requestor's personal physician in any capacity or have been previously involved in the requestor's case on behalf of the Department or a Department contractor.

Independent review means the process through which a medically disqualified individual may appeal to have an independent review of the individual's case conducted by an Independent Physician.

Job analysis (JA) is a systematic method used to obtain a detailed listing of the tasks of a specific job. JAs must be derived from criteria determined and published by the DOE National Training Center or identified and documented through a site-specific Mission Essential

Task List (METL)-based process based on a set of Departmental Nuclear Security Enterprise-wide standards. A METL-based process that identifies and formally documents duties, tasks, and sub-tasks to be trained is commensurate with the process to develop JAs.

Medical approval means a determination by a Designated Physician that an individual is medically cleared to attempt the physical readiness standard qualification test and perform SO or SPO duties.

Medical certification means a determination by a Designated Physician approved by the PPMD that an individual is medically qualified for a particular category of PF positions, including the performance of the essential functions of an SO or SPO, and the required ongoing physical readiness training.

Medical certification disqualification means a determination by a Designated Physician and approved by the PPMD that an individual, with or without reasonable accommodation, is unable to perform the essential functions of an SO or SPO job position, including the required physical readiness training, without creating a direct threat to that individual or others.

Medical evaluation means the analysis of information generated by medical examinations and psychological evaluations and assessments of an individual to determine medical certification.

Medical examination means an examination performed or directed by the Designated Physician that incorporates the components described in § 1046.13.

Mission Essential Task List (METL) means a list of common tasks required for PF assignments based on site-specific protection plans to defend against adversary capabilities as defined by DOE.

Officially Designated Federal Security Authority (ODFSA) means the Departmental Federal authority at the Field or Headquarters (HQ) Element with the primary and delegated responsibility for oversight of a site PF. Also may be referred to as the Department or Federal cognizant security authority.

Pertinent negative means the absence of a sign or symptom that helps substantiate or identify a patient's condition.

Physical Protection Medical Director (PPMD) means the physician programmatically responsible for the overall direction and operation of the site medical program supporting the requirements of this part.

Primary weapon as used in this part means any weapon individually assigned or available at the majority of posts/patrols to which the SPO may be assigned.

Protective Force (PF) personnel means Special Response Team members, SPOs, and SOs employed to protect Department security interests.

Qualification means the documented determination that an individual meets the applicable medical, physical, and as appropriate, firearms training standards, and possesses the knowledge, skills, abilities and access authorizations required for a particular SO or SPO position.

Randomly selected means any process approved by the ODFSA, which ensures each member of the SPO population has an equal chance to be chosen every time the selection process is used.

Reasonable accommodation means an accommodation consistent with the Americans with Disabilities Act Amendment Act (ADAAA) that is documented in writing.

Re-qualification date means the date of expiration of current qualification at which demonstration of knowledge, skills and/or abilities is required to maintain specific job status.

Security interests include any Department asset, resource or property which requires protection from malevolent acts and/or unpermitted access. These interests may include (but are not limited to) Department and contractor personnel; sensitive technology; classified matter; nuclear weapons, components, and assemblies; special nuclear material (SNM) as defined by the Atomic Energy Act of 1954 (as amended) and the Department; other nuclear materials; secure communications centers; sensitive compartmented information facilities; automated data processing centers or facilities storing and transmitting classified information; vital equipment; or other Department property.

Security Officer (SO) means an unarmed uniformed PF member who has no Departmental arrest or detention authority, used to support SPOs and/or to perform duties (e.g., administrative, access control, facility patrol, escort, assessment and reporting of alarms) where an armed presence is not required.

Security Police Officer (SPO) means a uniformed PF member who is authorized under section 161(k) of the Atomic Energy Act of 1954, as amended, section 661 of the DOE Organization Act, or other statutory authority, to carry firearms and to make arrests without warrant for specifically enumerated offenses and who is employed for, and charged with, the protection of Department security interests.

Semi-structured interview means, for the purpose of this part, an interview by a Psychologist who meets standards established by DOE and who has the latitude to vary the focus and content of the questions depending upon the interviewee's responses.

Special Response Team, commonly referred to as SRT, means a PF special operations unit comprised of SPOs whose primary mission is to resolve incidents that require activities and force options that exceed the capability of existing physical security systems (e.g., performance of recapture/recovery operations and augmentation of denial missions).

Special Response Team (SRT) *Member* means SPOs who meet the ARS, with additional training and qualification requirements as necessary, and who are assigned to an SRT that trains and responds as a team to perform recapture and recovery and to augment denial missions, e.g., those missions that require adversaries be denied proximity to the protected property.

Weapons proficiency demonstration means a process based on a predetermined, objective set of criteria approved by the respective program office in consultation with the Office of Health, Safety and Security that results in a grade (e.g., pass/fail). The process must ensure that an individual (or team, for crew-served weapons) demonstrates the ability to perform all weapons-handling and operational manipulations necessary to load, operate, and discharge a weapon system accurately and safely (to include clearing/returning to safe mode the weapons system at the conclusion of firing), without the necessity for scoring targets during the course of fire. Proficiency courses of fire must include tactically-relevant time constraints. Demonstrations of proficiency are allowed with the actual weapon and assigned duty load, with alternate loads (e.g., frangible or dye-marking rounds), or with authorized weapons system simulators, as defined in this section. Proficiency courses of fire must be tactically relevant.

Weapons qualification is a formal test of weapons proficiency that includes, in addition to all specified elements of proficiency demonstration, the achievement of a prescribed qualification score according to a Departmentally-approved course of fire. Weapons qualification courses of fire must be constrained by time.

Weapons system simulator means a device that closely simulates all major aspects of employing the corresponding actual firearm/weapons system, without

firing live ammunition. The simulator should permit all weapons-handling and operational actions required by the actual weapon, and should allow the use of sight settings similar to the corresponding actual weapon with assigned duty loads. Additionally, when weapons or weapons system simulators are used for qualification testing of protective force officers, the operation of the simulated weapon must closely approximate all weapons handling and operational manipulation actions required by the actual weapon. The simulation system must precisely register on-target hits and misses with accuracy comparable to the actual weapon at the same shooting distances. The weight, balance, and sighting systems should closely replicate those of the corresponding actual weapon with assigned duty loads, and noise signatures and felt recoil should be simulated to the extent technically feasible.

Work hardening is discussed by the Department of Labor in their Division of Federal Employees' Compensation Procedure Manual, 2–813–12 (available at *http://www.dol.gov/owcp/dfec/procedure-manual.htm*), as a physical therapy program which will facilitate return-to-work. Work hardening is also known as an Occupational Rehabilitation Program.

§ 1046.4 Physical Protection Medical Director (PPMD).

(a) *General.* The PPMD is the contractor physician programmatically responsible for the overall direction and operation of site medical programs supporting the PF requirements of this part. The PPMD is responsible for the programmatic oversight of all site Designated Physicians, including those who may operate physically separate clinics. Appropriate contractual arrangements must ensure that the PPMD's authority applies to all site contractors.

(1) *Nomination.* The name of each PPMD candidate must be submitted by the contractor to the ODFSA who in turn must consult with the Office of Health, Safety and Security prior to approving the PPMD. For NNSA, PPMD nominations must be made to the NNSA organization responsible for occupational health and safety. At the time of initial nomination for the PPMD designation the nominee shall submit, through the nominee's employer and the ODFSA, the following documents or copies thereof, translated into English if written in another language:

(i) Applicable diplomas;

(ii) Certificate of any postgraduate professional training (e.g., internship, residency, fellowship);

(iii) Current medical license in the state in which duties will be performed;

(iv) Certification of good standing by all medical licensing bodies from which the applicant has held medical licenses, as well as documentation of any restrictions or limitations to practice medicine, past or present (such documentation may be obtained in written form or electronically). The nominee may be requested to instruct the licensing body to send such certifications to the Office of Health, Safety and Security and as applicable to the NNSA organization responsible for occupational health and safety. Under no circumstances will such certifications of good standing be accepted directly from the applicant. Additionally, notice of certification by any additional American specialty board, if applicable, and/or current curriculum vitae may be requested; and

(v) A curriculum vitae, if requested, must include a discussion of any gaps in employment.

(2) *Updates.* If determined necessary at any time and requested by the Office of Health, Safety and Security, the NNSA organization responsible for occupational health and safety, the ODFSA, or the PPMD's employer, updated information as identified in paragraphs (a)(1)(i) through (v) of this section must be provided.

(3) *Other roles and responsibilities.* Nothing in this part is intended to preclude the PPMD from fulfilling similar or related roles under other parts or this title, including providing occupational medical services under 10 CFR part 851, ''Worker Safety and Health Program.'' Additionally, the PPMD may fulfill the role of Designated Physician. The PPMD's employer must notify the Office of Health, Safety and Security, and if appropriate the NNSA organization responsible for occupational health and safety, through the ODFSA if the PPMD will also be fulfilling the role of the Designated Physician.

(4) *Qualifications.* The PPMD shall possess an MD or DO degree; be board certified or board eligible in occupational medicine; be a professionally qualified physician in good standing in the professional community, to include all medical licensing bodies from which the applicant has held medical licenses; demonstrate past professional performance and personal conduct suitable for a position of responsibility and trust; read, write, speak, and understand the English language proficiently; and possess an unrestricted license to practice medicine in the state in which the designation is sought, or meet the medical licensing requirements of the applicable military or Federal service to which the applicant belongs.

(b) *Nominations.* Except as provided in § 1046.5(c), prior to approval of a Designated Physician by the PPMD's employer, the PPMD must nominate in writing, through the local ODFSA, to the Office of Health, Safety and Security, one or more nominees for Designated Physician positions. For NNSA, Designated Physician nominations must be made through the NNSA organization responsible for occupational health and safety.

(1) Each nomination must describe the relevant training and experience of the nominee.

(2) Each nominee must be professionally qualified in good standing in the professional community, to include all medical licensing bodies from which the applicant has held medical licenses; demonstrate past professional performance and personal conduct suitable for a position of responsibility and trust; read, write, speak, and understand the English language proficiently; and possess the applicable unrestricted license to practice in the state in which the designation is sought or meet the medical licensing requirements of the applicable military or Federal service to which the applicant belongs.

(3) To be nominated, a Designated Physician shall possess an MD or DO degree and be board certified or board eligible in occupational medicine.

(c) *Documentation.* At the time of initial nomination, the nominee shall submit to the PPMD the following documents or copies thereof, translated into English if written in another language:

(1) Applicable diplomas;

(2) Certificate of any postgraduate professional training (e.g., internship, residency, fellowship);

(3) Current medical license in the state in which duties will be performed; and

(4) Certification of good standing by all medical licensing bodies from which the applicant has held medical licenses, as well as documentation of any restrictions or limitations to practice medicine, past or present (such documentation may be obtained in written form or electronically). The PPMD may request the nominee to instruct the licensing body to send such certifications to the PPMD. Under no circumstances will such certifications of good standing be accepted directly from the applicant. Additionally, the PPMD

may request notice of certification by any additional American specialty board, if applicable; and

(5) A current curriculum vitae may be requested. The curriculum vitae, if requested, must include a discussion of any gaps in employment.

(6) If determined necessary by the PPMD, updated information, as identified in paragraphs (c)(1) through (5) of this section, may be requested at any time.

(d) *Self reporting.* (1) Each incumbent individual covered under paragraphs (a) or (b) of this section must agree to self-report the following information as a condition of the designation. PPMDs must report to their employer, who must forward the information to the Office of Health, Safety and Security or as appropriate to the NNSA organization responsible for occupational health and safety through the ODFSA. Additionally, Designated Physicians must report to the PPMD the following:

(i) Any change in status or initiation or taking of an adverse action, past or present, by any state medical licensing board or any other professional licensing board against the licenses of the individual (these may be provided in written or electronic form). The incumbent or nominee may be required to request the licensing body to provide such information to the ODFSA or PDMD, as appropriate. Under no circumstances will such information be accepted directly from the incumbent or nominee;

(ii) Initiation of an adverse action by any Federal or state regulatory board;

(iii) Being named a defendant in any criminal proceedings (felony or misdemeanor);

(iv) Being named in a civil suit alleging professional malpractice;

(v) Being evaluated or treated for alcohol use disorder or drug dependency or abuse; and

(vi) Occurrence of a physical disorder, a mental disorder, or any other health condition that might affect the physician's ability to perform professional duties.

(2) All information in paragraphs (d)(1)(i) through (vi) of this section must be submitted to DOE for consideration and possible action and may result in rejection or termination of the applicable designation. Failure to provide such information may also result in the rejection or termination of the applicable designation. For NNSA contractors, in consultation with the Office of Health, Safety and Security, the NNSA organization responsible for occupational health and safety will make the final decision on the appropriate action in light of the information received.

(e) *Annual activity report.* The PPMD must review the current credentials of each Designated Physician annually and make a recommendation to the employer to either retain or replace each incumbent. The Office of Health, Safety and Security and as appropriate, the NNSA organization responsible for occupational health and safety must be notified by the employer through the appropriate field element of any changes.

(f) *Retention or replacement.* For DOE, the PPMD's supervisor of record must send an annual letter to the Office of Health, Safety and Security reporting on the current credentials of the PPMD recommending retention or replacement. Immediate notification must be made to the Office of Health, Safety and Security if a PPMD is relieved of duties or replaced. For NNSA, the PPMD's supervisor of record must send an annual letter to the NNSA organization responsible for occupational health and safety with a courtesy copy to the Office of Health, Safety and Security reporting on the current credentials of the PPMD recommending retention or replacement. For NNSA, immediate notification must be made to the NNSA organization responsible for occupational health and safety with a courtesy copy to the Office of Health, Safety and Security if a PPMD is relieved of duties or replaced.

(g) *Medical activity summary.* The PPMD must submit an annual letter summarizing the medical activity during the previous year conducted under this part to the Chief Health, Safety and Security Officer or designee through the manager of the Field Element. For NNSA the summary must be sent to the NNSA organization responsible for occupational health and safety with a courtesy copy to the Office of Health, Safety and Security. The PPMD must comply with applicable DOE requirements specifying report content.

§ 1046.5 Designated Physician.

(a) *Responsibilities.* Designated Physicians are responsible for the conduct of medical examinations, evaluations, and medical certification of SOs and SPOs. Additionally, Designated Physicians are responsible for the supervision of physician extenders (e.g., physician's assistants, certified occupational health nurses, or nurse practitioners), as required by applicable state or local law. The Designated Physician must:

(1) Annually determine whether to approve an individual's participation in programmed physical readiness training programs required under this rule and determine the individual's ability to perform the physical readiness and PF qualification tests without undue risk. Medical approval must be obtained within thirty days prior to the individual's beginning such training or attempting the qualifying tests;

(2) With the assistance of a psychologist or psychiatrist meeting standards established by DOE, determine:

(i) An individual's medical capability, with or without reasonable accommodation, to perform the essential functions of PF job duties without creating a direct threat to the individual or others; and

(ii) Whether to certify that the individual meets the applicable medical and physical readiness standards as set forth herein for their position.

(3) Determine whether any portion of any medical examination may be performed by other qualified personnel, such as another physician or physician extenders;

(4) Be responsible for case management, including supervising, interpreting, and documenting PF personnel medical conditions; and

(5) Be familiar with the required essential functions of the job duties for PF personnel, as set forth in § 1046.11, and the physical readiness requirements as identified in § 1046.16.

(b) *Nominations.* The requirements of § 1046.4(b) and (c) must be followed by the individuals nominated for Designated Physician positions.

(c) *Approval in lieu of nomination.* Designated Physicians approved under the provisions of 10 CFR part 712, ''Human Reliability Program,'' will also satisfy the requirement for nomination to, and approval by, DOE/NNSA under this part. The employer must notify the Office of Health, Safety and Security through the ODFSA if the physician will be fulfilling the role of Designated Physician for this part in addition to fulfilling a role for another part (e.g., 10 CFR part 712). For NNSA the notification must be sent to the NNSA organization responsible for occupational health and safety with a courtesy copy to the Office of Health, Safety and Security.

(d) *Self reporting.* The self-reporting requirements of § 1046.4(d) must be followed by incumbent Designated Physicians.

Subpart B—Protective Force (PF) Personnel

§ 1046.11 Essential functions of PF positions.

Nothing in this part is intended to preclude emergency use of any available protective force personnel by an on-scene commander to successfully resolve a national security emergency.

(a) *Essential functions.* The essential functions described in paragraphs (b) through (g) of this section and other site-specific essential functions must be communicated in writing by the manager of the Field Element to the PPMD and the Designated Physician. The Designated Physician is required to ensure applicant and incumbent PF members are aware that these essential physical and mental functions in paragraphs (b) through (g) of this section and other site-specific essential functions, as appropriate, and the medical certification standards provided in section 1046.13 if this part are the elements against which the initial and annual evaluations for PF personnel will be conducted.

(b) *SO essential functions.* (1) The control of voluntary motor functions, strength, range of motion, neuromuscular coordination, stamina, and dexterity needed to meet physical demands associated with routine and emergency situations of the job;

(2) The ability to maintain the mental alertness necessary to perform all essential functions without posing a direct threat to self or others; and

(3) The ability to understand and share essential, accurate communication by written, spoken, audible, visible, or other signals while using required protective equipment.

(c) *Additional SO essential functions.* SOs may be required to support SPOs and assist in the routine physical protection of DOE facilities, personnel, classified information, and property, as warranted by DOE facility operations, staff security posts used in controlling access to DOE facilities, conduct routine foot and vehicular patrols, escort visitors, check rooms and facilities, assess and report alarms, and perform basic first aid. Therefore, all SOs must also be able to:

(1) Understand and implement departmental and site policies and procedures governing post and patrol operations and access control systems;

(2) Understand and implement departmental and site policies and procedures governing the SO's role in site protection;

(3) Understand and implement inspection techniques for persons, packages and vehicles, as well as detect and identify prohibited articles and site-specific security interests;

(4) Work in locations where assistance may not be available;

(5) Spend extensive time outside exposed to the elements and working in wet, icy, hot, or muddy areas;

(6) Make frequent transitions from hot to cold, cold to hot, dry to humid, and from humid to dry atmospheres;

(7) Walk, climb stairs and ladders, and stand for prolonged periods of time;

(8) Safely operate motor vehicles when their use is required by local missions and duty assignments;

(9) Use clear and audible speech and radio communications in other than quiet environments;

(10) Read and understand policies, procedures, posted notices, and badges;

(11) Rely on the senses of smell, sight, hearing and touch to: detect the odor of products of combustion and of tracer and marker gases to detect prohibited articles; inspect persons, packages and vehicles; and in general determine the nature of emergencies; maintain personal safety; and report the nature of emergencies;

(12) Employ weaponless self-defense; and

(13) Be fitted with and use respirators other than self-contained breathing apparatus when the use of such equipment is required by local assignment.

(d) *FPRS SPO essential functions.* FPRS SPO personnel may be assigned only to fixed posts where there is no planned requirement for response away from that post. In addition to the SO essential functions listed in paragraphs (b) and (c) of this section, FPRS SPOs must be able to:

(1) Apply basic tactics (to include use of intermediate force weapons) necessary to engage and neutralize armed adversaries and determine probable capabilities and motivations of potential adversaries;

(2) Use site-specific hand tools and weapons required for the performance of duties;

(3) While armed and authorized to use deadly force, perform complex tasks, make life or death and other critical decisions, and take appropriate actions under confusing, stressful conditions including potentially life-threatening environments throughout the duration of emergency situations, e.g., active shooter scenarios;

(4) Perform physically demanding work under adverse weather and temperature conditions (extreme heat and extreme cold) on slippery or hazardous surfaces with the prolonged use of protective equipment and garments such as respirators, air supply hoods, or bullet-resistant garments, as required by site protection strategies;

(5) Be fitted for and properly utilize personal duty equipment;

(6) Work for long periods of time in conditions requiring sustained physical activity and intense concentration in environments of high noise, poor visibility, limited mobility, at heights, and in enclosed or confined spaces;

(7) Accommodate to changing work and meal schedules or to a delay in meals without potential or actual incapacity; and

(8) Have no known significant abnormal intolerance to chemical, mechanical (e.g., heat, light or water), and other physical agent exposures to the skin that may be encountered during routine and emergency duties, as specified at the site.

(e) *BRS SPO essential functions.* In addition to the FPRS SPO essential functions listed above, BRS SPOs must be able to:

(1) Read placards and street signs while driving or to see and respond to imminently hazardous situations in both daylight and reduced light conditions;

(2) Be capable of operating armored vehicles with an expectation of employing the capabilities of the vehicle;

(3) Staff security posts which normally require movement on foot, by vehicle, watercraft, or aircraft in response to alarms and any breach of security; and to support site protection strategies;

(4) Provide interdiction, interruption, neutralization, and support the recapture, pursuit and/or recovery of a DOE asset/site/facility/location;

(5) Make rapid transitions from rest to near maximal exertion without warm-up; and

(6) Otherwise act as needed to protect Department sites, personnel, classified information, and nuclear weapons, nuclear weapons components, and SNM, to apprehend suspects, and to participate in the armed defense of a Department site against a violent assault by adversaries.

(f) *ARS SPO essential functions.* The essential functions of an ARS SPO include those of a BRS SPO. Security posts which normally, or are expected to, require extensive tactical movement on foot must be staffed by ARS SPOs. In addition, an ARS SPO must be able to support the pursuit/recovery of a Department security interest.

(g) *SRT member essential functions.* The essential functions of an SRT member include those of an ARS SPO. The primary role of SRTs is the recapture, pursuit, and/or recovery of

Department security interests. In addition, an SRT member must be trained to resolve incidents that require activities and force options that exceed the capabilities of other site PF members, as determined by site-specific analysis. An SRT SPO also must:

(1) Successfully complete a Departmental advanced tactical qualification course designed to provide the minimum level of skills and knowledge needed to completely perform all tasks associated with SRT job responsibilities;

(2) Have knowledge and skills to provide additional protection capability as demanded by the particular targets, threats, and vulnerabilities existing at their assigned Departmental facility;

(3) Be able to operate special weapons, tactical vehicles, and other equipment necessary to protect a particular facility or to effectively engage an adversary with advanced capabilities; and

(4) Possess the ability to act successfully as a member of an aggressive and readily mobile response team as dictated by site-specific vulnerability assessments, using force options and tactical response team techniques necessary for recapture and recovery operations directed against an adversary and to support site-specific protection strategies.

§ 1046.12 Medical, physical readiness, and training requirements for PF personnel.

Department PF personnel must be individuals who:

(a) Are medically certified by the PPMD pursuant to the procedures set out in § 1046.13 to perform all of the applicable essential functions of the job, as set forth in § 1046.11;

(b) Meet the physical readiness qualification standards set forth in § 1046.16; and

(c) Are determined to be qualified as having the knowledge, skills, abilities and completed the requirements of a formal training program as set out in § 1046.16.

§ 1046.13 Medical certification standards and procedures.

(a) *PF medical certification standards.* All applicant and incumbent PF personnel must satisfy the applicable Medical Certification Standards set forth in this section.

(b) *Requirements of the medical evaluation to determine medical certification.* (1) The medical evaluation must be made by the Designated Physician without delegation (e.g., to a physician's assistant or nurse practitioner).

(2) Evaluations of incumbent security police officers must include a medical history, the results of the examination, and a formal written determination.

(3) A site standard form approved by the Chief Medical Officer must be used, and pertinent negatives must be documented on the form.

(4) The Medical Certification Standards are the minimum medical standards to be used in determining whether applicants and incumbent PF personnel can effectively perform, with or without reasonable accommodation, all essential functions of normal and emergency duties without imposing an undue hardship on the employer or posing a direct threat to the PF member or others, the facility, or the general public. All reasonable accommodations as defined in this part must be approved in writing by the PF contractor with a determination that the use of the device is compatible with all actions associated with emergency and protective equipment without creating a hardship for the contractor. The Designated Physician and PPMD must determine that the reasonable accommodation is consistent with the medical standard without creating a direct threat to the individual or to others.

(c) *General medical standards for PF personnel.* The examinee must possess the mental, sensorial, and motor skills to perform, safely and efficiently, all applicable essential job functions described in § 1046.11 and those designated in the current job analysis submitted by PF management to the Designated Physician/PPMD. Specific qualifications for SOs and SPOs are set forth in paragraphs (d) and (e), respectively, of this section. Reasonable accommodations shall be provided pursuant to the requirements of the ADAAA.

(d) *Specific medical standards for SOs*—(1) *Head, face, neck, and scalp.* Configuration suitable for fitting and effective use of personal protective equipment when the use of such equipment is required by assigned normal or emergency job duties.

(2) *Sense of smell.* Ability to detect the odor of combustion products and of tracer or marker gases.

(3) *Speech.* Capacity for clear and audible speech as required for effective communications of the job.

(4) *Hearing.* Hearing loss with or without aids not to exceed 30 decibels (db) average at 500, 1000, and 2000 Hertz (Hz), with no loss greater than 40 db at any one of these frequencies and the ability to localize sounds with a difference of not more than 15 db average loss between the two ears. If hearing aids are necessary, suitable testing procedures shall be used to ensure auditory acuity equivalent to the above requirement.

(5) *Vision.* Near and distant visual acuity, with or without correction, of at least 20/25 in one eye and no worse than 20/40 in the other eye.

(6) *Color vision.* Ability to distinguish red, green, and yellow. Acceptable measures of color discrimination include the Ishihara; Hardy, Rand, & Rittler; and Dvorine pseudoisochromatic plates (PIP) when administered and scored according to the manufacturer's instructions. Tinted lenses such as the X-Chrom contact lenses or tinted spectacle lenses effectively alter the standard illumination required for all color vision tests, thereby invalidating the results and are not permitted during color vision testing.

(7) *Cardiorespiratory.* Capacity to use a respirator other than self-contained breathing apparatus (SCBA) when required by local assignment.

(8) *Nutritional/metabolic.* Ability to accommodate to changing work and meal schedules without potential or actual incapacity. Status adequate to meet the stresses and demands of assigned normal and emergency job duties.

(e) *Specific medical standards for SPOs.* In addition to the criteria identified in § 1046.16(f), the following standards must be applied.

(1) *Head, face, neck and scalp.* Configuration suitable for fitting and effective use of personal protective equipment when the use of such equipment is required by assigned normal or emergency job duties.

(2) *Sense of Smell.* The ability to detect the odor of combustion products and of tracer or marker gases.

(3) *Speech.* Capacity for clear and audible speech as required for effective communications on the job.

(4) *Hearing.* Hearing loss without aids not to exceed 30 db average at 500, 1000, 2000 Hz, with no loss greater than 40 db at any of these frequencies and the ability to localize sounds with a difference of not more than 15 db average loss between the two ears. Hearing loss beyond indicated level would interfere with ability to function and respond to commands in emergency situations. Use of a hearing aid is allowed for one ear only with the remaining ear qualifying for no more than an average of 30 db loss at frequencies of 500, 1000 and 2000 Hz. If a hearing aid is necessary, suitable testing procedures must be used to assure auditory acuity equivalent to the above requirement for the difference between two ears.

(5) *Vision.* (i) Near and distant vision. Near and distant visual acuity sufficient

to effectively perform emergency-related essential functions:

(A) With or without correction, vision of 20/25 or better in the better eye and 20/40 or better in the other eye.

(B) If uncorrected, distant vision in the better eye is at least 20/25, and if the SPO wears corrective lenses, the SPO must carry an extra pair of corrective lenses.

(ii) *Color vision.* Ability to distinguish red, green, and yellow. Acceptable measures of color discrimination include the Ishihara; Hardy, Rand, & Rittler; and Dvorine pseudoisochromatic plates (PIP) when administered and scored according to the manufacturer's instructions. Tinted lenses such as the X-Chrom contact lenses or tinted spectacle lenses effectively alter the standard illumination required for all color vision tests, thereby invalidating the results and are not permitted during color vision testing.

(iii) *Field of vision.* Field of vision in the horizontal meridian at least a total of 140 degrees, contributed to by at least 70 degrees from each eye.

(iv) *Depth perception.* Ability to judge the distance of objects and the spatial relationship of objects at different distances.

(6) *Cardiorespiratory.* (i) *Respiratory.* Capacity and reserve to perform physical exertion in emergencies at least equal to the demands of the job assignment. This must be measured by annual pulmonary function test, with no less than a 90 percent predicted forced vital capacity and forced expiratory volume. There must be no diagnosis of respiratory impairment requiring ongoing use of medications such as bronchodilators or beta agonists. A full review and approval by the PPMD is required whenever there is a past history of sleep apnea (with an established index of suspicion), with or without treatment.

(ii) *Cardiovascular.* (A) Capacity for tolerating physical exertion during emergencies. The results of the two semiannual assessments as identified in § 1046.16(b)(4) must be considered. Normal configuration and function, normal resting pulse, regular pulse without arrhythmia, full symmetrical pulses in extremities, and normotensive, with tolerance for rapid postural changes on rapid change from lying to standing position. The use of hypertensive medications is acceptable if there are no side effects present that would preclude adequate functions as herein specified.

(B) If an examination reveals significant evidence of cardiovascular abnormality or significantly increased risk for coronary artery disease (CAD) as determined by the examining physician (e.g., by using the Framingham Point System), an evaluation by a specialist in internal medicine or cardiology may be required and evaluated by the Designated Physician. An electrocardiogram is required at entry, at age 40, and annually thereafter, which must be free from significant abnormality. If such abnormalities are detected, then a stress electrocardiogram with non-ischemic results must be provided, or the individual must be referred to a cardiologist for a fitness for duty examination. A stress electrocardiogram must be performed every other year beginning at age 50 with the results reviewed by the Designated Physician.

(7) *Neurological, mental, and emotional.* Absence of central and peripheral nervous system conditions that could adversely affect ability to perform normal and emergency duties or to handle firearms safely. A test for peripheral neuropathy at fingers and toes is required annually. Absence of neurotic or psychotic conditions which would adversely affect the ability to handle firearms safely or to act safely and efficiently under normal and emergency conditions. Psychologists and psychiatrists identified to conduct evaluations, assessments, testing, and/or diagnoses associated with medical qualifications of this part must meet standards established by DOE.

(8) *Musculoskeletal.* Absence of conditions that could reasonably be expected to interfere with the safe and effective performance of essential physical activities such as running, walking, crawling, climbing stairs, and standing for prolonged periods of time. All major joint range of motion limits must have no significant impairments in the performance of essential functions. This includes full range of motion to include overhead reaching and squatting. No history of spine surgery, a documented diagnosis of herniated disc, or mechanical back pain that has not been certified to have normal functional recovery with no activity limitations precluding the ability to perform SPO essential functions.

(9) *Skin.* Have no known significant abnormal intolerance to chemical, mechanical, and other physical agent exposures to the skin that may be encountered during routine and emergency duties, as specified at the site. Capability to tolerate use of personal protective covering and decontamination procedures when required by assigned job duties. Facial hair cannot be allowed to interfere with respirator fitting, and any such growth or a skin condition which could preclude respirator fit is not acceptable and must be documented.

(10) *Endocrine/nutritional/metabolic.* Ability to accommodate to changing work and meal schedules without potential or actual incapacity. Status adequate to meet the stresses and demands of assigned normal and emergency job duties. A full evaluation and approval of reasonable accommodation by the PPMD is required for hiring and retention when metabolic syndrome is identified and/or when diabetes is controlled by other than diet.

(f) *Additional medical or physical tests.* For those facilities where it is necessary to determine the medical qualification of SPOs or SPO applicants to perform special assignment duties which might require exposure to unusually high levels of stress or physical exertion, Field Elements may develop more stringent medical qualification requirements or additional medical or physical tests, in collaboration with the PPMD, as necessary for such determinations. All such additional qualification requirements must be coordinated with the Office of Health, Safety and Security prior to application.

(g) *Medical examination procedures and requirements.* (1) The medical examinations required for certification must be performed at the following intervals:

(i) Applicants for PF member positions must undergo a comprehensive medical examination, as specified herein. The Chief Health, Safety and Security Officer or designee, the Chief, Defense Nuclear Security in the case of NNSA, and/or the PPMD may require additional evaluations.

(ii) After initial certification, each SO must be medically examined and recertified at least every two years or more often if the PPMD so requires. This initial certification date becomes the SO's anniversary date. Medical certification remains valid through 30 days beyond the anniversary date or for the period indicated by the PPMD if less than twenty-four months.

(iii) After initial certification, each SPO must be medically examined and recertified every twelve months or more often (pursuant to § 1046.14 or otherwise if the PPMD so requires). This initial certification date becomes the SPO's anniversary date. Medical certification remains valid through 30 days from the anniversary date or for the time indicated by the PPMD if less than twelve months.

(2) The medical examination must include a review of the essential functions of the job to which the

individual is assigned. Medical examinations of SPO and SO applicants and incumbents must include the following evaluations to determine whether the individual meets the Medical Certification Standards for the applicable position:

(i) An up to date medical and occupational history, complete physical examination, vision testing, audiometry, and spirometry. In addition, laboratory testing must be performed, including a complete blood count (CBC), basic blood chemistry, a fasting blood glucose, and a fasting lipid panel (the examination and testing is to identify baseline abnormalities, as well as trends); and

(ii)(A) A psychologist or, as appropriate, a psychiatrist who meets standards established by DOE must be used to fulfill the requirements of this part. A personal, semi-structured interview at the time of the pre-placement medical evaluation and during the biennial (for SOs) or annual (for SPOs) examination must be conducted by a psychologist or, as appropriate, a psychiatrist. At the pre-placement medical examination and every third year for SPOs and every fourth year for SOs thereafter, a Minnesota Multi-Phasic Personality Inventory (MMPI) (available only to appropriate medical professionals at, e.g., *http://psychcorp.pearsonassessments.com*) or its revised form must be administered in order to:

(*1*) Establish a baseline psychological profile;

(*2*) Monitor for the development of abnormalities; and

(*3*) Qualify and quantify abnormalities.

(B) The information gathered from paragraph (g)(2)(i) of this section, together with the results of the semi-structured interview of this paragraph, psychiatric evaluations (if required), and reviews of job performance may indicate disqualifying medical or psychological conditions. Additional generally-accepted psychological testing may be performed as required to substantiate findings of the MMPI. If medically indicated and approved by the PPMD, an additional evaluation by a psychiatrist who meets standards established by DOE may be conducted. Additional or more frequent psychological evaluations as determined by the psychologist, psychiatrist, Designated Physician, or the PPMD may be required. Unless otherwise indicated, a psychological evaluation performed in accordance with the other DOE requirements (e.g., pursuant to 10 CFR part 712) may satisfy the requirements of this part.

(C) The Designated Physician may request any additional medical examination, test, consultation or evaluation deemed necessary to evaluate a candidate or an incumbent SO's or SPO's ability to perform essential job duties or for incumbents, the need for temporary work restrictions.

(3) When an examinee needs the use of corrective devices, such as eyeglasses or hearing aids, to enable the examinee to successfully meet medical qualification requirements, the contractor responsible for the examinee's performance must make a determination that the use of any such device is compatible with all required emergency and protective equipment that the examinee may be required to wear or use while performing assigned job duties. The Designated Physician and the PPMD must determine that the reasonable accommodation is consistent with the medical standard and will not result in a direct threat to the individual or to others. This determination must be made before such corrective devices may be used by the examinee to meet the medical, physical readiness, or training requirements for a particular position.

(4) Contractor management must provide reasonable accommodations to a qualified individual by taking reasonable steps to modify required emergency and protective equipment to be compatible with corrective devices or by providing equally effective, alternate equipment, if available.

(5) The Designated Physician must discuss the results of the medical and physical readiness examinations with the individual. The results of the medical examinations also must be communicated in writing to PF management and to the individual and must include:

(i) A statement of the certification status of the individual, including any essential functions for which the individual is not qualified, with or without reasonable accommodations, and an assessment of whether the individual would present a direct threat to self or others in the position at issue;

(ii) If another medical appointment is required, the date of the next medical appointment; and

(iii) Recommended remedial programs or other measures that may restore the individual's ability to perform the essential functions or may negate the direct threat concern, if the individual is not approved for physical training, testing, or the relevant position.

(6) The PF contractor must offer a health status exit review for all employees leaving PF service. If the employee desires the review, it must be conducted by the PPMD or Designated Physician. The review, which may be conducted in conjunction with the requirements of other parts, must include all of the medical standards for the PF position being vacated. The reason(s) for any health status exit review not being performed must be documented (e.g., employee declined to have the review conducted).

§ 1046.14 Medical certification disqualification.

(a) *Removal.* An incumbent SO or SPO is disqualified from medical certification by the PPMD if one or more of the medical certification standards contained in § 1046.13 are not met. An incumbent SO or SPO temporarily or permanently disqualified from medical certification by the PPMD must be removed from those protective force duties by the employer when the employer is notified by the PPMD of such a determination.

(b) *Medical removal protection.* The employer of a disqualified SPO must offer the SPO medical removal protection if the PPMD determines in a written medical opinion that the disqualifying condition occurred as a result of site-approved training for or attempting to meet a physical readiness standard qualification, or site-approved training for security and emergency response (e.g., participating in force-on-force exercises for training, inspection, or validation purposes). The PPMD's determination must be based on an examining physician's recommendation or any other signs or symptoms that the Designated Physician deems medically sufficient to medically disqualify an SPO. The employee pay benefits specified in this section for combined temporary and permanent medical removal shall not be provided for more than one year from the date of the initial PPMD written determination regarding the same basis for disqualification.

(1) *Temporary removal pending final medical determination.* (i) The employer of a disqualified SPO must offer the SPO temporary medical removal from PF duties on each occasion that the PPMD determines in a written medical opinion that the worker should be temporarily removed from such duties pending a final medical determination of whether the SPO should be removed permanently, if appropriate. ''Final medical determination'' means the outcome of the Independent Review provided for in

§ 1046.15(c) or, if one is held, the Final Review provided for in § 1046.15(d).

(ii) If an SPO is temporarily removed from PF duties pursuant to this section, the SPO's employer must not remove the employee from the payroll unless available alternative duties for which the worker is qualified or can be trained in a short period of time are refused or performed unsatisfactorily.

(iii) While the SPO remains on the payroll pursuant to paragraph (b)(1)(i) of this section, the SPO's employer must maintain the SPO's total base pay (overtime not included), seniority, and other site-specific worker rights and benefits (e.g., corporate benefit package and collective bargaining agreement benefits) as if the worker had not been removed. Funds reimbursable by the DOE which are provided to a SPO under medical removal protection must be reduced dollar for dollar for any other PF related pay or monetary benefit for associated lost earnings, including those negotiated through collective bargaining and from workers compensation. Medical removal protection in conjunction with these other benefits must not exceed the SPO's total base pay.

(iv) If there are no suitable alternative duties available as described in paragraph (b)(1)(ii) of this section, the SPO's employer must provide to the SPO the medical removal protection benefits specified in paragraph (c)(1) of this section until alternative duties become available, the SPO has recovered, or one year has elapsed from the date of the PPMD's determination that the SPO should be temporarily removed from duties, whichever comes first. During this period the SPO may be placed on administrative leave when alternative duties are not available.

(2) *Permanent medical removal resulting from injuries.* (i) If the PPMD determines in a written medical opinion that the worker should be permanently removed from PF duties as a result of injuries sustained while engaging in required physical readiness activities (i.e., site approved training for or attempting to meet a physical readiness standard qualification or site approved training for security or emergency response), employer Human Resources policies, disability insurance, and/or collective bargaining agreements will dictate employment status and compensation beyond the requirements of paragraphs (b) and (c) of this section.

(ii) If an SPO has been permanently removed from duty pursuant to paragraph (b)(2)(i) of this section, the SPO's employer must provide the SPO the opportunity to transfer to another available position, or one which later becomes available, for which the SPO is qualified (or for which the SPO can be trained in a short period), subject to collective bargaining agreements, as applicable.

(3) *Worker consultation before temporary or permanent medical removal.* If the PPMD determines that an SPO should be temporarily or permanently removed from PF duties, the PPMD must:

(i) Advise the SPO of the determination that medical removal is necessary to protect the SPO's health and well-being or prevent the SPO from being a hazard to self or others;

(ii) Provide the SPO the opportunity to have any medical questions concerning medical removal answered; and

(iii) Obtain the SPO's signature or document that the SPO has been advised on the provisions of medical removal as provided in this section and the risks of continued participation in physically demanding positions.

(4) *Return to work after medical removal.* (i) Except as provided in paragraph (b)(4)(ii) of this section, the SPO's employer must not return an SPO, who has been granted medical removal protection under this section, to the SPO's former job status.

(ii) If, in the PPMD's opinion, continued participation in PF duties will not pose an increased risk to the SPO's health and well-being or an increased risk (beyond those normally associated with SPO duties) of the SPO being a direct threat to self or others, the PPMD must fully discuss these matters with the SPO and then, in a written determination, may authorize the SPO's employer to return the SPO to former job status. Within one year from the PPMD's original decision to remove the individual from SPO status and subject to the SPO's ability to meet all other position related requirements (e.g., weapons qualifications, physical readiness standard, human reliability program, and refresher training), the employer must return the SPO to duty status given PPMD authorization to return to work. For durations beyond one year from the original decision given PPMD authorization to return to work, return to SPO status will be at the employer's discretion.

(c) *Medical removal protection benefits.* (1) If required by this section to provide medical removal protection benefits, the SPO's employer must maintain for not more than one year, as specified in paragraphs (b)(1) and (b)(2) of this section, the removed worker's total base pay, and seniority, as though the SPO had not been removed. The total base pay provision in this section must be reduced by any compensation for lost earnings provided by any other benefit or those negotiated through collective bargaining for both temporary and permanent removal protection as provided by this section.

(2) If a removed SPO files a claim for workers' compensation payments for a physical disability, then the SPO's employer must continue to provide medical removal protection benefits until disposition of the claim, recovery of the claimant, or one year from the date the removal protection began, whichever comes first. If workers' compensation benefits are provided retroactively then the SPO must reimburse the employer to the extent the SPO is compensated for lost earnings for the same period that the medical removal protection benefits are received for both temporary and permanent removal protection as provided by this section. Expenses for medical/rehabilitation treatments related to the basis for medical removal protection are not covered under this part.

(3) The SPO's employer's obligation to provide medical removal protection benefits to an SPO is reduced to the extent that the worker receives compensation for earnings lost during the period of removal either from a publicly or site employer-funded compensation program.

(d) *Collective bargaining agreements.* For the purposes of this section, the requirement that the SPO's employer provide medical removal protection benefits is not intended to expand upon, restrict, or change any rights to a specific job classification or position under the terms of an applicable existing collective bargaining agreement.

§ 1046.15 Review of medical certification disqualification.

(a) *Temporary medical and physical conditions.* Should the PPMD determine that an individual is disqualified from medical certification because of a temporary medical or physical condition which results in the individual not being able to perform any of the essential functions of the job classification, the employer may assign the individual to alternate, limited duty, if available, until the individual is again medically certified by the PPMD. However, this limited duty may only include assignment to duties in a job classification where all essential functions for that job classification can be safely and efficiently performed. Medical certification is required to remain in armed status. A temporary medical certification disqualification may not exceed a period of twelve

months regardless of whether medical removal protection is authorized. Before the end of the twelve-month period, the PPMD must determine whether the individual is permanently disqualified from medical certification because of a continuing medical or physical condition which results in the individual not being able to perform all essential functions of the job classification. The individual may request an Independent Review of the disqualification at any time the twelve-month period.

(b) *Permanent medical and physical conditions.* If the PPMD determines that an individual is disqualified from medical certification because of a permanent medical or physical condition which results in the individual not being able to perform all essential functions of the job classification, and the individual requests an Independent Review, the employer may assign the individual to alternate, limited duty, if available. This limited duty may include assignment to duties in any job classification where all essential functions can be safely and efficiently performed. Subject to the one year limit as identified in § 1046.14, assignment to alternate, limited duty, may remain in effect until an Independent Review determination, and if applicable, the Final Review determination by the DOE Office of Hearings and Appeals.

(c) *Independent review.* An individual PF member disqualified from medical certification, temporarily or permanently, by the PPMD may request an Independent Review of the case. The individual initiating such a review must submit the request for an Independent Review in writing to the Office of Health, Safety and Security within ten working days of the date of notification (date of written correspondence) of disqualification. A copy of the request must be sent to the individual's employer and to the local ODFSA: for DOE HQ sites, to the Director, Office of Security Operations; for NNSA sites, to the cognizant NNSA Security Director; and for any other DOE sites, to the cognizant DOE Security Director.

(1) The Office of Health, Safety and Security, in coordination with the respective PPMD, must provide for the Independent Review. The Independent Review must be conducted within sixty calendar days of the receipt of the request for an Independent Review. The Independent Review must include a complete review of the record of the case.

(2) The disqualified individual may select a representative during the Independent Review process. The individual or representative may provide additional evidence relating solely to the medical or physical readiness of the individual. The individual must execute a consent document authorizing the release of relevant medical information to the Office of Health, Safety and Security.

(3) The disqualified individual must provide a copy of the request for Independent Review and the signed consent document for the release of medical information to the respective PPMD and the individual's employer within ten working days of the submission of the request to the Office of Health, Safety and Security.

(4) Within ten working days of receipt of a copy of the request for an Independent Review, the disqualified individual's employer must provide the Office of Health, Safety and Security with the following:

(i) A copy of the job analysis (JA)/mission essential task list (METL) available to the respective Designated Physician at the time of the individual's medical evaluation;

(ii) A listing of the essential functions for the individual's PF job classification; and

(iii) Any additional information relating to the medical or physical readiness of the requestor that the Office of Health, Safety and Security may request.

(5) The Office of Health, Safety and Security must provide the information in paragraph (c)(4) of this section to the Independent Physician for use in the independent review.

(6) A medical examination of the disqualified individual must be conducted by an Independent Physician approved by the Office of Health, Safety and Security. The Independent Physician must not have served as the requestor's personal physician in any capacity or have been previously involved in the requestor's case on behalf of the Department or a Department contractor. The Independent Review must confirm or disagree with the medical certification disqualification and must consider:

(i) The validity of the stated physical requirements and essential function(s) for the applicable job classification;

(ii) The PPMD's medical determination of the individual's inability to perform essential functions or to undertake training or the physical readiness qualification test without undue medical risk to the health and safety of the individual;

(iii) The completeness of the medical information available to the PPMD; and

(iv) If applicable, the determination by the PPMD that the performance of the individual poses a direct threat to self or others.

(7) The results of the Independent Physician's medical examination of the individual must be provided to the Office of Health, Safety and Security for review. The Office of Health, Safety and Security must then recommend a final determination confirming or reversing the medical certification disqualification. The recommendation of the Office of Health, Safety and Security must be forwarded to the applicable local ODFSA (for DOE HQ sites, the Director, Office of Security Operations; for NNSA sites, the cognizant local NNSA Security Director; and for any other DOE sites, the cognizant local DOE Security Director) and the respective PPMD. This individual will either adopt or reject the recommendation of the Office of Health, Safety and Security.

(8) The Office of Health, Safety and Security must provide the results of the Independent Review and the final determination regarding the individual's medical disqualification to the requestor, the respective PPMD, the respective local ODFSA, and the requestor's employer.

(9) If the Independent Review determination confirms the individual is disqualified from medical certification, the individual must be removed from the PF job classification by the individual's employer. If the Independent Review disagrees with the medical certification disqualification, the individual must be reinstated to the PF job classification by the individual's employer, subject to successful completion of any required qualifications or training requirements that were due during the temporary disqualification, and subject to subsequent annual medical examinations and the ability to meet applicable physical readiness requirements.

(d) *Final review.* An individual receiving an unfavorable Independent Review Determination may request a Final Review of the Independent Review Determination by the Office of Hearings and Appeals. The individual must submit a request for a Final Review to the Office of Hearings and Appeals, in writing, within 30 days of receiving an unfavorable determination, and notify the Office of Health, Safety and Security of the request for appeal. In the request for a Final Review, the individual must state with specificity the basis for disagreement with the Independent Review confirming the medical certification disqualification. The Office of Health, Safety and Security must transmit the complete

record in the case to the Office of Hearings and Appeals within five business days of receiving notice from the individual that the SPO has filed an appeal of the Independent Review Determination. The Office of Hearings and Appeals may request additional information, if necessary, to clarify any issue on appeal. Within 45 days of the closing of the record, the Office of Hearings and Appeals must issue a Decision and Order setting forth its findings on appeal and its conclusions based on the record before it. Upon receipt of an unfavorable Final Review decision by the Office of Hearings and Appeals, the individual must be permanently removed from that PF job classification, SO or SPO (FPRS, BRS, ARS, or SRT member) by the employer. However, nothing in the Final Review decision shall prevent the employee from being allowed to qualify for a less strenuous physical readiness job classification given the availability of said position, subject to successful completion of any other required qualifications or training requirements. Upon receipt of a favorable Final Review decision from the Office of Hearings and Appeals, the individual must be reinstated to the PF job classification by the employer, subject to successful completion of any required qualifications or training requirements due during the temporary disqualification, and future ability to be medically certified for the PF job classification and to meet applicable physical readiness standards.

§ 1046.16 SPO physical readiness qualification standards and procedures.

(a) *General.* Employers must ensure SPOs have access to their applicable physical readiness standard and the provisions of this part. Employers must also inform SPOs of their rights associated with the physical readiness requirements.

(1) All SPO applicants must satisfy the applicable physical readiness standard for their assigned position and must physically demonstrate the physical training and knowledge, skills, and abilities set out in paragraph (g) of this section, as required for their assigned position before beginning active duty in that position.

(2) All incumbent SPOs must re-qualify every year according to their applicable readiness standard, pursuant to paragraphs (d)(1), (f), or (g) of this section. Re-qualification must occur no earlier than 30 days prior to and no later than 30 days following the SPOs anniversary date. The actual date of re-qualification does not affect the anniversary date under this section.

(3) All qualification and re-qualification activities must be conducted under the supervision of personnel knowledgeable of DOE physical readiness program requirements as approved by the local ODFSA.

(b) *Physical readiness training program.* SPOs must maintain physical readiness standards on a continuing basis. Each SPO must engage in a year-round physical readiness training program consistent with paragraph (c)(2) and (3) of this section to:

(1) Achieve and maintain the cardio-respiratory and musculoskeletal fitness necessary to safely perform, without posing a direct threat to self or others, all essential functions of normal and emergency PF duties at any time; and

(2) Enable the individual SPO to pass (on an annual basis) the applicable SPO physical readiness standard without any undue risk of physical injury.

(c) *Training program requirements.* (1) The training program must include the following elements:

(i) Activities with appropriate durations specific to the physical readiness standard, which appropriately address aerobic, agility, flexibility, and strength conditioning.

(ii) Instruction on techniques and exercises designed to ensure SPOs can safely rise quickly from the prone position, and if required by qualification standard, transition into a run.

(iii) Appropriate warm-up and cool down activities designed by exercise physiologists to support injury free workouts and physical readiness testing.

(2) An SPO physical readiness training and maintenance program must be developed by the employing organization in consultation with the PPMD and the local ODFSA.

(3) After initial training and qualification, each SPO must participate in the physical readiness training and maintenance program on a continuing basis. The physical readiness maintenance program must be based on assessment of the individual SPO's physical readiness levels and be tailored to the individual SPO's physical readiness maintenance requirements and improvement needs. Whether training is conducted on or off site, the SPO's participation must be documented.

(4) Assessments of an SPO's level of physical readiness must be conducted at least semiannually by personnel knowledgeable of DOE requirements. The results of the assessments must be provided to the Designated Physician. The assessments must include recognized assessment standard values for aerobic capacity (e.g., American College of Sports Medicine [*http://www.acsm.org/*], Cooper Fitness Institute [*http://www.cooperinstitute.org/*], or Rockport Walk Protocol [available online from a variety of Web sites]). Though not a qualification, the assessment report must include an evaluation of the SPO's level of physical readiness and provide recommendations for maintenance requirements and improvement needs, if any. Ability to summon appropriate medical emergency response with the capability of responding within a reasonable time must be available at the assessment site. An individual trained in cardio-pulmonary resuscitation and automatic external defibrillator equipment must be present.

(5) No additional training or time extension to meet the standards is permitted except for unusual circumstances based on a temporary medical or physical condition as certified by the PPMD that causes the SPO to be unable to satisfy the physical readiness standards within the required time period without suffering undue physical harm. An SPO who fails to re-qualify must be removed from armed SPO status and must participate in a remedial physical readiness training program, as specified in paragraphs (g)(8) and (9) of this section.

(6) An SPO may be required to demonstrate the ability to meet the applicable physical readiness qualification standard during a Headquarters or field audit/inspection/survey or other similar activity, as directed by the local ODFSA. Failure to meet the physical readiness standard must be treated as if the SPO failed the first attempt during routine qualification, and the procedures of paragraphs (g)(5) and (8) of this section apply. An SPO who fails to demonstrate the standard must be removed from armed status.

(7) Employees must notify the employer when the requirements of the training program cannot be successfully completed on a recurring basis (e.g., exercises cannot be completed and/or completed within time limits several times in a row due to injury and/or conditioning issues).

(8) When a physical readiness deficiency is first identified, the employer must provide the SPO access to remedial training or, based upon PPMD evaluation validating the medical need, to a work hardening or rehabilitation program.

(d) *Physical readiness standards for SPOs.* Any failure, at any time, by an SPO to physically demonstrate ability to meet the required physical readiness standard, must result in temporary

removal from being authorized to perform the functions of that standard. The physical readiness standards for SPOs are as follows:

(1) *Fixed Post Readiness Standard (FPRS).* This qualification standard applies to all SPOs. Regardless of an SPO's physical readiness category, the FPRS must be physically demonstrated every year by all SPOs.

(i) The standard requires sufficient agility and range of motion to: Assume, maintain, and recover from the variety of cover positions associated with effective use of firearms at entry portals and similar static environments to include prone, standing, kneeling, and barricade positions; use site-specific deadly and intermediate force weapons and employ weaponless self-defense techniques; effect arrests of suspects and place them under restraint, e.g., with handcuffs or other physical restraint devices; and meet any other measure of physical readiness necessary to perform site-specific essential functions as prescribed by site management and approved by the respective program office.

(ii) A stand-alone qualification test which requires the demonstration of all of the required elements (both general and site-specific, if applicable) must be developed and maintained by each site and approved by the ODFSA. This qualification test can be used for annual qualification, or sites may choose to document an SPO's ability to meet specific elements of the standard during annual refresher training sessions and/or during weapons qualification activities. All elements of this standard must be demonstrated annually in the aggregate.

(iii) The results must be provided to the Designated Physician prior to the annual medical examination. Inability to physically demonstrate the FPRS requirements must result in temporary loss of SPO status. Remedial training must be provided pursuant to the requirements of paragraph (g)(8) of this section.

(2) *Basic Readiness Standard (BRS).* In addition to demonstrating the FPRS requirements as stated in paragraph (d)(1) of this section, the BRS qualification consists of a one-half mile run with a maximum qualifying time of 4 minutes 40 seconds and a 40-yard dash from the prone position in 8.5 seconds or less, and any other site-specific measure of physical readiness necessary to perform essential functions as prescribed by site management and approved by the respective program office. The running elements and other site-specific measures of the BRS must be demonstrated on the same day.

(3) *Advanced Readiness Standard (ARS).* In addition to demonstrating the FPRS requirements as stated in paragraph (d)(1) of this section, the ARS qualification consists of a one mile run with a maximum qualifying time of 8 minutes 30 seconds, and a 40-yard dash from the prone position in 8.0 seconds or less, and any other site-specific measure of physical readiness necessary to perform site-specific essential functions as prescribed by site management and approved by the respective program office. The running elements and other site-specific measures of the ARS must be demonstrated on the same day.

(e) *Revisions to Physical Readiness Standards.* The Department may revise the physical readiness standards or establish new standards consistent with the Administrative Procedure Act and other applicable law.

(f) *Evaluation and documentation for BRS and ARS SPOs.* Two distinct determinations must be made by the Designated Physician for BRS and ARS SPOs. First, a medical examination that meets the requirements of § 1046.13(g) must be conducted. A written determination must be made whether the SPO is medically certified for SPO duties without being a danger to self or others. This includes being able to attempt to physically demonstrate the applicable physical readiness standard. Given a favorable medical clearance determination, the second determination assesses the SPO's physical readiness capability by comparing the SPO's current examination results, medical history, normative data, past qualifying times, and the results of physical assessments. The Designated Physician's evaluation and documentation that an incumbent BRS or ARS SPO has reasonable expectation of meeting the appropriate physical readiness standard is deemed to have met the annual physical readiness qualification requirement without having to take the appropriate BRS or ARS test unless the SPO is randomly selected pursuant to paragraph (f)(7) of this section. Physician extenders (e.g., physician's assistants, certified occupational health nurses, or nurse practitioners) and exercise physiologists may perform appropriate elements of the physical examination and the physical assessments required in paragraph (b)(4) of this section. However, both the medical clearance determination and the formal physical readiness capability evaluation must be made by the Designated Physician without delegation. A site standard form must be used, and pertinent negatives must be documented on the form. The following procedures apply regarding the Designated Physician's evaluation and documentation that an incumbent BRS or ARS SPO has a reasonable expectation of meeting the appropriate physical readiness standard.

(1) Evaluation of BRS and ARS SPOs must include consideration of past medical history and normative data when available for individuals deemed to be physically capable. The following criteria must be evaluated: Cardiac function to include resting pulse rate and pulse recovery after exertion; neuromuscular function to include assessments of strength, range/freedom of motion, and movement without pain. While they are not required to be used or intended to be the sole determining criterion, for Designated Physicians using metabolic equivalents (METS) data the following values may be included in the overall process to determine if an individual SPO has a reasonable expectation of being able to physically demonstrate the appropriate physical readiness standard.

(i) For BRS SPOs a METS value of seven or greater would be a positive indicator of sufficient aerobic capacity to successfully demonstrate the half mile run associated with the BRS.

(ii) For ARS SPOs a METS value of 12 or greater would be a positive indicator of sufficient aerobic capacity to successfully demonstrate the mile run associated with the ARS.

(2) The designated physician may medically certify the BRS or ARS SPO for SPO duties and document that the SPO has a reasonable expectation of meeting the appropriate physical readiness standard. In this case, the SPO is deemed to have met the annual physical readiness qualification requirement without having to take the appropriate BRS or ARS test, unless the SPO is randomly selected pursuant to paragraph (f)(7) of this section.

(3) The designated physician may indicate the BRS or ARS SPO meets medical standards for SPO duties, but also indicate that the SPO does not appear to have the physical capability to pass the appropriate physical readiness test. In this case, the file must be immediately forwarded to the PPMD for review.

(4) If the PPMD concurs with the Designated Physician that the SPO does not have a reasonable expectation of being able to meet the readiness standard, the SPO may request to attempt to demonstrate the appropriate physical readiness test, which must be accomplished successfully within 30 days of the date of the medical certification for the SPO to remain in

status. If the SPO chooses not to attempt to demonstrate the readiness standard, then the SPO must be removed immediately from duties associated with that physical readiness standard. Should the SPO fail to meet the standard, the retesting process described below in paragraph (g) of this section must be followed. Ultimate return to duties associated with that standard would require following the new hire process of medical clearance for SPO duties and then physically demonstrating the readiness standard which had not been met.

(5) Should the PPMD determine that the SPO does appear to have a reasonable expectation of meeting the appropriate physical readiness standard, the SPO is deemed to have met the annual qualification requirement for the appropriate physical readiness standard.

(6) The Designated Physician may find that the SPO cannot be medically certified for SPO duties. In this case, the SPO must be removed from armed status with appropriate PPMD review and medical intervention recommendations.

(7) Each year, 10 percent of the BRS and ARS SPO populations (supervisors included) at each site must be randomly selected by the employer and physically tested pursuant to paragraph (g) of this section. At the beginning of the testing year as established by each site, the site must ensure that a sufficient number of individuals and alternates are selected in one drawing to ensure that the 10 percent testing requirement can be achieved even though some SPOs selected may not receive a reasonable expectation determination for the Designated Physician as identified in paragraph (f)(2) of this section. Once 10 percent of the SPOs successfully demonstrating the standard has been achieved, the remaining alternates are not required to be physically tested unless they do not receive a reasonable expectation determination. The identity of an individual as a selectee for testing shall be kept confidential by the employer in a manner that ensures this information does not become known to the selected individual, the PPMD, and the Designated Physician until after the individual SPO has been deemed to have a reasonable expectation of meeting the appropriate physical readiness standard pursuant to paragraphs (f)(2) or (5) of this section. The selected individuals must successfully complete the applicable physical readiness standard to retain SPO status. During a given year's testing, at least 90 percent of those tested in each physical readiness category must meet the requirements.

(8)(i) Should the passing percentage of those randomly selected and attempting to physically demonstrate the standard in a particular physical readiness category at a particular site drop below 90 percent (on the first attempt) then all SPOs in that category at that site must be tested on their ability to physically demonstrate the standard. The following parameters apply.

(A) All percentages are based upon first attempts.

(B) The total population of SPOs (supervisors included) in that physical readiness category at the beginning of that testing year at that site must be used to determine the percentage thresholds.

(C) The 100 percent testing of SPOs in that category must commence immediately upon the failure that renders achievement of a 90 percent success rate mathematically impossible for that readiness category during that testing year. The date of this failure will establish the anniversary date of the new testing year.

(D) An insufficient number of randomly selected individuals and alternates available to constitute the 10 percent selection criterion represents a failure to achieve the 90 percent threshold. Identification of additional randomly selected individuals for that testing year is not authorized.

(ii) The 100 percent testing described in paragraph (f)(8)(i) of this section must continue for a minimum of 365 days. With a 95 percent successful demonstration rate of the standard over the year, 10 percent testing may return at the beginning of the new testing year.

(iii) Should 95 percent successful demonstration not be achieved in the 365 days of 100 percent testing, the 100 percent testing described in paragraph (f)(8)(i) of this section must continue for the next 365 days under the conditions specified in paragraphs (f)(8)(i)(A) through (D) of this section. This process must be repeated until 95 percent successful demonstration is achieved.

(g) *Physical testing for BRS and ARS SPOs.* The following procedures apply to an individual physically demonstrating the physical readiness standards for applicants and incumbent SPOs.

(1) Incumbent BRS and ARS SPOs randomly selected for physical testing pursuant to paragraph (f) of this section in any given year shall physically meet the applicable physical readiness standard within 30 days of their anniversary date.

(2) Incumbent SPOs shall physically meet the applicable physical readiness standard prior to their assignment to duties which require a more stringent standard.

(3) All newly hired SPOs must physically meet the most stringent standard required at the site.

(4) SPOs returning after an absence from protective force duties which encompasses their anniversary date must physically meet at least the standard they were required to meet when they left SPO duties, should such a position requiring that standard be available.

(5) Each applicant and incumbent SPO must be medically approved by the Designated Physician within thirty days prior to initial participation in any physical readiness training program and prior to attempting the applicable standard to determine whether the individual can undertake the standard without undue medical risk to the health and safety of the individual. Incumbents also must have successfully completed a physical readiness assessment within thirty days prior to their annual physical examination by the Designated Physician.

(6) Incumbent SPOs must qualify on the applicable standard annually by physically passing the required test if they have not received a reasonable expectation determination as described in paragraph (f) of this section. The testing protocol shall include mandated participation by the SPO being tested in pre-test warm-up and post-test cool-down activities as described in paragraph (c) of this section. The responsible person in charge of the qualification activity must inform the SPO that the attempt will be for qualification. Once this has been communicated by the person in charge, the attempt will constitute a qualification attempt. Ability to summon appropriate medical emergency response with the capability of responding within a reasonable time must be available at the testing site. An individual trained in cardio pulmonary resuscitation and automatic external defibrillator equipment must be present.

(7) Physical readiness re-qualification for randomly selected incumbent SPOs must occur not more than 30 days from the anniversary date. Failure to qualify within 30 days past the anniversary date must result in removal from SPO status for that physical readiness category. Not more than five attempts may be allowed during the 30-day period. All attempts must be made within 30 days of the medical approval required in paragraph (g)(5) of this section.

(8) Remedial training program: If an SPO fails all attempts pursuant to paragraph (g)(7) of this section for reasons other than injury or illness, the

PF contractor must offer the SPO the opportunity to participate in a supervised physical readiness remedial training program developed by an exercise physiologist.

(i) Supervision of the physical readiness remedial training program may be accomplished by direct observation of the SPO during the training program by personnel knowledgeable of Department physical readiness program requirements, or by these personnel monitoring the SPO's progress on a weekly basis.

(ii) The remedial training program must be based upon an assessment of the SPO's individual physical readiness deficiencies and improvement needs which precluded the SPO from successfully completing the applicable physical readiness standard.

(iii) The remedial training program must not exceed a period of 30 days.

(9) Re-testing of incumbent SPOs after completion of remedial training program.

(i) Once an SPO has begun a remedial training program, it must be completed before the SPO may attempt the applicable standard.

(ii) Upon completion of the remedial training the ARS/BRS SPO must be offered an assessment using the same process that is used for the required semiannual assessment as required in paragraph (c)(4) of this section. Any deficiencies and improvement needs must be identified to the SPO.

(iii) The SPO has seven days from the completion date of the remedial training program to meet the applicable physical readiness qualification standard. Only one attempt during this seven-day period may be made unless circumstances beyond the testing organization or participant's control (e.g., severe weather, equipment failure, or injury as determined by the employer) interrupt the attempt. When the attempt is interrupted, the employer may reschedule it within seven days.

(iv) If the SPO meets the standard on the attempt specified in paragraph (f)(9)(iii) of this section, the original anniversary qualification date remains the same.

(v) Failure to meet the standard must result in the SPO being permanently removed from duties requiring ability to meet that physical readiness standard.

(vi) If an SPO requires remedial training during three consecutive annual qualification periods, then a fourth remediation shall not be offered for subsequent failures to achieve the physical readiness standard. The SPO must be permanently removed from duties requiring ability to meet that physical readiness standard.

(10) The physical readiness standards set forth in this part may not be waived or exempted. Additional time, not to exceed six months, may be granted on a case-by-case basis for those individuals who, because of a temporary medical condition or physical injury certified by the Designated Physician, are unable to satisfy the physical readiness standards within the required period without suffering injury. Additional time totaling more than one year may not be granted. When additional time is granted:

(i) The granting of such time does not eliminate the requirement for the incumbent SPO to be removed from that SPO physical readiness standard status during the time extension.

(ii) When additional time is granted because of an inability to qualify without a certified medical condition or injury, the PF member is not entitled to temporary removal protection benefits. Granting additional time due to deconditioning is not authorized.

(iii) Upon completion of the additional time period and requisite physical readiness training, as applicable, the incumbent SPO must be assessed using the same process that is used for the semiannual assessment as required in paragraph (c)(4) of this section if the results indicate the SPO is ready to take the test. The test must be taken within 30 days of medical clearance as described in § 1046.13(g).

(iv) For a duration exceeding three months, the SPO's original anniversary qualification date may be revised at the discretion of the employer to reflect the most recent date that the SPO qualified under the applicable standard, which will become the new anniversary qualification date.

§ 1046.17 Training standards and procedures.

(a) Department contractors responsible for the management of PF personnel must establish training programs and procedures for PF members to develop and maintain the knowledge, skills and abilities required to perform assigned tasks. The site-specific qualification and training programs must be based upon criteria approved by the ODFSA.

(b) Department contractors responsible for training PF personnel must prepare and annually review mission essential tasks from which a JA or mission essential task list (METL) is developed. The JAs or METLs must be prepared detailing the required actions or functions for each specific PF job assignment. When a generic Department JA or METL does not exist for a site-specific PF assignment (e.g., dog handler, investigator, flight crew, pilot, etc.) the site must develop a site-specific JA or METL. The JA or METL must be used as the basis for local site-specific training programs.

(c) The Designated Physician must approve in advance the participation by individuals in training and examinations of training prior to an individual's beginning employment as a PF member and annually thereafter.

(d) The formal PF training program must:

(1) Be based on identified essential functions and job tasks, with identified levels of knowledge, skills and abilities needed to perform the tasks required by a specific position;

(2) Be aimed at achieving at least a well-defined, minimum level of competency required to perform each essential function and task acceptably, with or without reasonable accommodations;

(3) Employ standardized instructional guidelines, based on approved curricula, with clear performance objectives as the basis for instruction;

(4) Include valid performance-based testing to determine and certify job readiness;

(5) Be documented so that individual and overall training status is easily accessible. Individual training records and certifications must be retained for at least one year after termination of the employee from employment as a member of the PF;

(6) Incorporate the initial and maintenance training and training exercise requirements expressly set forth in this part and as otherwise required by DOE;

(7) Be reviewed and revised, as applicable, by PF management on an annual basis; and

(8) Be reviewed and approved by the local ODFSA on an annual basis.

(e) *SOs*—(1) *SO initial training requirements.* (i) Prior to initial assignment to duty, unless they previously have been employed as an SPO at the same DOE facility, each SO must successfully complete a basic SO training course, approved by the local ODFSA, designed to provide the knowledge, skills, and ability needed to competently perform all essential functions and tasks associated with SO job responsibilities.

(ii) The essential functions and minimum competency levels must be determined by a site-specific JA or METL. The essential functions and minimum competency levels must include, but are not limited to, the knowledge, skills, and abilities required to perform the essential functions set forth in this part; task areas as specified

by DOE; and any other site-specific task areas that will ensure the SO's ability to perform all aspects of the assigned position under normal and emergency conditions without posing a direct threat to the SO or to others.

(2) *SO maintenance training.* Each SO must successfully complete an annual course of maintenance training to maintain the minimum level of competency required for the successful performance of tasks and essential functions associated with SO job responsibilities. The type and intensity of training must be based on a site-specific JA or METL. Failure to achieve a minimum level of competency must result in the SO's placement in a remedial training program. The remedial training program must be tailored to provide the SO with the necessary training to afford a reasonable opportunity to meet the level of competency required by the job analysis. Failure to demonstrate competency at the completion of the remedial program must result in loss of SO status.

(3) *SO knowledge, skills, and abilities.* Each SO must possess the knowledge, skills, and abilities necessary to protect Department security interests from the theft, sabotage, and other acts that may harm national security, the facility, its employees, or the health and safety of the public. The requirements for each SO to demonstrate proficiency in, and familiarity with, the knowledge, skills, and abilities and the responsibilities necessary to perform the essential functions of the job must be based on the JA or METL.

(f) *SPOs*—(1*) SPO initial training requirements.* Prior to initial assignment to duty, in addition to meeting SO training requirements described above in paragraph (e)(1) of this section, each SPO must successfully complete the approved Department basic SPO training course. SPOs who are rehired at the same DOE facility or who have worked as an SPO at another DOE facility are not required to retake the basic training course as determined by a site-specific assessment of the individual. In addition to the basic SPO training course, SPO initial training must include successful completion of site-specific training objectives derived from a site-specific JA or METL, task areas as specified by DOE, and any other site-specific task areas that will ensure the SPO's ability to perform all aspects of the assigned position under normal and emergency conditions without posing a direct threat to the SPO or to others.

(2) *SPO maintenance training.* In addition to meeting the SO maintenance training requirements described in paragraph (e)(2) of this section, each SPO must successfully complete an annual course of maintenance training to maintain the minimum level of competency required for the successful performance of essential functions and tasks associated with SPO job responsibilities. The type and intensity of training must be determined by a site-specific JA or METL. Failure to achieve a minimum level of competency must result in the SPO being placed in a remedial training program. The remedial training program must be tailored to provide the SPO with necessary training to afford a reasonable opportunity to meet the level of competency required by the JA or METL within clearly established time frames. Failure to demonstrate competency at the completion of the remedial program must result in loss of SPO status.

(3) *SPO knowledge, skills and abilities.* In addition to meeting the SO knowledge, skills and ability requirements described in paragraph (e)(3) of this section, the requirements for each SPO to demonstrate proficiency in, and familiarity with, the responsibilities identified in the applicable JA or METL and proficiency in the individual and collective knowledge, skills, and abilities necessary to perform the essential functions and the job tasks must be based on their applicable JA or METL.

(g) *SRT Members.* In addition to satisfying the initial and maintenance training requirements for SPOs and meeting the SPO knowledge, skill, and ability requirements, SRT members must meet the following requirements.

(1) *SRT initial training requirements.* Prior to initial assignment to duty, each SRT-qualified SPO must successfully complete the current Department-approved SRT basic qualification course designed to provide at least the minimum level of knowledge, skills, and ability needed to competently perform all the identified essential functions of the job and tasks associated with SRT job responsibilities. SPOs who have previously successfully completed the SRT basic qualification course to work at another DOE facility do not have to retake the SRT basic qualification as determined by a site-specific assessment of the individual. After completion of the SRT basic qualification course, the SRT-qualified SPO must participate in a site-specific training program designed to provide the minimum level of knowledge and skills needed to competently perform all the identified essential functions of the job and tasks associated with site-specific SRT job responsibilities. The site-specific essential functions and minimum levels of competency must be based on a site-specific JA or METL, task areas as specified by DOE, and any other site-specific task areas that will ensure the SRT-qualified SPO's ability to perform all aspects of the assigned position under normal and emergency conditions without posing a direct threat to the SPO or to others.

(2) *SRT maintenance training.* After assignment to duties as a member of an SRT, an SRT-qualified SPO must receive maintenance training annually on each area required by a site-specific JA or METL. The annual maintenance training program must be completed over two or more sessions appropriately spaced throughout the year. Failure to achieve a minimum level of competency must result in the SRT-qualified SPO being placed in a remedial training program or removal from SRT qualification status, as determined by contractor management. The remedial training program must be tailored to provide the SRT-qualified SPO with necessary training to afford a reasonable opportunity to meet the level of competency required by the JA or METL. Failure to demonstrate competency at the completion of the remedial program must result in loss of SRT-qualification status.

(3) *SRT knowledge, skills, and abilities.* The requirements for each SRT-qualified SPO to demonstrate proficiency in, and familiarity with, the responsibilities identified in the applicable JA or METL and proficiency in the individual and collective knowledge, skills, and abilities necessary to perform the job tasks must include, but are not limited to, those identified for SPOs and based on their applicable JA or METL.

(h) *Specialized requirements.* PF personnel who are assigned specialized PF responsibilities outside the scope of normal duties must successfully complete the appropriate basic and maintenance training, as required by DOE and other applicable governing regulating authorities (e.g., Federal Aviation Administration). This training must enable the individual to achieve and maintain at least the minimum level of knowledge, skills, ability needed to competently perform the tasks associated with the specialized job responsibilities, as well as maintain mandated certification, when applicable. Such personnel may include, but are not limited to, flight crews, instructors, armorers, central alarm system operators, crisis negotiators, investigators, canine handlers, and law enforcement specialists. The assignment of such

specialists and scope of such duties must be based on site-specific needs and approved by the local ODFSA.

(i) *Supervisors*—(1) *Supervisor training requirements.* Prior to initial assignment to supervisory duty, each PF supervisor must successfully complete a supervisor training program designed to provide at least the minimum level of knowledge, skills, ability needed to competently perform all essential functions of the job and tasks associated with supervisory job responsibilities. Appropriate annual refresher training must be provided. The essential functions and minimum levels of competency must be based on a site-specific JA or METL and must include the essential functions and task areas identified for the level of PF personnel to be supervised. Armed supervisors of SPOs must be trained and qualified as SPOs. SPO supervisors must meet applicable medical and physical readiness qualification and certification standards for assigned response duties.

(2) *Supervisor knowledge, skills, and abilities.* Each PF supervisor must possess the skills necessary to effectively direct the actions of assigned personnel. Each supervisor must demonstrate proficiency in, and familiarity with, the responsibilities identified in the applicable JA or METL and proficiency in the skills and abilities necessary to perform those jobs.

(j) *PF training exercises.* Exercises of various types must be included in the training and performance testing process for the purposes of achieving and maintaining skills and assessing individual, leader and collective competency levels. The types and frequency of training exercises must be determined by the training needs analysis conducted as part of the training program, and approved by the local ODFSA. These exercises must be planned and conducted to provide site-specific training to the PF in the prevention of the successful completion of potential adversarial acts as specified by DOE.

(k) *Firearms qualification standards.* (1) No person may be authorized to carry a firearm as an SPO until the responsible local ODFSA is assured that the individual who is to be armed with individually issued/primary weapons is qualified in accordance with firearms standards or that, in the case of post-specific crew-served and special weapons, a determination of proficiency and ability to operate the weapon safely has been made.

(2) As a minimum, each SPO must meet the applicable firearms qualification or proficiency standards every six months under daylight and reduced lighting conditions. Requalification or proficiency demonstration must occur no earlier than 30 days prior to, and no later than 30 days after, six months from the previous qualification. In the case of individually assigned/primary weapons, if the SPO does not re-qualify during the re-qualification period, the individual's authority to be armed and to make arrests must be suspended following the unsuccessful qualification attempts as provided in paragraph (k)(11) of this section. For post-specific and crew-served weapons, if the SPO does not demonstrate proficiency during the re-qualification period, the individual's eligibility for assignment to posts having those post-specific or crew-served weapons must be suspended until such time as proficiency can be demonstrated. To facilitate training programs, employers may adjust qualification and proficiency demonstration schedules as long as the maximum durations as noted in this section are not exceeded.

(3) PF personnel must maintain firearms proficiency on a continuing basis. Therefore, an SPO may be required to demonstrate an ability to meet the applicable firearms qualification or proficiency standard(s) during a Headquarters or field audit, survey, inspection, or other situation directed by the local ODFSA. Failure to meet the standard must be treated as if the individual failed the first attempt during routine semiannual qualification or proficiency demonstration. See paragraph (k)(10) of this section. In the event the SPO fails both attempts, the requirements of paragraphs (k)(11) through (14) of this section apply.

(4) Each SPO must qualify with primary/individually-issued weapons required by duty assignment (to include: specialty weapons, long gun and/or handgun, if so armed). Qualification is the semiannual act of achieving a set score while demonstrating the ability to load, operate, and discharge a firearm or weapon system accurately and safely (to include clearing the weapon at the conclusion of firing) according to a Departmentally-approved course of fire. At least one of the two semiannual qualifications must be accomplished with the same type of firearm or weapon system and ammunition equivalent in trajectory and recoil as that authorized for duty use. All qualification courses must: be constrained by time, identify the maximum amount of available ammunition, and include minimum scoring percentages required to qualify.

(5) For the purposes of this part, weapons system simulator means a device that closely simulates all major aspects of employing the corresponding actual firearm/weapons system, without firing live ammunition. The simulator should permit all weapons-handling and operational actions required by the actual weapon, and should allow the use of sight settings similar to the corresponding actual weapon with assigned duty loads. Additionally, when weapons or weapons system simulators are used for qualification testing of protective force officers, the operation of the simulated weapon must closely approximate all weapons handling and operational manipulation actions required by the actual weapon. The simulation system must precisely register on-target hits and misses with accuracy comparable to the actual weapon at the same shooting distances. The weight, balance, and sighting systems should closely replicate those of the corresponding actual weapon with assigned duty loads, and noise signatures and felt recoil should be simulated to the extent technically feasible.

(6) SPOs assigned to posts which require the operation of post-specific specialized or crew-served weapons must be trained and must demonstrate proficiency in the safe use of such weapons in a tactical environment. These proficiency courses must provide for the demonstration of skills required to support the site security plan. Ammunition equivalent in both trajectory and recoil to that used for duty must be used during an initial demonstration of proficiency. A weapons proficiency demonstration means a process based on a predetermined, objective set of criteria approved by the respective program office in consultation with the Office of Health, Safety and Security that results in a grade (e.g., pass/fail). The process must ensure that an individual (or team, for crew-served weapons) demonstrates the ability to perform all weapons-handling and operational manipulations necessary to load, operate, and discharge a weapon system accurately and safely (to include clearing/returning to safe mode the weapon system at the conclusion of firing), without the necessity for scoring targets during the course of fire. Proficiency courses of fire must include tactically-relevant time constraints. Demonstrations of proficiency are allowed with the actual weapon and assigned duty load, with alternate loads (e.g., frangible or dye-marking rounds), or with authorized weapons system simulators, as defined in this section. Proficiency courses of fire must be tactically relevant.

(7) Weapon system simulators may be used for training, familiarization, and

semiannual proficiency verifications (e.g., engaging moving vehicles and/or aircraft). Demonstrations of proficiency must include all weapons-handling and operational manipulations necessary to load, operate, and discharge a weapon system accurately and safely (to include clearing the weapon at the conclusion of firing) according to a Departmentally-approved course of proficiency demonstration. Weapon demonstrations of proficiency are allowed with the same type of firearm or weapon system and ammunition equivalent in trajectory and recoil as that authorized for duty use, or with firearms simulators that have the features and capabilities as described in paragraph (k)(5) of this section.

(8) Each SPO must be given a presentation on the basic principles of weapons safety prior to any range activity. This does not require that a weapons safety presentation be given for each course of fire, but does require that, prior to the start of range training or qualification for a given period (e.g., initial qualification, semiannual qualification, training, familiarization, proficiency testing, or range practice), each SPO must be given a range and weapon safety presentation.

(9) Standardized Departmentally-approved firearm/weapon qualification courses must be used for qualification. Site-specific conditions and deployment of specialized firearms/weapons may justify requirements for developing and implementing supplementary special training and proficiency courses. Proficiency courses or demonstrations must be constrained by time limits. Where standardized Department firearms/weapons courses do not exist for a weapons system that is required to address site-specific concerns, both daylight and reduced lighting site-specific qualification or proficiency courses (as applicable) must be developed. After approval by the local ODFSA, the developed courses must be submitted to the respective program office for review and approval.

(10) When qualification or demonstration of proficiency is prescribed, SPOs must be allowed two attempts to qualify with assigned firearms/weapons semiannually. A designated firearms instructor or other person in charge of the range must ensure the shooter understands that the attempt will be for qualification. Once this has been communicated by the firearms instructor or person in charge, the attempt must constitute an attempt to qualify or demonstrate proficiency. The SPO must qualify or demonstrate proficiency during one of these attempts.

(11) Upon suspension of an SPO's authority to carry firearms, in order to return to status, the SPO must enter a standardized, remedial firearms/weapons training program developed by the respective site PF contractor firearms training staff. The remedial training program must be a combination of basic weapon manipulation skills, firearms safety, and an additional segment of time individually designed to provide the SPO with the necessary individual training to afford a reasonable opportunity to meet the firearms/weapons qualification or proficiency standards by addressing specific areas of performance.

(12) When qualification is required following the completion of the remedial training course, any SPO who fails to qualify after two subsequent attempts must lose SPO status and the authority to carry firearms/weapons and to make arrests. When weapons-specific safety or proficiency cannot be demonstrated, the SPO must not be assigned to posts that require the operation of that weapon until such safety or proficiency standards can be met.

(13) Any SPO who requires remedial training on three consecutive semiannual qualification periods with the same type of firearm/weapon (caliber, make, and model, but not necessarily the exact same weapon) must be removed from duties that require the issuance of that weapon. If the weapon is considered a primary duty weapon; e.g., rifle or handgun, the officer must be removed from SPO status based on recurring inability to maintain qualification status. If an SPO requires remedial training for the same firearm during three consecutive semiannual qualification periods, then a fourth remediation shall not be offered for subsequent failures to achieve that firearms qualification standard. The employer may reinstate an individual removed from SPO status if the individual can demonstrate the ability to pass the current Department qualification course for that firearm. Prior to being given the opportunity to obtain reinstatement, the SPO must provide the employer written validation from a certified firearms instructor that the SPO has demonstrated the ability to meet applicable DOE standards. All such training and validation expenses are solely the responsibility of the SPO. If reinstatement under these circumstances occurs, the employer must provide all other training for returning protective force members according to the requirements of this part and as otherwise specified by DOE.

(14) An appropriate Department record must be maintained for each SPO who qualifies or who attempts to qualify or to demonstrate proficiency. Records must be retained for one year after separation of a PF member from SPO duties, unless a longer retention period is specified by other requirements. A supervisor or a training officer must be designated, in writing, as the individual authorized to certify the validity of the scores.

§ 1046.18 Access authorization.

PF personnel must have the access authorization for the highest level of classified matter to which they have access or SNM which they protect. The specific level of access authorization required for each duty assignment must be determined by the site security organization and approved by the local ODFSA. At sites where access authorizations are not required, SPOs must have at least a background investigation based upon a national agency check with local agency and credit check with maximum duration between reinvestigations not to exceed 10 years. This background investigation must be favorably adjudicated by the applicable Departmental field element. Those SPOs who have access to Category I or Category II quantities of SNM as defined by DOE or with access to credible roll-up potential to Category I according to site-specific determination must have and maintain a DOE ''Q'' access authorization.

§ 1046.19 Medical and fitness for duty status reporting requirements.

(a) SPOs and SOs must report immediately to their supervisor that they have a known or suspected change in health status that might impair their capacity for duty. To protect their medical confidentiality, they are required only to identify that they need to see the Designated Physician. SOs and SPOs must provide to the Designated Physician detailed information on any known or suspected change in health status that might impair their capacity for duty or the safe and effective performance of assigned duties.

(b) SPOs and SOs must report to their supervisor and the Designated Physician for a determination of fitness for duty when prescription medication is started or a dosage is changed, to ensure that such medication or change in dosage does not alter the individual's ability to perform any of the essential functions of the job. SPOs and SOs must report to their supervisor and the Designated Physician for a determination of fitness for duty within 24 hours, and prior to

assuming duty, after any medication capable of affecting the mind, emotions, and behavior is started, to ensure that such medication does not alter the individual's ability to perform any of the essential functions of the job. Where a written reasonable accommodation determination already has been made, any additional change to an SO's or SPO's health status affecting that accommodation must be reported to their supervisor and the Designated Physician for a determination of fitness for duty.

(c) Supervisory personnel must document and report to the Designated Physician any observed physical, behavioral, or health changes or deterioration in work performance in SPOs and SOs under their supervision.

(d)(1) PF contractor management must inform the Designated Physician of all anticipated job transfers or recategorizations including:

(i) From SO to FPRS, BRS, ARS, or SRT Member;

(ii) From FPRS, to BRS, ARS or SRT Member;

(iii) From BRS to ARS or SRT Member;

(iv) From ARS to SRT Member;

(v) From SRT Member to ARS, BRS, FPRS or SO;

(vi) From ARS to BRS, FPRS, or SO;

(vii) From BRS to FPRS or SO;

(viii) From FPRS to SO; and

(ix) From PF to other assignments.

(2) For downward re-categorizations in paragraphs (d)(1)(v) through (ix) of this section, the anticipated transfer notification must include appropriate additional information such as the apparent inability of the employee to perform essential functions, meet physical readiness standards, or to serve without posing a direct threat to self or others.

(e) The Designated Physician must notify the PPMD to ensure appropriate medical review can be made regarding any recommended or required changes to the PF member's status.

§ 1046.20 Medical records maintenance requirements.

(a) The Designated Physician must maintain all medical information for each employee or applicant as a confidential medical record, with the exception of the psychological record. The psychological record is part of the medical record but must be stored separately, in a secure location in the custody of the evaluating psychologist. These records must be kept in accordance with the appropriate DOE Privacy Act System of Records, available at *http://energy.gov/sites/prod/files/maprod/documents/FinalPASORNCompilation.1.8.09.pdf.*

(b) Nothing in this part is intended to preclude access to these records according to the requirements of other parts of this or other titles. Medical records maintained under this section may not be released except as permitted or required by law.

(c) Medical records must be retained according to the appropriate DOE Administrative Records Schedule, available at: *http://energy.gov/sites/prod/files/cioprod/documents/ADM_1%281%29.pdf* (paragraph 21.1)

(d) When an individual has been examined by a Designated Physician, all available history and test results must be maintained by the Designated Physician under the supervision of the PPMD in the medical record, regardless of whether:

(1) The individual completes the examination;

(2) It is determined that the individual cannot engage in physical training or testing and cannot perform the essential functions of the job; or

(3) It is determined that the individual poses a direct threat to self or others.

(e) The Designated Physician must provide written work restrictions to the affected SPO/SO and PF management. PF management must develop, approve, implement, and operate according to site-specific plans based upon the PF contractor's operational and contract structure to ensure confidentiality of PF medical information. This plan must permit access only to those with a need to know specific information, and must identify those individuals by organizational position or responsibility. The plan must adhere to all applicable laws and regulations, including but not limited to the Privacy Act of 1974, the Health Insurance Portability and Accountability Act of 1996, the Family and Medical Leave Act of 1993, and the ADA, as amended by the ADAAA.

[FR Doc. 2013–22022 Filed 9–9–13; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9610]

RIN 1545–BK68

Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations (TD 9610), which were published in the **Federal Register** on Monday, January 28, 2013 (78 FR 5874). The regulations related to information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities.

DATES: *Effective Date:* These corrections are effective September 10, 2013.

Applicability Date: These corrections are applicable on January 28, 2013.

FOR FURTHER INFORMATION CONTACT: John Sweeney, (202) 622–3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are §§ 1.1471–1 through 1.1474–7, promulgated under sections 1471 through 1474 of the Internal Revenue Code. These regulations affect persons making certain U.S.-related payments to FFIs and other foreign entities, and affect payments by FFIs to other persons. Sections 1471 through 1474 were added to the Internal Revenue Code, as Chapter 4 of Subtitle A, by the Hiring Incentives to Restore Employment Act of 2010 (Pub. L. 111–147, 124 Stat. 71).

Need for Correction

As published, the final regulations contain a number of items that need to be corrected or clarified. Several citations and cross references are corrected. The correcting amendments also include the addition, deletion, or modification of regulatory language to clarify the relevant provisions to meet their intended purposes. Additions, deletions, and modifications are also made to ensure that the rules in the final regulations are coordinated with other

rules contained in other relevant regulations (e.g., under chapters 3 and 61). For example in § 1.1471–3(c)(3)(iii)(B)(*2*), the definition of an FFI withholding statement was modified to add an applicable cross reference to the reporting on the statement that is required under chapter 61 (in addition to the reporting required under chapters 3 and 4); to delete an incorrect reference to a pool of payees exempt from chapter 4 withholding; and to add the modified requirements of an FFI withholding statement provided by a Qualified Intermediary that should have been referenced in this paragraph.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1471–0 is amended by:
■ 1. Revising paragraph (a)(2)(i) under § 1.1471–2.
■ 2. Revising paragraphs (b)(7) and (c)(2)(v) under § 1.1471–4.
■ 3. Revising paragraph (b)(2)(i)(E) under § 1.1471–5.
■ 4. Revising paragraph (a)(5)(vii) and removing paragraph (b)(3)(iii) under § 1.1473–1.

The revisions read as follows:

§ 1.1471–0 Outline of regulation provisions for sections 1471 through 1474.

* * * * *

§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) * * *

(2) * * *

(i) Requirement to withhold on payments of U.S. source FDAP income to participating FFIs and deemed-compliant FFIs that are NQIs, NWPs, or NWTs.

* * * * *

§ 1.1471–4 FFI agreement.

* * * * *

(b) * * *

(7) Withholding requirements for U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons.

(c) * * *

(2) * * *

(v) Special rule for U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons.

* * * * *

§ 1.1471–5 Definitions applicable to section 1471.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(E) Account that is tax-favored.

* * * * *

§ 1.1473–1 Section 1473 definitions.

(a) * * *

(5) * * *

(vii) Special rules for determining when gross proceeds are treated as paid to a partner, owner, or beneficiary of a flow-through entity.

* * * * *

■ **Par. 3.** Section 1.1471–1 is amended by revising paragraph (b)(23), the first sentence of paragraph (b)(34), and paragraph (b)(99) to read as follows:

§ 1.1471–1 Scope of chapter 4 and definitions.

* * * * *

(b) * * *

(23) *Customer master file.* A *customer master file* includes the primary files of a withholding agent, participating FFI, or deemed-compliant FFI for maintaining account holder information, such as information used for contacting account holders and for satisfying AML due diligence.

* * * * *

(34) * * * The term *electronically searchable information* means information that a withholding agent or FFI maintains in its tax reporting files, customer master files, or similar files, and that is stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used. * * *

* * * * *

(99) *Pre-FATCA Form W–8.* The term *pre-FATCA Form W–8* means a version of a Form W–8 that was issued by the IRS prior to 2013 (including an acceptable substitute form based on such version) and that does not contain chapter 4 statuses but otherwise meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate (or substitute form) and has not expired.

* * * * *

■ **Par. 4.** Section 1.1471–2 is amended by:
■ 1. Revising the heading and first two sentences of paragraph (a)(2)(i),
■ 2. Revising the first sentence of paragraph (a)(2)(iii)(A),
■ 3. Revising paragraphs (a)(2)(iii)(A)(*2*) and (a)(2)(iv),
■ 4. Revising the second and fourth sentences of paragraph (a)(2)(v),
■ 5. Revising the first sentence of paragraph (a)(4)(i)(A), and
■ 6. Revising paragraph (a)(4)(viii).

The revisions read as follows:

§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) * * *

(2) * * *

(i) *Requirement to withhold on payments of U.S. source FDAP income to participating FFIs and deemed-compliant FFIs that are NQIs, NWPs, or NWTs.* A withholding agent that, after December 31, 2013, makes a payment of U.S. source FDAP income to a participating FFI or deemed-compliant FFI that is an NQI receiving the payment as an intermediary, or a NWP or NWT, must withhold 30 percent of the payment unless the withholding is reduced under this paragraph (a)(2)(i). A withholding agent is not required to withhold on a payment, or portion of a payment, that it can reliably associate, in the manner described in § 1.1471–3(c)(2), with a valid intermediary or flow-through withholding certificate that meets the requirements of § 1.1471–3(d)(4) and a withholding statement that meets the requirements of § 1.1471–3(c)(3)(iii)(B) and that allocates the payment or portion of the payment to payees for which no withholding is required under chapter 4. * * *

* * * * *

(iii) * * *

(A) * * * A withholding agent is required to withhold with respect to a payment, or portion of a payment, that is U.S. source FDAP income subject to withholding that is made after December 31, 2013, to a QI that has elected in accordance with this paragraph to be withheld upon, unless such withholding agent also makes an election to be withheld upon under this paragraph (a)(2)(iii)(A) or is an FFI that may not accept primary withholding responsibility for the payment. * * *

* * * * *

(*2*) The person who receives the payment is a participating FFI or registered deemed-compliant FFI that acts as a QI with respect to the payment;

* * * * *

(iv) *Withholding obligation of a territory financial institution.* A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment has an obligation to withhold (to the extent required

under this section and § 1.1472–1(b)) if it agrees to be treated as a U.S. person with respect to the payment for purposes of both chapter 4 and § 1.1441–1(b)(2)(iv)(A). A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment is not required to withhold under paragraph (a)(1) of this section or § 1.1472–1(b), however, if it has provided the withholding agent that is a U.S. withholding agent, participating FFI, reporting Model 1 FFI, or QI with all of the documentation described in § 1.1471–3(c)(3)(iii) (in which it has not agreed to be treated as a U.S. person with respect to the payment), and it does not know, or have reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1474–1(d).

(v) * * * Accordingly, a QI branch of a U.S. financial institution must withhold in accordance with this section and § 1.1472–1(b) in addition to meeting its obligations under either § 1.1471–4(b) and its FFI agreement or § 1.1471–5(f). * * * Accordingly, a foreign branch of a U.S. financial institution that is a reporting Model 1 FFI must withhold in accordance with this section and § 1.1472–1(b). * * *

* * * * *

(4) * * *

(i) * * *

(A) * * * A withholding agent that is not related to the payee or beneficial owner has an obligation to withhold under chapter 4 only to the extent that, at any time between the date that the obligation to withhold would arise (but for the provisions of this paragraph (a)(4)(i)) and the due date for filing the return on Form 1042 (including extensions) for the year in which the payment occurs, it has control over or custody of money or property owned by the payee or beneficial owner from which to withhold an amount and has knowledge of the facts that give rise to the payment. * * *

* * * * *

(viii) *Payments to certain excepted accounts.* A withholding agent is not required to withhold under chapter 4 on a withholdable payment made to an account described in § 1.1471–5(b)(2).

* * * * *

■ **Par. 5.** Section 1.1471–3 is amended by:

■ 1. Revising the fourth sentence of paragraph (b)(2),

■ 2. Adding a sentence to the end of paragraph (c)(2)(i),

■ 3. Revising paragraph (c)(3)(iii)(A)(*5*),

■ 4. Revising the first two sentences of paragraph (c)(3)(iii)(B)(*2*),

■ 5. Revising the first sentence of paragraph (c)(6),

■ 6. Revising paragraphs (c)(6)(ii)(B)(*2*), (c)(6)(ii)(B)(*3*), and (c)(6)(ii)(C)(*2*)(*vi*),

■ 7. Revising the second sentence of paragraph (c)(6)(v)(B),

■ 8. Revising the second sentence of paragraph (c)(9)(iv)(A),

■ 9. Revising the first sentence of paragraph (d)(1),

■ 10. Revising the second sentence of paragraph (d)(2)(i),

■ 11. Revising paragraph (d)(2)(ii),

■ 12. Revising the second sentence of paragraph (d)(2)(iii),

■ 13. Revising the second sentence of paragraph (d)(4)(i),

■ 14. Revising paragraph (d)(6)(i)(F),

■ 15. Revising the third sentence of paragraph (d)(6)(ii),

■ 16. Revising the first sentence of paragraph (d)(6)(iii), and

■ 17. Revising the first sentence of paragraph (d)(9)(i)(A).

The revisions and addition read as follows:

§ 1.1471–3 Identification of payee.

* * * * *

(b) * * *

(2) * * * A withholding agent that makes a payment with respect to an offshore obligation may also rely upon a written notification provided by the person who receives the payment, regardless of whether such notification is signed, that indicates the person's entity classification (other than as a QI, WP, or WT) unless the withholding agent knows or has reason to know that the entity classification indicated by the person who receives the payment is incorrect. * * *

* * * * *

(c) * * *

(2) * * *

(i) * * * With respect to the documentation provided for the owners of a foreign flow-through entity, the foreign flow-through entity is permitted to provide the documentary evidence described in paragraph (d) of this section applicable to each payee in lieu of a withholding certificate, regardless of whether the payment is made with respect to an offshore obligation.

* * * * *

(3) * * *

(iii) * * *

(A) * * *

(*5*) A GIIN, in the case of a participating FFI or a registered deemed-compliant FFI (including a U.S. branch of such an entity), and an EIN in the case of a QI, WP, or WT.

* * * * *

(B) * * *

(*2*) * * * An FFI withholding statement must include either pooled information that indicates the portion of the payment attributable to a class of U.S. persons, each class of recalcitrant account holders identified in § 1.1471–5(g)(2), or a class of nonparticipating FFIs; or payee-specific information, if payee-specific information is provided for purposes of chapter 3 or 61, which indicates both the portion of the payment attributable to each payee and each payee's chapter 4 status. Regardless of whether the FFI withholding statement provides information on a pooled or payee-specific basis, a withholding statement provided by an FFI other than an FFI acting as a QI with respect to the account must identify each intermediary or flow-through entity that receives the payment on behalf of a payee with such entity's chapter 4 status and GIIN, when applicable. * * *

* * * * *

(6) * * * The provisions in this paragraph (c)(6) describe standards generally applicable to withholding certificates on Forms W–8 (or substitute forms), written statements, and documentary evidence furnished to establish the payee's chapter 4 status. * * *

* * * * *

(ii) * * *

(B) * * *

(*2*) A beneficial owner withholding certificate and documentary evidence supporting the individual's claim of foreign status when both are provided together by an individual claiming foreign status, if the withholding agent does not have a current U.S. residence or U.S. mailing address for the payee and does not have one or more current U.S. telephone numbers that are the only telephone numbers the withholding agent has for the payee;

(*3*) A beneficial owner withholding certificate that is provided by an entity described in paragraph (c)(6)(ii)(C)(*2*) of this section and documentary evidence establishing the entity's foreign status when both are provided together;

* * * * *

(C) * * *

(*2*) * * *

(*vi*) A territory financial institution;

* * * * *

(v) * * *

(B) * * * However, in addition to the name and address of the individual that is the payee or beneficial owner, the form must provide all countries for which the individual is a resident for tax purposes, the individual's city and country of birth, a tax identification

number, if any, for each country of residence (or the individual's date of birth if the individual does not have a foreign tax identification number for the country of residence claimed), and must contain a signed and dated certification made under penalties of perjury that the information provided on the form is accurate and will be updated by the individual within 30 days of a change in circumstances that causes the form to become incorrect. * * *

* * * * *

(9) * * *

(iv) * * *

(A) * * * However, an agent that makes a payment pursuant to an agency arrangement (paying agent) is also a withholding agent with respect to the payment unless an exception under § 1.1473–1(d) applies. * * *

* * * * *

(d) * * *

(1) * * * To establish a payee's status as a foreign individual, foreign government, government of a U.S. territory, or international organization, a withholding agent may rely upon a pre-FATCA Form W–8 in lieu of obtaining an updated version of the withholding certificate. * * *

(2) * * *

(i) * * * Consistent with the presumption rules in paragraph (f)(3) of this section, a withholding agent must treat a payee that has provided a valid Form W–9 as a specified U.S. person unless the Form W–9 certifies that the payee is other than a specified U.S. person. * * *

(ii) *Reliance on documentary evidence.* A withholding agent may also treat the payee as a U.S. person that is other than a specified U.S. person if the withholding agent has documentary evidence described in paragraphs (c)(5)(i)(C) and (D) of this section or general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that both establishes that the payee is a U.S. person and establishes (either through the documentation or the application of the rules in § 1.6049–4(c)(1)(ii) or paragraph (f)(3) of this section) that the payee is an exempt recipient. For purposes of the previous sentence, an exempt recipient means with respect to a withholding agent other than a participating FFI or registered deemed-compliant FFI, an exempt recipient under § 1.6049–4(c)(1)(ii) or, with respect to a withholding agent that is a participating FFI or registered deemed-compliant FFI, a U.S. person other than a specified U.S. person as described under § 1.1473–1(c).

(iii) * * * A withholding agent, other than a participating FFI or registered deemed-compliant FFI, may also treat a payee as a U.S. person if it has previously reviewed a Form W–9 or documentary evidence that established that the payee is a U.S. person and established (through the documentation or the application of the rules in § 1.6049–4(c)(1)(ii)) that the payee is an exempt recipient for purposes of chapter 61.

* * * * *

(4) * * *

(i) * * * For payments made prior to January 1, 2016, a registered deemed-compliant FFI that is a sponsored FFI must provide the GIIN of its sponsoring entity on the withholding certificate if the sponsored FFI has not obtained a GIIN.

* * * * *

(6) * * *

(i) * * *

(F) The withholding agent does not know or have reason to know that the payee is a member of an expanded affiliated group with any other FFI other than an FFI that is also treated as an owner-documented FFI by the withholding agent or that the FFI has any specified U.S. persons that own an equity interest in the FFI or a debt interest (other than a debt interest that is not a financial account or that has a balance or value not exceeding $50,000) in the FFI other than those identified on the FFI owner reporting statement described in paragraph (d)(6)(iv) of this section.

(ii) * * * A withholding agent may rely upon the letter described in this paragraph (d)(6)(ii) if it does not know or have reason to know that any of the information contained in the letter is unreliable or incorrect.

(iii) * * * Acceptable documentation for an individual owning an equity interest in the payee or a debt holder described in paragraph (d)(6)(iv) of this section means a valid withholding certificate, valid Form W–9 (including any necessary waiver), or documentary evidence establishing the foreign status of the individual as set forth in paragraph (d)(3)(ii) of this section (regardless of whether the payment is made with respect to an offshore obligation). * * *

* * * * *

(9) * * *

(i) * * *

(A) * * * A withholding agent may treat a payee as a foreign government, government of a U.S. territory, international organization, or foreign central bank of issue if it has a withholding certificate that identifies the payee as such an entity, indicates that the payee is the beneficial owner of the payment, and indicates that the payee is not engaged in commercial financial activities with respect to the payments or accounts identified on the form. * * *

* * * * *

■ **Par. 6.** Section 1471–4 is amended by:

■ 1. Revising the seventh sentence of paragraph (b)(1),

■ 2. Revising the first and third sentences of paragraph (b)(2),

■ 3. Revising the fifth sentence of paragraph (b)(3),

■ 4. Revising paragraph (b)(7),

■ 5. Revising the first and third sentences of paragraph (c)(2)(iii)(B),

■ 6. Revising the second sentence of paragraph (c)(2)(iii)(C),

■ 7. Revising the heading and first sentence of paragraph (c)(2)(v),

■ 8. Removing the language ''this paragraph (c)(5)(iv)(D)'' from paragraph (c)(5)(iv)(D)(*4*) and adding ''paragraph (c)(5)(iv)(D)(*3*) of this section'' in its place,

■ 9. Revising the second, fourth, and eighth sentences of paragraph (c)(6) *Example 2,*

■ 10. Revising the fourth sentence of paragraph (c)(7),

■ 11. Revising paragraphs (d)(2)(iii)(B) introductory text, (d)(2)(iii)(B)(*4*), (d)(3)(iv)(B), and (d)(3)(iv)(D),

■ 12. Revising the third sentence of paragraph (d)(4)(i),

■ 13. Revising paragraph (d)(5)(iii)(B),

■ 14. Revising the first sentence of paragraph (d)(6)(i),

■ 15. Revising paragraph (d)(7)(ii)(A)(*1*),

■ 16. Revising the first sentence of paragraph (e)(2)(ii),

■ 17. Removing the language ''as of February 15, 2012, and'' from paragraph (e)(2)(iii),

■ 18. Revising paragraph (e)(2)(iv)(B),

■ 19. Revising the second sentence of paragraph (e)(3)(ii)(B),

■ 20. Revising paragraph (e)(3)(iii)(B), and

■ 21. Revising the first sentence of paragraph (i)(1).

The revisions read as follows:

§ 1.1471–4 FFI agreement.

* * * * *

(b) * * *

(1) * * * See § 1.1471–2 for the exceptions to and special rules for withholding and the exclusion from the definition of withholdable payment and foreign passthru payment that applies to any payment made under a grandfathered obligation or the gross proceeds from the disposition of such an obligation. * * *

(2) * * * Except as otherwise provided under § 1.1471–2 and, with respect to certain preexisting accounts

under paragraph (c) of this section, a participating FFI is required to determine whether withholding applies at the time a payment is made by reliably associating the payment with valid documentation described in paragraph (c) of this section for the payee of the payment. * * * For a payment made to an account held by an entity, except as otherwise provided in § 1.1471–3(a)(3), the payee is the account holder. * * *

(3) * * * See the QI, WP, or WT agreement for the withholding requirements of an FFI that is a QI, WP, or WT for purposes of chapter 4.

* * * * *

(7) *Withholding requirements for U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons.* A U.S. branch of a participating FFI (and reporting Model 1 FFI) that is treated as a U.S. person and that satisfies its backup withholding obligations under section 3406(a) with respect to accounts held at the U.S. branch by account holders that are payees treated as other than exempt recipients under chapter 61 will be treated as satisfying its withholding obligation with respect to such accounts under section 1471(b)(1) and this paragraph (b). See paragraph (d)(2)(iii)(B) of this section for the special reporting requirements applicable to U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons. See paragraphs (c)(2) and (d)(4) of this section for the reporting requirements of U.S. branches of participating FFIs (and reporting Model 1 FFIs) with respect to payments that are chapter 4 reportable amounts.

(c) * * *

(2) * * *

(iii) * * *

(B) * * * For purposes of this section, a change in circumstances (as defined in § 1.1471–3(c)(6)(ii)(E)) includes any change or addition of information to the account holder's account (including the addition, substitution, or other change of an account holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules described in § 1.1471–5(b)(4)(iii) or by treating the accounts as consolidated obligations) if such change or addition of information affects the chapter 4 status of the account holder. * * * With respect to a preexisting account that meets a documentation exception described in paragraphs (c)(3)(iii) and (c)(5)(iii) of this section, a change in circumstances also includes a change in account balance or value as of the end of the first subsequent year that causes the account no longer to meet the documentation exception.

(C) * * * With respect to an account held by an entity other than a passive NFFE described in the preceding sentence, following a change in circumstances, the participating FFI must retain a record of the appropriate documentation described in paragraph (c)(3) of this section by the date that is 90 days after the change in circumstances or, if unable to do so, must treat such account as held by a nonparticipating FFI.

* * * * *

(v) *Special rule for U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons.* A U.S. branch of a participating FFI (and reporting Model 1 FFI) that is treated as a U.S. person shall apply, in lieu of the due diligence requirements of this paragraph (c), the due diligence requirements of § 1.1471–3 to determine the chapter 4 status of account holders and payees that are entities and shall apply the documentation requirements of chapter 3 or 61 (as applicable) with respect to individual account holders. * * *

* * * * *

(6) * * *

Example 2. * * * The balance in U's depository account on the effective date of CB's FFI agreement is $20,000. * * * The balance in Entity X's account on the effective date of CB's FFI agreement is $130,000, and the balance in Entity Y's account on the effective date of CB's FFI agreement is $110,000. * * * U's depository account qualifies for the § 1.1471–5(a)(4)(i) exception to U.S. account status because it does not exceed the $50,000 threshold, taking into account the aggregation rule described in § 1.1471–5(a)(4)(iii)(A). * * *

(7) * * * The responsible officer must also certify that the participating FFI has completed the account identification procedures and documentation requirements of this paragraph (c) for all other preexisting accounts or, if it has not retained a record of the documentation required under this paragraph (c) with respect to an account, treats such account in accordance with the requirements of this section and § 1.1471–5(g) or § 1.1471–3(f) (as applicable). * * *

(d) * * *

(2) * * *

(iii) * * *

(B) *Special reporting rules for U.S. branches treated as U.S. persons.* A U.S. branch of a participating FFI (and reporting Model 1 FFI) that is treated as a U.S. person shall be treated as having satisfied the reporting requirements described in paragraphs (d)(2)(i) and (d)(2)(ii)(C) of this section if it reports under—

* * * * *

(*4*) Section 1.1474–1(i) with respect to specified U.S. persons identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and (*2*) of owner-documented FFIs.

(3) * * *

(iv) * * *

(B) The name, address, and TIN of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and (*2*);

* * * * *

(D) The account balance or value of the account held by the owner-documented FFI;

* * * * *

(4) * * *

(i) * * * In the case of an account held by an owner-documented FFI, the address to be reported is the address of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and (*2*).

* * * * *

(5) * * *

(iii) * * *

(B) The name, address, and TIN of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and (*2*); and

* * * * *

(6) * * *

(i) * * * Except as otherwise provided in a Model 2 IGA, a participating FFI, as part of its reporting responsibilities under this paragraph (d), shall report to the IRS for each calendar year the information described for each of the classes of account holders described in paragraphs (d)(6)(i)(A) through (E) of this section. * * *

* * * * *

(7) * * *

(ii) * * *

(A) * * *

(*1*) The name, address, and TIN of each specified U.S. person who is an account holder and, in the case of any account holder that is an NFFE that is a U.S. owned foreign entity or that is an owner-documented FFI, the name of such entity and the name, address, and TIN of each substantial U.S. owner of such NFFE or, in the case of an owner-documented FFI, of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and (*2*);

* * * * *

(e) * * *

(2) * * *

* * * * *

(ii) * * * For purposes of this section, a branch is a unit, business, or office of an FFI that is treated as a branch under

the regulatory regime of a country or is otherwise regulated under the laws of such country as separate from other offices, units, or branches of the FFI. * * *

* * * * *

(iv) * * *

(B) Agree that each such branch will identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain a record of account holder and payee documentation pertaining to those identification requirements for the longer of six years from the effective date of the FFI agreement or for as long as the branch maintains the account or obligation, and report to the IRS with respect to accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the branch;

* * * * *

(3) * * *

(ii) * * *

(B) * * * See paragraph (e)(2)(iii)(B) of this section for when an account is considered blocked.

(iii) * * *

(B) Agree as part of such registration to identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain a record of account holder and payee documentation pertaining to those identification requirements for the longer of six years from the effective date of its registration as a limited FFI or for as long as the FFI maintains the account or obligation, and report with respect to accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the FFI;

* * * * *

(i) * * *

(1) * * * Except to the extent otherwise provided in a Model 2 IGA, a participating FFI (or branch thereof) that is prohibited by foreign law from reporting the information required under paragraph (d) of this section with respect to a U.S. account must follow the procedures of paragraph (i)(2) of this section to obtain a valid and effective waiver of such law and, if such waiver is not obtained within a reasonable period of time, to close or transfer such account. * * *

* * * * *

■ **Par. 7.** Section 1.1471–5 is amended by:

■ 1. Removing the language ''(e)(3)(iv)'' from paragraphs (b)(1)(iii)(A), (b)(1)(iii)(B), and (b)(1)(iii)(C) and adding ''(b)(3)(iv)'' in its place,

■ 2. Revising paragraphs (b)(2)(i)(C) and (b)(2)(v),

■ 3. Revising the first sentence of and adding a new second sentence in paragraph (b)(3)(iv),

■ 4. Revising the third sentence of paragraph (b)(4)(iv),

■ 5. Revising the third, fourth, and fifth sentences of paragraph (e)(4)(v) *Example 1,*

■ 6. Revising the second sentence of paragraph (e)(5),

■ 7. Adding the language ''and income derived from transactions between members of the expanded affiliated group'' to the end of the first parenthetical in paragraph (e)(5)(i)(B)(*1*),

■ 8. Revising paragraphs (e)(5)(iv)(D), (f)(1)(i)(F)(*3*)(*i*), and (f)(1)(i)(F)(*3*)(*iii*),

■ 9. Revising the first sentence of paragraph (f)(2),

■ 10. Revising paragraph (f)(2)(iii)(B),

■ 11. Revising the first sentence of paragraph (f)(3)(ii)(E),

■ 12. Removing the language ''§ 1.1471–4(c)(8)'' in paragraph (g)(3)(i)(B) and adding ''§ 1.1471–4(c)(5)(iv)(D)'' in its place,

■ 13. Revising the first sentence of paragraph (g)(3)(ii), and

■ 14. Revising the first sentence of paragraph (g)(3)(iii).

The revisions read as follows:

§ 1.1471–5 Definitions applicable to section 1471.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) *Rollovers.* An account that otherwise satisfies the requirements of paragraph (b)(2)(i)(A) or (B) of this section will not fail to satisfy such requirements solely because such account may receive assets or funds transferred from one or more accounts that meet the requirements of paragraph (b)(2)(i)(A) or (B) of this section, one or more retirement or pension funds that meet the requirements of § 1.1471–6(f), one or more accounts described in paragraph (b)(2)(vi) of this section, or one or more entities identified as nonreporting financial institutions under the terms of an applicable Model 1 or Model 2 IGA because they are retirement or pension funds.

* * * * *

(v) *Certain annuity contracts.* A non-investment linked, non-transferable, immediate life annuity contract (including a disability annuity) that monetizes a retirement or pension account described in paragraph (b)(2)(i)(A) or (b)(2)(vi) of this section.

* * * * *

(3) * * *

(iv) * * * To determine if debt or equity interests described in paragraph (b)(1)(iii) of this section are regularly traded, the principles of § 1.1472–1(c)(1)(i)(A)(*2*)(*i*) and (*ii*) shall apply with respect to the interests, and the principles of § 1.1472–1(c)(1)(i)(B)(*1*) shall apply for this purpose in the case of an initial public offering of such interests. See § 1.1472–1(c)(1)(i)(C) for the definition of an established securities market. * * *

* * * * *

(4) * * *

* * * * *

(iv) * * * In the case of an FFI determining whether an account meets (or continues to meet) a preexisting account documentation exception described in § 1.1471–4(c)(3)(iii) or (c)(5)(iii), or whether the account is an account described in paragraph (a)(4)(i) of this section, the spot rate must be determined on the date for which the FFI is determining the threshold amount as prescribed in those provisions.

* * * * *

(e) * * *

(4) * * *

(v) * * *

Example 1. * * * Fund Manager hires Investment Advisor, a foreign entity, to provide advice and discretionary management of a portion of the financial assets held by Fund A. Investment Advisor earned more than 50% of its gross income for the last three years from providing similar services. Because Investment Advisor primarily conducts a business of managing financial assets on behalf of clients, Investment Advisor is an investment entity under paragraph (e)(4)(i)(A) of this section and an FFI under paragraph (e)(1)(iii) of this section.

* * * * *

(5) * * * For the treatment of foreign entities described in this paragraph under section 1472, see § 1.1472–1(c)(1)(v).

* * * * *

(iv) * * *

(D) The entity has not agreed to report under § 1.1471–4(d)(2)(ii)(C) or otherwise act as an agent for chapter 4 purposes on behalf of any financial institution, including a member of its expanded affiliated group.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(F) * * *

(*3*) * * *

(*i*) Is authorized to act on behalf of the FFI (such as a fund manager, trustee, corporate director, or managing partner) to fulfill the requirements of the FFI agreement;

* * * * *

(*iii*) Has registered the FFI with the IRS by the later of January 1, 2016, or

the date that the FFI identifies itself as qualifying under this paragraph (f)(1)(i)(F);

* * * * *

(2) * * * A certified deemed-compliant FFI means an FFI described in any of paragraphs (f)(2)(i) through (iv) of this section that has certified as to its status as a deemed-compliant FFI by providing a withholding agent with the documentation described in § 1.1471–3(d)(5) applicable to the relevant deemed-compliant category. * * *

* * * * *

(iii) * * *

(B) A participating FFI, reporting Model 1 FFI, or U.S. financial institution agrees to fulfill all due diligence, withholding, and reporting responsibilities that the FFI would have assumed if it were a participating FFI.

* * * * *

(3) * * *

(ii) * * *

(E) The designated withholding agent agrees to report to the IRS (or, in the case of a reporting Model 1 FFI, to the relevant foreign government or agency thereof) all of the information described in § 1.1471–4(d) or § 1.1474–1(i) (as appropriate) with respect to any specified U.S. persons that are identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and (*2*). * * *

* * * * *

(g) * * *

(3) * * *

(ii) * * * An account holder of an account other than a preexisting account and that is described in paragraph (g)(2) of this section will be treated as a recalcitrant account holder beginning on the date that is the earlier of 90 days after the account is opened by the participating FFI or the date that a withholdable payment that is subject to withholding under § 1.1441–2(a) is made to the account. * * *

(iii) * * * An account holder holding an account that is described in paragraph (g)(2) of this section following a change in circumstances (other than a change in account balance or value in a subsequent year that causes an individual account to be identified as a high-value account) will be treated as a recalcitrant account holder beginning on the date that is 90 days after the change in circumstances. * * *

* * * * *

■ **Par. 8.** Section 1471–6 is amended by revising paragraph (h)(2)(ii) to read as follows:

§ 1.1471–6 Payments beneficially owned by exempt beneficial owners.

* * * * *

(h) * * *

(2) * * *

(ii) The entity has no outstanding debt that would be a financial account under § 1.1471–5(b)(1)(iii)(C); and

* * * * *

■ **Par. 9.** Section 1.1472–1 is amended by revising the fourth sentence of and adding a new fifth sentence to paragraph (a), and revising paragraphs (b)(1) introductory text, (b)(2), and (c)(2)(i) to read as follows:

§ 1.1472–1 Withholding on NFFEs.

(a) * * * See § 1.1473–1(a)(4)(vi), however, for rules excepting from the definition of withholdable payment certain payments of U.S. source FDAP income made prior to January 1, 2017, with respect to an offshore obligation and § 1.1471–2(b) for rules excepting from the definition of withholdable payment a grandfathered obligation. See also § 1.1471–2(a)(2)(ii), (iv), (v), and (vi) for special rules of withholding that apply for purposes of this section and § 1.1471–2(a)(5) for withholding requirements if the source or character of a payment is unknown.

(b) * * *

(1) *In general.* Except as otherwise provided in paragraph (b)(2) of this section (providing transitional relief), paragraph (c) of this section (providing exceptions for payments to an excepted NFFE, a WP or WT, or an exempt beneficial owner), § 1.1471–2(a)(4)(i) (providing an exception to withholding if the withholding agent lacks control, custody, or knowledge), § 1.1471–2(a)(4)(vii) (providing an exception to withholding for payments made to an account held with or equity interests traded through a clearing organization with FATCA-compliant membership), or § 1.1471–2(a)(4)(viii) (providing an exception to withholding for payments to certain excepted accounts), a withholding agent must withhold 30 percent of any withholdable payment made after December 31, 2013, to a payee that is an NFFE unless—

* * * * *

(2) *Transitional relief.* For any withholdable payment made prior to January 1, 2016, with respect to a preexisting obligation to a payee that is not a prima facie FFI and for which a withholding agent does not have documentation indicating the payee's status as a passive NFFE when the NFFE has failed to provide the owner certification as required under § 1.1471–3(d)(12)(iii), the withholding agent is not required to withhold under this section or report under § 1.1474–1(i)(2) (describing the reporting obligations of withholding agents with respect to NFFEs).

(c) * * *

(2) * * *

(i) Treat the payee as an NFFE that is a WP or WT in accordance with § 1.1441–5(c)(2) (for a WP) or § 1.1441–5(e)(5)(v) (for a WT); or

* * * * *

■ **Par. 10.** Section 1.1473–1 is amended by:

■ 1. Removing the second sentence of paragraph (a)(3)(iii)(A),

■ 2. Revising the second sentence of paragraph (a)(4)(iii),

■ 3. Revising the first sentence of paragraph (a)(4)(vi),

■ 4. Revising the heading of paragraph (a)(5)(vii),

■ 5. Removing the language ''beneficiary'' from paragraph (b)(3)(ii)(A) and adding ''person'' in its place, and

■ 6. Removing the language ''trust; or'' from paragraph (b)(3)(ii)(B) and adding ''trust as of the end of the prior calendar year; or'' in its place.

The revisions read as follows:

§ 1.1473–1 Section 1473 definitions.

(a) * * *

(4) * * *

(iii) * * * Notwithstanding the preceding sentence, excluded nonfinancial payments do not include: payments in connection with a lending transaction (including loans of securities), a forward, futures, option, or notional principal contract, or a similar financial instrument; premiums for insurance contracts or annuity contracts; amounts paid under cash value insurance or annuity contracts; dividends; interest (including substitute interest described in § 1.861–2(a)(7)) other than interest described in the preceding sentence; gross proceeds other than gross proceeds described in paragraph (a)(4)(iv) of this section; investment advisory fees; custodial fees; and bank or brokerage fees.

* * * * *

(vi) * * * A payment of U.S. source FDAP income made prior to January 1, 2017, with respect to an offshore obligation if such payment is made by a person that is not acting as an intermediary or as a WP or WT with respect to the payment. * * *

(5) * * *

(vii) *Special rules for determining when gross proceeds are treated as paid to a partner, owner, or beneficiary of a flow-through entity.* * * *

* * * * *

■ **Par. 11.** Section 1.1474–1 is amended by:

■ 1. Revising paragraph (a)(2),

■ 2. Revising the first sentence of paragraph (b)(1),

■ 3. Removing the language ''Except as otherwise provided under an FFI agreement, a'' in the first sentence of paragraph (c)(2) and adding ''A'' in its place,

■ 4. Removing the language ''(including its U.S. branch that is not treated as a U.S. person)'' from paragraphs (d)(1)(ii)(A)(*1*)(*iii*), (d)(1)(ii)(B)(*1*)(*i*), and (d)(1)(ii)(B)(*1*)(*iii*) and adding ''(including a U.S. branch of a participating FFI that is not treated as a U.S. person)'' in its place,

■ 5. Revising the second and sixth sentences of paragraph (d)(4)(i)(B),

■ 6. Revising paragraph (d)(4)(i)(C)(*1*),

■ 7. Removing the language ''If the U.S. branch is not treated'' from paragraphs (d)(4)(i)(C)(*2*) and (d)(4)(i)(C)(*3*) and adding ''If the U.S. branch of a participating FFI is not treated'' in its place,

■ 8. Removing the language ''its reporting pools as described in paragraph (d)(4)(i)(B)'' from paragraph (d)(4)(i)(C)(*2*) and adding ''its reporting pools referenced in paragraph (d)(4)(i)(B)'' in its place,

■ 9. Revising the first sentence of paragraph (d)(4)(ii)(C),

■ 10. Revising the first, second, and fifth sentences of paragraph (d)(4)(iii)(A),

■ 11. Revising the first sentence of paragraph (d)(4)(iii)(B),

■ 12. Revising paragraph (d)(4)(iii)(C),

■ 13. Revising the first sentence of paragraph (i)(1), and

■ 14. Revising paragraphs (i)(1)(ii), (i)(1)(iii), and (i)(2)(iii).

The revisions read as follows:

§ 1.1474–1 Liability for withheld tax and withholding agent reporting.

(a) * * *

(2) *Withholding agent liability.* A withholding agent that is required to withhold with respect to a payment under § 1.1471–2(a), 1.1471–4(b) (in the case of a participating FFI), or 1.1472–1(b) but fails either to withhold or to deposit any tax withheld as required under paragraph (b) of this section is liable for the amount of tax not withheld and deposited.

* * * * *

(b) * * *

(1) * * * Except as otherwise provided in this paragraph (b), every withholding agent who withholds tax pursuant to chapter 4 shall deposit such tax within the time provided in § 1.6302–2(a) by electronic funds transfer as provided under § 31.6302–1(h) of this chapter. * * *

* * * * *

(d) * * *

(4) * * *

(i) * * *

(B) * * * With respect to a payment of U.S. source FDAP income made to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT or QI that elects to be withheld upon under section 1471(b)(3) and from whom the withholding agent receives pooled information regarding such FFI's account holders and payees, a U.S. withholding agent must complete a separate Form 1042–S issued to the participating FFI, registered deemed-compliant FFI, or QI (as applicable) as the recipient with respect to each pool provided in an FFI withholding statement described in § 1.1471–3(c)(3)(iii)(B)(*2*). * * * See paragraph (d)(4)(ii)(A) of this section for reporting rules applicable if participating FFIs or deemed-compliant FFIs provide specific payee information for reporting to the recipient of the payment for Form 1042–S reporting purposes. * * *

(C) * * *

(*1*) If the U.S. branch is treated as a U.S. person, if the withholding agent treats amounts paid as effectively connected with the conduct of the branch's trade or business in the United States, or if the U.S. branch is the beneficial owner of the payment, the withholding agent must file Form 1042–S reporting the U.S. branch as the recipient;

* * * * *

(ii) * * *

(C) * * * If a U.S. withholding agent makes a payment to a disregarded entity and receives a valid withholding certificate or other documentary evidence from the person that is the single owner of such disregarded entity, the withholding agent must file a Form 1042–S treating the single owner as the recipient. * * *

(iii) * * *

(A) * * * Except as otherwise provided in paragraphs (d)(4)(iii)(B) (relating to NQIs, NWPs, NWTs, and FFIs electing under section 1471(b)(3)) and (d)(4)(iii)(C) of this section (relating to transitional payee-specific reporting for payments to nonparticipating FFIs), a participating FFI or deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) that makes a payment that is a chapter 4 reportable amount to a recalcitrant account holder or nonparticipating FFI, must complete a Form 1042–S to report such payments. A participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) may report in pools consisting of its recalcitrant account holders and payees that are nonparticipating FFIs. * * * Alternatively, a participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) may (and a certified deemed-compliant FFI is required to) perform payee-specific reporting to report a chapter 4 reportable amount made to a recalcitrant account holder or a nonparticipating FFI when withholding was applied (or should have applied) to the payment.

(B) * * * Except as otherwise provided in paragraph (d)(4)(iii)(C) of this section, a participating FFI or deemed-compliant FFI that is an NQI, NWP, NWT (including a U.S. branch of a participating FFI that is not treated as a U.S. person), or an FFI that has made an election under section 1471(b)(3) and has provided sufficient information to its withholding agent to withhold and report the payment is not required to report the payment on Form 10420S as described in paragraph (d)(4)(iii)(A) of this section if the payment is made to a nonparticipating FFI or recalcitrant account holding and its withholding agent has withheld the correct amount of tax on such payment and correctly reported the payment on a Form 1042–S. * * *

(C) *Reporting by participating FFIs and registered deemed-compliant FFIs (including QIs, WPs, and WTs) for certain payments made to nonparticipating FFIs (transitional).* Except as otherwise provided in the instructions to Form 1042–S or under a Model 2 IGA, if a participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) makes a payment to a nonparticipating FFI of a foreign reportable amount as defined in paragraph (d)(2)(i)(D) of this section, the FFI must report on Form 1042–S on a payee-specific basis the aggregate amount of all foreign reportable amounts paid by the FFI to the nonparticipating FFI for each of the calendar years 2015 and 2016.

* * * * *

(i) * * *

(1) * * * Beginning in calendar year 2014, if a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under § 1.1471–4(d)) makes during a calendar year a withholdable payment to an entity account holder or payee of an obligation and the withholding agent treats the entity as an owner-documented FFI under § 1.1471–3(d)(6), the withholding agent is required to report for such calendar year with respect to each specified U.S. person

identified under § 1.1471–3(d)(6)(iv)(*A*)(*1*) or (*2*). * * *

* * * * *

(ii) The name, address, and TIN of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and (*2*);

(iii) The total of all withholdable payments made to the owner-documented FFI;

* * * * *

(2) * * *

(iii) The total of all withholdable payments made to the NFFE; and

* * * * *

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2013–22004 Filed 9–9–13; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–162–FOR; Docket ID: OSM–2012–0022; S1D1SSS08011000SX066A00067 F134S180110; S2D2SSS08011000 SX066A00033F13XS501520]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (''OSM''), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are announcing the approval of an amendment to the Pennsylvania regulatory program (the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or the ''Act''). Pennsylvania proposed to revise its program at 25 Pa. Code 86.1, 86.3, and 86.17, to reflect the addition of new definitions and revisions to Pennsylvania's regulations on the use of the Coal Refuse Disposal Control Fund (''CRDCF'') and permit and reclamation fees. OSM is approving the proposed amendment which was submitted by Pennsylvania on December 19, 2012.

DATES: *Effective Date:* September 10, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, 3rd Floor, Pittsburgh, Pennsylvania 15220; Telephone: (412) 937–2827; E-Mail: *bowens@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the SMCRA permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program, effective July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

II. Submission of the Proposed Amendment

By letter dated December 19, 2012, (Administrative Record Number, PA 895.00), Pennsylvania sent OSM a request to approve the amendment of regulations found at Chapter 86 relating to surface and underground coal mining. The submission establishes a revised schedule of fees for coal mining activity permit applications. Specifically, Pennsylvania is requesting approval of regulations found at 25 Pa. Code Chapter 86, sections 1, 3, and 17. These changes were made at Pennsylvania's initiative.

We announced receipt of the proposed amendment in the February 26, 2013, **Federal Register** (78 FR 13002). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting.

We did not hold a public hearing or meeting because one was not requested. The public comment period ended on March 28, 2013. We received one comment from the United States Environmental Protection Agency (Administrative Record Number, PA 895.04). This comment was in response to OSM's December 26, 2012, letter (Administrative Record Number, PA 895.01) soliciting comment. No comments were received from the public.

III. OSM's Findings

30 CFR 732.17(h)(10) requires that State program amendments meet the criteria for approval of State programs set forth in 30 CFR 732.15, including that the State's laws and regulations are in accordance with the provisions of the Act and consistent with the requirements of 30 CFR Part 700. In 30 CFR 730.5, OSM defines ''consistent with'' and ''in accordance with'' to mean: (a) With regard to SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions of the Act; and (b) with regard to the Federal regulations, the State laws and regulations are no less effective than the Federal regulations in meeting the requirements of SMCRA.

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment, as described below. Any revisions that we do not specifically discuss concern non-substantive wording or editorial changes.

Minor Revisions to Pennsylvania's Regulations

Bifurcation of 25 Pa. Code 86.3 for Clarity Purposes

Pennsylvania proposed minor wording, editorial, and recodification changes to the following previously-approved regulation at 25 Pa. Code 86.3 (a). This section is amended to add subsection (b), which necessitates the lettering of the existing paragraph as subsection (a). Although Pennsylvania has always collected permit application fees, the bifurcation of this section, resulting in the addition of subsection (b) provides clarity regarding the use of the money collected from permit application fees that are deposited in the Coal Refuse Disposal Control Fund (''CRDCF''); a function within Pennsylvania's purview, as the regulatory authority. Specifically, subsection (b), will incorporate the definition of ''Permit application fee,'' discussed at length herein, and will read:

Permit application fees required under this chapter for permit applications submitted under the Coal Refuse Disposal Control Act

will be used by the Department to cover its costs to review applications.

OSM finds that this provision is consistent with regulations issued pursuant to 30 CFR 777.17. Accordingly, we are approving this portion of the amendment.

Revisions to Pennsylvania's Regulations That Are No Less Effective Than the Corresponding Provisions of the Federal Regulations and No Less Stringent Than SMCRA

Definition of ''Permit application fee'' at 25 Pa. Code 86.1

Pennsylvania proposes the addition of a new term; the definition of ''Permit application fee.'' This term will be found at 25 Pa. Code 86.1. Pennsylvania has always assessed a fee for permits consistent with Section 4(a) of the Pennsylvania Surface Mining Conservation and Reclamation Act and in a manner no less stringent than SMCRA, but did not define this term. In addition to the term, ''Permit application fee'' being introduced in the ''Definitions'' section, it will be incorporated in § 86.17, as a sub-section heading and shall be defined as, ''[a] nonrefundable filing fee due at the time of submission of an application. The permit application fee is required for an application to be considered complete.'' While there are no direct Federal counterpart provisions, section 507(a) of SMCRA specifically authorizes the implementation of a fee for permit applications, providing that a permit application ''shall be accompanied by a fee as determined by the regulatory authority, [which] may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit . . .'' and that ''[t]he regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit.'' Therefore, we find Pennsylvania's introduction of this definition to be no less stringent than SMCRA. Accordingly, we are approving this portion of the amendment.

Pennsylvania's Revision to 25 Pa. Code 86.17, Permit and Reclamation Fees, Creating an Increase in Permit Fees

Pennsylvania has resolved to increase the permit application fee schedule for coal mining permit activity applications in order to pay the costs the Department of Environmental Protection (''PA DEP'') incurs in reviewing permit applications. Prior to this submission, a permit application for coal mining activities or a coal preparation plant was required to be submitted with an application fee of $250. Additionally, any permit application fee for coal refuse disposal activities required a fee of $500, plus an additional $10 per acre fee for acreage in excess of 50 acres. This submission increases the fees and creates new categories of permits with differing fees. Surface mining and coal refuse disposal permits will be assessed a fee of $3,250; coal refuse reprocessing permits will be assessed a fee of $1,900; coal preparation plants, anthracite underground mining, and incidental extraction permits will be assessed a fee of $1,650; bituminous underground mining permits will be assessed a fee of $5,750; and post-mining activity permits will be assessed a fee of $300. As discussed above, SMCRA gives the regulatory authority discretion in selecting the fee to be imposed, stating that the fee ''may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit. . . .'' In establishing the new fees, Pennsylvania calculated the amounts using a workload analysis system. This system assigns a specific number of hours to each task to be completed, such as processing a permit application based on historical data recorded by staff. Using this historical data, the new fees were determined.

Under subsection (b)(2) of the amendment, a new fee for major permit revisions is imposed. This fee is either $300 or $1,250, depending upon the permit type.

Subsection (b)(3) introduces a new fee of $250 for permit transfers. The renewal fee, as detailed in subsection (b)(4), continues to be assessed under the former rate of $250. Additionally, new fees for auger safety and bond liability revisions will be assessed in the amount of $200 and $100, respectively.

Subsection (c) now describes how the collected fees will be allocated. Permit application fees collected for surface coal mine facilities, coal refuse reprocessing facilities, and coal mining activity facilities will be deposited in the Surface Mining Conservation and Reclamation Fund. Permit application fees for bituminous underground mines will be deposited in the Bituminous Mine Subsidence and Land Reclamation Fund. The fees collected for coal refuse disposal facilities are to be deposited in the CRDCF.

The amendment also adds a new component at subsection (d). This subsection requires the PA DEP to review the adequacy of the permit application fees at least once every three years. The results of this review must be submitted in writing to Pennsylvania's Environmental Quality Board. Specifically, the proposed report will identify and reconcile any disparity between the amount of income generated by the fees and the cost to administer these programs as well as recommend a fee increase, as necessary.

Subsection (e) of the current regulation will remain unaltered.

Pennsylvania has established that it has discretion in defining the fees for permit applications provided Pennsylvania conforms to section 507 of SMCRA in performing this analysis. As demonstrated, Pennsylvania, using the recommendations of the PA DEP and the Mining and Reclamation Advisory Board, reviewed historical data to determine the costs of reviewing, processing, and performing these tasks. We find the proposed Pennsylvania amendment to be no less stringent than the applicable SMCRA provisions and no less effective than the regulations promulgated thereunder. Therefore, we are approving this portion of the amendment as proposed by Pennsylvania.

Pennsylvania also proposes the addition of the term, ''Major Permit Revisions,'' to be added to the Definitions section found at 25 Pa. Code 86.1. This term is also used as a section header, found at 25 Pa. Code 86.17(b)(2). OSM considered the use of this term, taking into consideration EPA's reservations regarding the introduction of this term into the Pennsylvania program. EPA's concerns are discussed at length in the ''Federal Agency Comments'' section below.

There is no direct, definitional Federal counterpart within SMCRA for the proposed term, ''Major Permit Revisions''; however, OSM finds sufficient support for incorporating this term into the Pennsylvania program and has found it to be no less stringent than SMCRA and no less effective than the regulations promulgated thereunder. This, too, is discussed in the ''Federal Agency Comments'' section below.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments (Administrative Record Number PA 895.03) on the amendment when advertising the existence of the proposed amendment in the **Federal Register** on February 26, 2013. We did not receive any public comments on the proposed amendment.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from

various Federal agencies, including the U.S. Fish and Wildlife Service, the United States Department of Agriculture, and the Mine Safety and Health Administration, with an actual or potential interest in the Pennsylvania program (Administrative Record Number PA 895.01). No comments were received.

Environmental Protection Agency (''EPA'') Comments

On December 26, 2012, (Administrative Record Number PA 895.01), we asked for comment from the EPA. Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to obtain a written concurrence from the EPA for those provisions of the program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). We did not seek concurrence from the EPA for this amendment. The purpose of the amendment is to alter pre-existing guidelines for permit fees; therefore, this amendment does not require EPA concurrence as it does not relate to air or water quality standards as outlined in the regulations.

On February 25, 2013, the EPA, as requested by OSM, provided comments to the proposed amendments, expressing concern that the proposed amendment had the potential for impacting water quality standards. Specifically, the EPA expressed concern that the addition of the term ''Major Permit Revisions'' to 25 Pa. Code 86.1, Definitions, and included as a section header at § 86.17, as detailed in the proposed amendment, may undermine the mandatory process of providing public notice and opportunity to comment on any modification to a National Pollutant Discharge Elimination System (''NPDES'') permit issued under the Federal Clean Water Act (''CWA''). As noted by the EPA, this mandatory process is outlined in 40 CFR Part 124 and 40 CFR 123.62, pertaining to decision making and State program amendments of the EPA regulations.

The EPA recommended that the definition of ''Major Permit Revisions'' at § 86.1, be clarified to specifically state that the Federal regulatory requirements for NPDES permit modifications will apply and may require, among other things, public notice and opportunity to comment.

We gave deference to the EPA's comment, as the agency promulgating the regulations at 40 CFR Part 124 and 40 CFR 123.62. However, OSM notes that, consistent with section 702 of SMCRA, nothing in the submission shall be construed as superseding, amending, modifying, or repealing the requirements of the Federal CWA. Upon review of the Pennsylvania program, we found direct support for approving the addition of the term ''Major Permit Revisions'' and its use as a header.

Specifically, the approved Pennsylvania program incorporates by reference provisions of Chapter 92a of the Pennsylvania regulations that govern the implementation of the NPDES Permitting, Monitoring, and Compliance. For each of the permit applications or major permit revisions referenced in the proposed amendment, there are applicable Pennsylvania regulations that incorporate by reference the requirements of the regulations promulgated pursuant to the CWA and the Pennsylvania counterpart, the Clean Streams Law, 35 P.S. 691.5. For example, relative to surface coal mining permits, 25 Pa. Code 87.102(f), Hydrologic balance: effluent standards, specifically reads:

> In addition to the requirements of subsections (a)–(e), the discharge of water from areas disturbed by mining activities shall comply with this title, including Chapters 91, 92, 93, 95, 97 (reserved) and 102.

The provisions in Pennsylvania's Chapter 92 deal specifically with Public Participation. This portion of the Pennsylvania environmental protection regulation, found at 25 Pa. Code 92a.82, is incorporated by reference into the Pennsylvania program. Therefore, the Pennsylvania program specifically requires that when dealing with the discharge of water from areas disturbed by mining activities, ''a public notice of every new draft individual permit, or major amendment to an individual permit, will be published in the *Pennsylvania Bulletin.''* (25 Pa. Code 92a.82(b)) With respect to categorizing revisions and modifications as ''minor'' or ''major,'' OSM notes that the Pennsylvania definition of ''minor amendment,'' found at 25 Pa. Code 92a.2, directly mirrors, with a few insignificant exceptions, the definition of ''Minor modifications'' as promulgated by the EPA at 40 CFR 122.63. The Pennsylvania regulations also provide for a standard 30-day public comment period following publication. (25 Pa. Code 92a.82)

In addition to the provision of the Pennsylvania program dealing with surface coal mining permits, there are similar provisions found at: 25 Pa. Code 89.52(h), applicable to underground coal mine permits and coal preparation facilities permits; 25 Pa. Code 90.102(f), applicable to coal refuse disposal permits, and 25 Pa. Code 88.92(f) applicable to anthracite coal mine permits. The presence of these public notice requirements dispense with the concern raised by the EPA that modifications to NPDES permits may not receive required public notice and comment periods.

Therefore, while taking the EPA's comment into consideration, we conclude that this aspect of the amendment may be approved as it is no less stringent than SMCRA and no less effective than the implementing regulations.

State Historic Preservation Officer (''SHPO'') and the Advisory Council on Historic Preservation (''ACHP'')

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On December 26, 2012, we requested comments on Pennsylvania's amendment (Administrative Record PA 895.01), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment proposed by Pennsylvania and sent to OSM on December 19, 2012.

We approve, as discussed in finding number 1, 25 Pa. Code 86.3, concerning the CRDCF fund; finding number 2, 25 Pa. Code 86.1, concerning the definition of permit application fee; and finding number 3, 25 Pa. Code 86.17, concerning the change in amount and addition of fees.

Moreover, as stated herein, OSM, while considering the comments received by the EPA, finds that the introduction of the definition, ''Major Permit Revisions'' found at 25 Pa. Code 86.1, of the Pennsylvania amendment and the reference thereto at 25 Pa. Code 86.17(2), is no less stringent than SMCRA and is not construed as superseding, amending, modifying, or repealing the Federal regulatory requirements for NPDES permit modifications. Specifically, the Pennsylvania program provides for public notice and opportunity to comment for ''every . . . major amendment to an individual permit.'' (25 Pa. Code 92a.82(b))

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the Federal regulations. Section 507(a) of

SMCRA gives the regulatory authority discretion in selecting the fee to be imposed. Other changes implemented through this final rule notice are administrative in nature and have no takings implications.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of Subsections (a) and (b). However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each plan is drafted and promulgated by a specific State, not by OSM. Under Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory plans and plan amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule merely approves a program amendment submitted by the State of Pennsylvania at its own initiative.

Executive Order 13175—Consultation and Coordination With Indian Tribal Government

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision pertains to the Pennsylvania regulatory program and does not involve a Federal program involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply Distribution or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 requiring agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866 (Regulatory Planning and Review), and (2) likely to have significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866, and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102 (2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). It is further documented in the DOI Departmental Manual 516 DM 13.5, that agency decisions on approval of State regulatory programs do not constitute major Federal actions.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon data and assumptions for the Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 13, 2013.

Thomas D. Shope,

Regional Director, Appalachian Region.

For the reasons set out in the preamble, 30 CFR Part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

■ 1. The authority citation for Part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 938.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
December 19, 2012	September 10, 2013	Addition of definitions to 25 Pa. Code 86.1, clarification of 86.3, and increase of fees at 86.17.

[FR Doc. 2013–22011 Filed 9–9–13; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0723]

Annual Marine Events in the Eighth Coast Guard District, Sabine River; Orange, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Special Local Regulations for the Southern Professional Outboard Racing Tour (S.P.O.R.T.) boat races to be held on the Neches River in Orange, TX from 3 p.m. on September 20, 2013, through 6 p.m. on September 22, 2013. This action is necessary to provide for the safety of the participants, crew, spectators, participating vessels, non-participating vessels and other users of the waterway. During the enforcement period no person or vessel may enter the zone established by the Special Local Regulation without permission of the Captain of the Port (COTP) Port Arthur or his designated on-scene Patrol Commander.

DATES: The regulation in 33 CFR 100.801 will be enforced from 3 p.m. to 6 p.m. on September 20, 2013; and from 9 a.m. to 6 p.m. on September 21 and 22, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email Mr. Scott Whalen. U.S. Coast Guard Marine Safety Unit Port Arthur, TX; telephone 409–719–5086, email *scott.k.whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce Special Local Regulation for the annual S.P.O.R.T. boat races in 33 CFR 100.801(60) on September 21, 2012, from 3 p.m. to 6 p.m. and on September 22 and 23, 2012 from 9 a.m. to 6 p.m.

Under the provisions of 33 CFR 100.801, a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port or his designated on-scene Patrol Commander. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede participants or official patrol vessels. The Coast Guard may be assisted by other federal, state or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.801 and 33 U.S.C. 1233. In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with notification of this enforcement period via Local Notice to Mariners, Marine Information Broadcasts, and Marine Safety Information Bulletins.

If the Captain of the Port or his designated on-scene Patrol Commander determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: July 30, 2013.

G.J. Paitl,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur.

[FR Doc. 2013–21924 Filed 9–9–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0807]

Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Burlington Northern Santa Fe (BNSF) Railway Bridge across the Lake Washington Ship Canal, mile 0.1, at Seattle, WA. This deviation is necessary to facilitate heavy maintenance on the bridge. This deviation allows the bridge to remain in the down, or closed position, during the maintenance period.

DATES: This deviation is effective from 9 a.m. on November 5, 2013 to 11:59 p.m. on November 14, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0807] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Lieutenant Commander Steven Fischer, Thirteenth District Bridge Program Office, Coast Guard; telephone (206)220–7277, *Steven.M.Fischer2@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: BNSF Railway has requested that the draw of the BNSF Railway Bridge across the Lake Washington Ship Canal, mile 0.1 (Ballard-Salmon Bay), be locked in the closed position and not be required to open for the passage of vessels on 4 separate days during a 9 day period to facilitate heavy maintenance on the bridge. The bridge provides 43 feet of vertical clearance above mean high water while in the closed position. Under normal operations this bridge opens on signal as required by 33 CFR 117.5 and 33 CFR 117.1051(c). The deviation period is from 9 a.m. on November 5, 2013 to 11:59 p.m. on November 14, 2013. This deviation allows the draw span of the BNSF Railway Bridge across the Lake Washington Ship Canal, mile 0.1, to remain in the closed position and to not open for maritime traffic from 9 a.m. to 11:59 p.m. on November 5, 2013, and 9 a.m. to 11:59 p.m. on November 7, 2013, and 9 a.m. to 11:59 p.m. on November 12, 2013, and 9 a.m. to 11:59 p.m. on

November 14, 2013. These time frames were selected because it corresponds with the closure of the Army Corps of Engineering Hiram M. Chittenden lock immediately upstream or inland of the bridge on the Lake Washington Ship Canal. This stretch of the Lake Washington Ship Canal experiences heavy waterway usage and is utilized by vessels ranging from commercial tug and barge to pleasure craft.

Vessels able to pass through the bridge in the closed positions may do so at anytime. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: August 27, 2013.

Daryl R. Peloquin,

Thirteenth Coast Guard District, Acting Bridge Administrator.

[FR Doc. 2013–21940 Filed 9–9–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0754]

Drawbridge Operation Regulation; Old River, Between Victoria Island and Byron Tract, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the State Highway 4 Drawbridge across Old River, mile 14.8 between Victoria Island and Byron Tract, CA. The deviation is necessary to allow the bridge owner to make critical repairs to the bridge shafts and gears. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 6 a.m. on September 9, 2013 to 6 p.m. on October 4, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0754], is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, 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 Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: California Department of Transportation has requested a temporary change to the operation of the State Highway 4 Drawbridge, mile 14.8, over Old River, between Victoria Island and Byron Tract, CA. The drawbridge navigation span provides 12 feet vertical clearance above Mean High Water in the closed-to-navigation position. Pursuant to 33 CFR 117.183, 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. and at other times, opening the draw on signal if at least four hours advance notice is given to the drawtender at the Rio Vista drawbridge across the Sacramento River, mile 12.8. Navigation on the waterway is recreational and commercial.

The drawspan will be secured in the closed-to-navigation position from 6 a.m. on September 9, 2013 to 6 p.m. on October 4, 2013, to allow the bridge owner to replace worn out shafts and gears, critical components of the drawbridge. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised. The drawspan can be operated upon four hour advance notice for emergencies requiring the passage of waterway traffic.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time. There is an alternative route for mariners around Victoria Island.

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

Dated: August 26, 2013.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2013–21953 Filed 9–9–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0806]

Drawbridge Operation Regulation; New Jersey Intracoastal Waterway (NJICW), Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from drawbridge regulation.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the operating schedule that governs the Route 30/Absecon Boulevard Bridge across Beach Thorofare, NJICW mile 67.2, and the US40–322 (Albany Avenue) across Inside Thorofare, NJICW mile 70.0, both at Atlantic City, NJ. The deviation is necessary to ensure the safety of the heavy volumes of vehicular and pedestrian traffic that would be transiting over the bridges for the Miss America Pageant Parade. This deviation allows the drawbridges to remain closed to navigation to accommodate a crowd of 200,000 to 300,000 following the conclusion of the Miss America Pageant Parade.

DATES: This deviation is effective from 8:30 p.m. until 10 p.m. on Saturday, September 14, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0806] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Kashanda Booker, Bridge

Management Specialist, Fifth Coast Guard District; telephone 757–398–6587, email *Kashanda.l.booker@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The New Jersey Department of Transportation requested a temporary deviation from the current operating regulations of the Route 30/Absecon Boulevard Bridge across Beach Thorofare, NJICW mile 67.2, and the US40–322 (Albany Avenue) across Inside Thorofare, NJICW mile 70.0, both at Atlantic City, NJ. The temporary deviation has been requested to ensure the safety of the heavy volumes of vehicular traffic that would be transiting over the bridges for the Miss America Pageant Parade. Due to security concerns, the NJDOT would like to have the capability to clear the city as quick as possible if necessary. Under this temporary deviation, on Saturday, September 14, 2013, the draws for both bridges need not open from 8:30 p.m. until 10 p.m.

Route 30/Absecon Boulevard Bridge

The current operating regulation for the Route 30/Absecon Boulevard Bridge across Beach Thorofare is outlined at 33 CFR 117.733(e) which requires that the bridge shall open on signal if at least four hours of notice is given; except that from April 1 through October 31, from 7 a.m. to 11 p.m., the draw need only open on the hour; on July 4, the draw need not open from 9:40 p.m. until 11:15 p.m. to accommodate the annual July 4th fireworks show. Should inclement weather prevent the fireworks event from taking place as planned, the draw need not open from 9:40 p.m. until 11:15 p.m. on July 5th to accommodate the annual July 4th fireworks show; on the third or fourth Wednesday of August the draw will open every two hours on the hour from 10 a.m. until 4 p.m. and need not open from 4 p.m. until 8 p.m. to accommodate the annual Air Show. In the closed position to vessels, the vertical clearance for this bascule-type bridge is 20 feet above mean high water.

US40–322 (Albany Avenue) Bridge

The current operating regulation for the US40–322 (Albany Avenue) Bridge across Inside Thorofare is outlined at 33 CFR 117.733(f) shall open on signal except that year-round, from 11 p.m. to 7 a.m.; and from November 1 through March 31 from 3 p.m. to 11 p.m., the draw need only open if at least four hours notice is given; from June 1 through September 30, from 9 a.m. to 4 p.m. and from 6 p.m. to 9 p.m., the draw need only open on the hour and half hour; and from 4 p.m. to 6 p.m., the draw need not open; on July 4, the draw need not open from 9:40 p.m. until 11:15 p.m., to accommodate the annual July 4th fireworks show. Should inclement weather prevent the fireworks event from taking place as planned, the draw need not open from 9:40 p.m. until 11:15 p.m. on July 5th to accommodate the annual July 4th fireworks show; and on the third or fourth Wednesday of August, the draw will open every two hours on the hour from 10 a.m. until 4 p.m. and need not open from 4 p.m. until 8 p.m. to accommodate the annual Air Show. In the closed position to vessels, the vertical clearance for this bascule-type bridge is 10 feet above mean high water.

The majority of the vessels that transit the bridges this time of the year are recreational boats. Vessels able to pass through the bridges in the closed positions may do so at anytime. Both bridges will be able to open for emergencies.

The Atlantic Ocean is an alternate route for vessels unable to pass through the bridges in closed positions. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: August 27, 2013.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2013–21952 Filed 9–9–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0692]

RIN 1625–AA00

Safety Zone: Suisun Bay Electromagnetic Scan and Ordnance Recovery, Suisun Bay, Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones in the navigable waters of Suisun Bay in support of the Military Ocean Terminal Concord (MOTCO) electromagnetic scan and ordnance recovery operations. These safety zones are established to ensure the safety of the ordnance identification and recovery teams and mariners transiting the area. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zones without permission of the Captain of the Port or their designated representative.

DATES: This rule will be enforced with actual notice from August 26, 2013 to September 10, 2013. This rule is effective in the Code of Federal Regulations from September 10, 2013 through October 25, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0692. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lieutenant Junior Grade Joshua Dykman, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585 or email at *D11–PF-MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Program Manager, Docket Operations, telephone (202)366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
DoD Department of Defense
FR Federal Register
MMRP Military Munitions Response Program
MOTCO Military Ocean Terminal Concord
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this 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)(B), the Coast Guard finds that good cause exists for not publishing a Notice of Proposed Rulemaking (NPRM) with respect to this rule because publishing an NPRM would be contrary to the public interest. The Military Munitions Response Program (MMRP) addresses the safety and environmental hazards presented by munitions and explosives. MOTCO recently completed an underwater geophysical survey of Suisun Bay whereby they identified 55 locations throughout Suisun Bay with ferrous-based objects that may contain ordnance deposited as a result of the Port Chicago explosion on July 17, 1944. MOTCO notified the Coast Guard on July 10, 2013 that they intend to conduct an intrusive electromagnetic scan and ordnance recovery operation in selected areas of Suisun Bay with a high probability of containing ordnance items, and the operation would occur before the rulemaking process would be completed. The safety zone is necessary to ensure the safety of the teams conducting ordnance scanning and recovery operations as well as provide for the safety of vessels transiting the area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the reasons stated above, delaying the effective date would be contrary to the public interest.

B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

MOTCO is sponsoring the Suisun Bay Electromagnetic Scan and Ordnance Recovery Safety Zone from August 26, 2103 through October 25, 2013 in the navigable waters of the Suisun Bay, CA as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18656. The safety zone establishes a 100 foot moving safety zone around a 2-barge configuration, flying a red flag, and traveling throughout Suisun Bay conducting electromagnetic scan and ordnance recovery operations. A temporary safety zone will also be established for emergency ordnance detonation between Roe Island and Ryer Island at the following location: 38°04′24″ N, 122°0′14″ W (NAD 83) for use only in the event that unstable ordnance items are recovered that require immediate detonation on site. Until such a time is needed, vessel traffic is free to move through the area. A broadcast will be released when the zone will be enforced, giving vessel traffic enough time to leave the area. These safety zones are necessary to ensure the safety of teams conducting electromagnetic scans and ordnance recovery operations and to ensure the safety of mariners transiting the area. These safety zones will be enforced from August 26, 2013 to October 25, 2013 between the hours of 7 a.m. and 4 p.m. The safety zones shall terminate at the conclusion of the electromagnetic scan and ordnance recovery operations.

C. Discussion of the Final Rule

The Coast Guard will enforce a 100 foot moving safety zone around a 2-barge configuration, flying a red flag, and traveling throughout Suisun Bay conducting electromagnetic scan and ordnance recovery operations from August 26, 2013 to October 25, 2013 between the hours of 7 a.m. and 4 p.m. To minimize impacts to commerce, the ordnance disposal team will cease operations to accommodate commercial vessels requiring transit through the navigation channel in vicinity to the project location. Commercial vessels will be informed via broadcast and local notice to mariners to coordinate passing arrangements with the ordnance disposal team prior to transiting the project area.

A temporary safety zone will be established for emergency ordnance detonation between Roe Island and Ryer Island at the following location: 38°04′24″ N, 122°0′14″ W (NAD 83) for use only in the event that unstable ordnance items are recovered that require immediate detonation on site. Until such a time is needed, vessel traffic is free to move through the area. A broadcast will be released when the zone will be enforced, giving vessel traffic enough time to leave the area. At the conclusion of the electromagnetic scan and ordnance recovery the safety zones shall terminate.

The effect of the temporary safety zones will be to restrict navigation in the vicinity of the electromagnetic scan and ordnance recovery operations. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes and 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 that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

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 certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: Owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the safety zone at times when this zone is being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time, and (ii) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

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 rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls 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 State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. 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 will 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 does not create an environmental risk to health or risk to safety that may 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 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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

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 guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–588 to read as follows:

§ 165.T11–588 Safety zone; Suisun Bay Electromagnetic Scan and Ordnance Recovery, Suisun Bay, Concord, CA.

(a) *Location.* A temporary 100 foot moving safety zone will be established around a 2-barge configuration, flying a red flag, and traveling throughout Suisun Bay conducting electromagnetic scan and ordnance recovery operations as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18656. Prior to vessels traveling through the navigational channel, notice will be given to the barges so that they have ample time to move out of the way and not impede traffic. An additional temporary safety zone will be established for emergency ordnance detonation between Roe Island and Ryer Island at the following location: 38°04′24″ N, 122°01′14″ W (NAD 83) for use only in the event that unstable ordnance items are recovered that require immediate detonation on site. Until such a time is needed, vessel traffic is free to move through the area. A broadcast will be released when the zone will be enforced, giving vessel traffic enough time to leave the area.

(b) *Enforcement Period.* The zones described in paragraph (a) of this section will be in effect from August 26, 2013 through October 25, 2013 between the hours of 7 a.m. until 4 p.m. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in 33 CFR Part 165, Subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: August 23, 2013.

Gregory G. Stump,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2013–21939 Filed 9–9–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0685]

RIN 1625–AA00

Safety Zone; Flying Machine Competition, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Michigan in the vicinity of Burnham Park in Chicago, IL. This temporary safety zone is intended to restrict vessels from a portion of Lake Michigan near Burnham Park during a flying machine competition event in Chicago, IL on September 21, 2013. This temporary safety zone is necessary to protect event participants, the surrounding public, and vessels from the hazards associated with this marine event.

DATES: This rule is effective and will be enforced from 10:30 a.m. until 4 p.m. on September 21, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0685. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or email MST1 John Ng, U.S. Coast Guard Marine Safety Unit Chicago, at 630–986–2122 or *John.H.Ng@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

A. Regulatory History and Information

The Coast Guard is issuing this temporary 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)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect participants, spectators and vessels from the hazards associated with this marine event, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register** for the same reasons discussed in the preceding paragraph, delaying the effect date of this rule past September 21, 2013, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

An annual flying machine competition event has been scheduled by a commercial entity to take place from 11 a.m. until 4 p.m. on September 21, 2013, in Chicago, IL. This event is expected to involve personally-crafted flying machines with human occupants, falling from a raised platform into Lake Michigan. The Coast Guard anticipates a large number of spectators to congregate close to the platform during the event. The Captain of the Port, Lake Michigan, has determined that this marine event will pose a significant risk to public safety and property. Such hazards include falling debris, and collisions between spectators, falling water craft, and their human occupants.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port, Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of participants, spectators, and vessels during the flying machine competition event on Lake Michigan in the vicinity of Burnham Park. This safety zone will be effective and enforced from 10:30 a.m. until 4 p.m. on September 21, 2013. This safety zone will encompass a portion of Lake Michigan, beginning at a point approximately 1000 feet to the

northwest of Burnham Park in Chicago, IL. This safety zone will extend approximately 260 feet from shore into Lake Michigan and will measure approximately 670 feet across. The specific coordinates are listed below in 33 CFR 165.T09–0685(a).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and 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 Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will only impact a small area and will be enforced for only a short duration on one day in September, 2013. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port or his designated on-scene representative.

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 certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Lake Michigan, Chicago, IL on September 21, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port, or his designated on-scene representative. Additionally, before the enforcement of the zone, we would issue local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

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** section, 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 rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a 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 determined that this rule 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 will 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 does not create an environmental risk to health or risk to safety that may 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 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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations

That Significantly Affect Energy Supply, Distribution, or Use.

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 guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0685 to read as follows:

§ 165.T09–0685 Safety Zone; Red Bull Flugtag, Chicago, IL.

(a) *Location.* This safety zone will encompass all waters of Lake Michigan in the vicinity of Burnham Park, within an imaginary box bounded by the following points: beginning on shore at 41°49′38″ N, 87°35′56″ W, then north east to 41°49′39″ N, 87°35′54″ W, then north west to 41°49′44″ N, 87°35′59″ W, then south west to shore at 41°49′43″ N, 87°36′02″ W, then southeast along the shoreline to the point of origin (NAD 83).

(b) *Effective and enforcement period.* This section is effective and will be enforced from 10:30 a.m. until 4 p.m. on September 21, 2013.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan or his designated on-scene representative.

(2) The safety zone described in paragraph (a) of this section is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Lake Michigan or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Lake Michigan or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Lake Michigan, or his on-scene representative.

Dated: August 22, 2013.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2013–21925 Filed 9–9–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0335; FRL–9900–82–Region6]

Approval and Promulgation of Implementation Plans; Texas; Procedures for Stringency Determinations and Minor Permit Revisions for Federal Operating Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking a direct final action to approve portions of three revisions to the Texas State Implementation Plan (SIP) concerning the Texas Federal Operating Permits Program. EPA has determined that these SIP revisions, submitted on December 17, 1999, October 4, 2001 and August 11, 2003, comply with the Clean Air Act and EPA regulations and are consistent with EPA policies. This action is being taken under section 110 of the Act.

DATES: This direct final rule is effective on November 12, 2013 without further notice, unless EPA receives relevant adverse comment by October 10, 2013. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2010–0335, by one of the following methods:

(1) *www.regulations.gov:* Follow the on-line instructions for submitting comments.

(2) *Email:* Ms. Adina Wiley at *wiley.adina@epa.gov.*

(3) *Fax:* Ms. Adina Wiley, Air Permits Section (6PD–R), at fax number 214–665–6762.

(4) *Mail or Delivery:* Ms. Adina Wiley, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2010–0335. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or email, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that 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 *http://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 along with any disk or CD–

ROM submitted. 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 and any form of encryption and should 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 the disclosure of which 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 Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's direct final action, please contact Ms. Adina Wiley (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, Texas 75202–2733, telephone (214) 665–2115; fax number (214) 665–6762; email address *wiley.adina@epa.gov.*

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

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I. What action is EPA taking?

EPA is taking a direct final action to approve portions of three revisions to the Texas State Implementation Plan (SIP) concerning the Texas Federal Operating Permits Program. EPA has determined that these SIP revisions, submitted on December 17, 1999, October 4, 2001 and August 11, 2003, comply with the Clean Air Act and EPA regulations and are consistent with EPA policies. This action is being taken under section 110 of the Act.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. As explained in our accompanying technical support documents (TSD), we are finding this action noncontroversial because the provisions for the Stringency Determination for Federal Operating Permits at 30 TAC 101.28 have been in effect in Texas since December 23, 1999, and the minor permit revision procedures for the Texas Federal Operating Permit Program have been in effect in Texas since June 3, 2001 and December 11, 2002, without any negative impact to attainment or maintenance of any National Ambient Air Quality Standard in Texas. 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 SIP revision if relevant adverse comments are received. This rule will be effective on *November 12, 2013* without further notice unless we receive relevant adverse comment by *October 10, 2013.* If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. What did Texas submit?

A. Stringency Determinations for Federal Operating Permits at 30 TAC 101.28

December 17, 1999 SIP Submittal

In a letter dated December 17, 1999, Governor George W. Bush submitted revisions to the Texas SIP at Rule Log No. 99017–101–AI that were adopted by the Texas Natural Resources Conservation Commission (TNRCC) on December 1, 1999, and became effective on December 23, 1999.[1] This SIP submittal included revisions to the following parts of the Texas Administrative Code, Title 30, Chapter 101:

1. Revisions to the General Air Quality Definitions at 30 TAC 101.1;
2. Revisions to Emissions Inventory Requirements at 30 TAC 101.10;
3. New provisions for Stringency Determinations for Federal Operating Permits at 30 TAC 101.28; and
4. Revisions to Conformity of General Federal and State Actions to State Implementation Plans at 30 TAC 101.30.

Today's direct final action and accompanying proposal only addresses the submittal of 30 TAC 101.28. The revisions to the General Air Quality Definitions at 30 TAC 101.1 were superceded by EPA's November 14, 2001 approval of the Definitions adopted on September 26, 2001. See 66 FR 57252. EPA approved the revisions to the Emissions Inventory Requirements at 30 TAC 101.10 and the revisions to Conformity of General Federal and State Actions to State Implementation Plans at 30 TAC 101.30 on July 23, 2010. See 75 FR 43062. This review will be the first time EPA has evaluated and taken action on the December 17, 1999, submittal of 30 TAC 101.28. TCEQ has made no revisions to 30 TAC 101.28 since the initial adoption and submittal of the regulatory language as a SIP revision.

B. Minor Permit Revisions Procedures for Federal Operating Permits Program at 30 TAC 122.215–122.218

The permitting provisions for minor permit revisions in the Texas Federal Operating Permits Program are found at

[1] Note that the Texas Natural Resource Conservation Commission (TNRCC) was a predecessor to the current Texas environmental agency, the Texas Commission on Environmental Quality. This analysis will identify the TNRCC when talking about a specific action taken by the TNRCC such as rule adoption and SIP submittal, but will generally refer to the TCEQ when discussing current duties of the state environmental agency.

30 TAC 122.215–122.218. These provisions generally identify what permitting actions constitute a minor permit revision and detail the application procedures for said minor permit revisions under the Texas Federal Operating Permits Program. The TCEQ initially adopted the revisions at 30 TAC 122.215–122.218 in response to our June 7, 1995, **Federal Register** notice (60 FR 30037), where EPA identified several inconsistencies between Texas's Chapter 122 Federal Operating Permits Program and Part 70, including the provisions for minor permit revisions. TCEQ amended 30 TAC 122.215–122.218 to ensure Chapter 122 is consistent with 40 CFR 70.7(e)(2)(i). These amendments were adopted by the state on May 9, 2001, and submitted to EPA for inclusion in the Texas Title V Operating Permit program on May 30, 2001. EPA published approval of these revisions into the Federal Operating Permit program on December 6, 2001 (66 FR 63318), based on our determination that TCEQ had corrected the deficiencies identified in Chapter 122, including those pertaining to the minor permit revisions. TCEQ subsequently adopted amendments to 30 TAC 122.217 regarding minor permit procedures on November 20, 2002. These amendments removed an obsolete reference to the monitoring process for general operating permits and renumbered the section for consistency. These amendments to 30 TAC 122.217 were submitted to EPA as revisions to the Texas Title V Operating Permit Program on December 9, 2002. EPA published approval of these revisions into the Federal Operating Permit program on March 30, 2005 (70 FR 16134).

While EPA has reviewed and approved the amendments to sections 30 TAC 122.215–122.218 into the Texas Operating Permit Program, this review marks the first time that EPA has taken action on these sections as revisions to the Texas SIP. In doing so, we are acting on the original SIP submission of October 4, 2001, and the subsequent revisions through the August 11, 2003 SIP submittal.

October 4, 2001 SIP Revision Submittal

In a letter dated October 4, 2001, Governor Rick Perry submitted revisions to the Texas SIP at Rule Log No. 2000–043–122–AI that were adopted by the TNRCC on May 9, 2001, and became effective on June 3, 2001. The following parts of the Texas Administrative Code, Title 30, Chapter 122 were submitted in this SIP submittal. Note that no other revisions were adopted or submitted to the Texas SIP in this rule package.

1. Minor permit revisions at 30 TAC 122.215,
2. Applications for Minor Permit Revisions at 30 TAC 122.216,
3. Procedures for Minor Permit Revisions at 30 TAC 122.217, and
4. Minor Permit Revision Procedures for Permit Revisions Involving the Use of Economic Incentives, Marketable Permits and Emissions Trading at 30 TAC 122.218.

August 11, 2003 SIP Revision Submittal

In a letter dated August 11, 2003, Mr. Robert J. Huston, Chairman of the TNRCC, submitted revisions to the Texas SIP at Rule Log No. 2002–056–122–AI for 30 TAC 122.217—Procedures for Minor Permit Revision. The revision to 30 TAC 122.217 was adopted by the TNRCC on November 20, 2002, and became effective on December 11, 2002. Note that no other revisions were adopted or submitted to the Texas SIP in this rule package.

III. EPA's Evaluation

We provide our evaluation for this rulemaking in this section. Additional information to support our evaluation is available in the TSDs for this rulemaking, which are available in the rulemaking docket.

December 17, 1999 Submittal of 30 TAC 101.28

The TCEQ adopted these provisions as a result of the guidance provided by EPA in our March 5, 1996 ''White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program'' (WP2). In WP2, EPA explains that EPA and the state permitting authorities have developed different and often overlapping applicable requirements for stationary source control. This results in some emissions units at stationary sources being subjected to multiple requirements—some of which may be duplicative or contradictory. To reduce the permit burden on the sources, the state permitting authorities, and the EPA Regional Offices, EPA provided guidance in WP2 on how best to streamline these multiple requirements into one requirement that is at least as stringent as the most stringent limit. Generally, the streamlined monitoring, recordkeeping, and reporting requirements would generally be those associated with the most stringent emission limit, providing that the streamlined requirements would assure compliance to the same extent as the subsumed requirements.

EPA finds that the new provisions adopted at 30 TAC 101.28 are substantively similar to the guidance provided to states in WP2. As such, the stringency determination provisions are approvable.

October 4, 2001 and August 11, 2003 Submittal of 30 TAC 122.215–122.218

Because of the different CAA requirements and authorizations surrounding each program, EPA generally prefers to *not* approve a state's Title V permitting provisions into the applicable SIP. However, there are instances where approving a portion of the Title V program into the SIP is appropriate and necessary to ensure proper functionality for both the Title I and V permitting programs. For instance, EPA approved the ''potential to emit'' provisions at 30 TAC 122.122 into the Texas SIP on November 14, 2003 (see 68 FR 64543). In this instance, EPA required TCEQ to revise the ''potential to emit'' provisions through our January 7, 2002, Notice of Deficiency of the Texas Title V program; we further required that the corrected PTE provisions be submitted as revisions to both the Texas SIP and Title V programs.

The TCEQ adopted revisions to the Texas Title V minor permit provisions at 30 TAC 122.215–122.218 to satisfy inconsistencies identified by EPA June 7, 1995, in the Texas part 70 program. After correcting the deficiencies and adopting revised rules at 30 TAC 122.215–122.218, the TCEQ has submitted and requested Title V and SIP approval. EPA has already evaluated and approved the revisions into the state's part 70 program. We now address whether these provisions should be SIP-approved.

The TCEQ has requested SIP approval because of 30 TAC 122.218; which provides that minor permit procedures may be used for emission trading programs and other similar approaches only to the extent that *such minor permit revision procedures are explicitly provided for in the Texas SIP* or in the applicable requirements promulgated by the EPA.

Texas has several emissions trading programs approved into the Texas SIP, but none of these programs explicitly provide for the use of Title V minor permit revision procedures. Our analysis and approval of each of these state trading programs, found that through approval of the trading programs into the Texas SIP, these programs themselves would become applicable requirements under the approved Texas part 70 program. Since the programs themselves do not provide for the use of minor permit revisions under title V, the minor permit revision procedures in the part 70 program must

be explicitly included in the SIP to ensure the Texas sources participating in the SIP-approved trading programs can use the minor permit revision mechanisms.

IV. Final Action

EPA is taking direct final action to approve revisions to the Texas SIP submitted on December 17, 1999, October 4, 2001 and August 11, 2003 as consistent with the CAA and EPA's policy and guidance. Specifically, EPA is approving new 30 TAC 101.28 as adopted on December 1, 1999 and submitted on December 17, 1999. EPA is approving revisions to 30 TAC Sections 122.215, 122.216, 122.217 and 122.218 as adopted on May 9, 2001 and submitted on October 4, 2001. EPA is also approving revisions to 30 TAC 122.217 as adopted on November 20, 2002 and submitted on August 11, 2003.

V. 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 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 November 12, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 28, 2013.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. Section 52.2270(c) is amended by adding to the table titled ''EPA Approved Regulations in the Texas SIP'':

■ a. A new entry in numerical order for Section 101.28 under the existing headings for Chapter 101—General Air Quality Rules and Subchapter A—General Rules.

■ b. A new centered heading at the end of the table for Subchapter C—Initial Permit Issuances, Revisions, Reopening, and Renewals under Chapter 122 Federal Operating Permits Program, followed by a new centered heading for Division 2—Permit Revisions and new sub entries for Sections 122.215, 122.216, 122.217 and 122.218.

The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 101—General Air Quality Rules Subchapter A—General Rules				
*	*	*	*	*
Section 101.28	Stringency Determination for Federal Operating Permits.	12/1/1999	9–10–13 [Insert FR page number where document begins].	
*	*	*	*	*
Chapter 122—Federal Operating Permits Program				
*	*	*	*	*
Subchapter C—Initial Permit Issuances, Revisions, Reopening, and Renewals Division 2—Permit Revisions				
Section 122.215	Minor Permit Revisions	5/9/2001	9–10–13 [Insert FR page number where document begins].	
Section 122.216	Applications for Minor Permit Revisions	5/9/2001	9–10–13 [Insert FR page number where document begins].	
Section 122.217	Procedures for Minor Permit Revisions	11/20/2002	9–10–13 [Insert FR page number where document begins].	
Section 122.218	Minor Permit Revision Procedures for Permit Revisions Involving the Use of Economic Incentives, Marketable Permits, and Emissions Trading.	5/9/2001	9–10–13 [Insert FR page number where document begins].	

* * * * *

[FR Doc. 2013–21868 Filed 9–9–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0800; FRL–9900–69-Region9]

Determination of Attainment for the Chico Nonattainment Area for the 2006 Fine Particle Standard; California; Determination Regarding Applicability of Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to determine that the Chico nonattainment area in Butte County, California has attained the 2006 24-hour fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS or standard). This determination is based upon complete, quality-assured, and certified ambient air monitoring data showing that this area has monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS based on the 2010–2012 monitoring period. Based on the above determination, the requirements for this area to submit an attainment demonstration, together with reasonably available control measures, a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines are suspended for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: This rule is effective on October 10, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0800 for this action. Generally, documents in the docket for this action are 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 at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be publicly available in either location (e.g., Confidential Business Information). 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: John Ungvarsky, (415) 972–3963, or by email at *ungvarsky.john@epa.gov*.

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

Table of Contents

I. Summary of EPA's Proposed Action
II. Public Comments
III. EPA's Final Action
IV. Statutory and Executive Order Reviews

I. Summary of EPA's Proposed Action

On October 30, 2012 (77 FR 65651), EPA proposed to determine that the Chico nonattainment area in California has attained the 2006 24-hour NAAQS for fine particles (generally referring to particles less than or equal to 2.5 micrometers in diameter, $PM_{2.5}$). The 2006 24-hour $PM_{2.5}$ NAAQS is 35 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of the 98th percentile of 24-hour concentrations. The Chico $PM_{2.5}$ nonattainment area includes the southwestern two-thirds of Butte County, California. Butte County lies in the central portion of northern California's Sacramento Valley Air Basin, which stretches from Sacramento County in the south to Shasta County in the north.

In our proposed rule, we explained how EPA makes an attainment determination for the 2006 24-hour $PM_{2.5}$ NAAQS by reference to complete, quality-assured, and certified data gathered at a State and Local Air Monitoring Station(s) (SLAMS) and entered into EPA's Air Quality System (AQS) database and by reference to 40 CFR 50.13 (''National primary and secondary ambient air quality standards for $PM_{2.5}$'') and appendix N to [40 CFR] part 50 (''Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$''). EPA proposed the determination of attainment for the Chico nonattainment area based upon a review of the monitoring network and the ambient air quality data collected at the monitoring sites during the 2009–2011 period. The monitoring network in the area is operated by the California Air Resources Board (CARB). Based on these reviews, EPA found that complete, quality-assured and certified data for the Chico nonattainment area showed that the 24-hour design value for the 2009–2011 period was equal to or less than 35 μ/m³ at the area's SLAMs monitor site.

Since publication of our October 30, 2012 proposal, CARB has entered data into AQS for the final two quarters of 2012 and the first quarter of 2013, and has certified the data for 2012.[1] Thus, we now have complete, quality-assured, and certified data for 2010–2012.

Because we make determinations of attainment based on the most recent three years of complete, quality-assured and certified data, we have updated the proposed determination of attainment (which had been based on 2009–2011 data) to reflect the 2010–2012 period. Specifically, we have updated table 1 (shown below) from the proposed rule to reflect the data for 2012. As shown in table 1, the design value (34 μg/m³) in the Chico nonattainment area for the 2010–2012 period is less than 35 μg/m³ and thus shows that the area has attained the 2006 24-hour $PM_{2.5}$ standard. Therefore, we are taking final action today to determine that the Chico nonattainment area has attained the 2006 24-hour $PM_{2.5}$ standard based on complete, quality-assured and certified data for 2010–2012. Preliminary data for 2013 (not shown in table 1 but included in the docket for this action) show that the area continues to attain the standard.

TABLE 1—2009–2012 24-HOUR $PM_{2.5}$ MONITORING SITE AND DESIGN VALUES FOR THE CHICO NONATTAINMENT AREA.

Monitoring site [a]	AQS site identification No.	98th percentile (μg/m³)				Design values (μg/m³)	
		2009	2010	2011	2012 [b]	2009–2011	2010–2012 [b]
Chico-Manzanita	06–007–0002	30.0	29.0	46.2	26.3	35	34
Chico-East	06–007–0008	.....	.....	.....	.....	.....	.....

[a] The Chico monitoring site was moved in 2012 to address siting issues, and EPA has approved this network modification request. See August 22, 2013 letter from Meredith Kurpius, Manager, Air Quality Analysis Office, EPA Region IX, to Michael Benjamin, Chief, Monitoring and Laboratory Division, CARB.

[b] The 2012 98th percentile and design value are calculated using January 1 through June 30, 2012 data from the Chico-Manzanita site and July 1 through December 31, 2012 data from the new Chico-East site.

Source: AQS Design Value and Raw Data Reports, August 9, 2013.

In our proposed rule, based on the proposed determination of attainment, we also proposed to apply EPA's Clean Data Policy to the 2006 $PM_{2.5}$ NAAQS and thereby suspend the requirements for this area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. See pages 65653–65655 of our October 30, 2012 proposed rule. In proposing to apply the Clean Data Policy to the 2006 24-hour $PM_{2.5}$ NAAQS, we explained how we are applying the same statutory interpretation with respect to the implications of clean data determinations that the Agency has long applied in regulations for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and in individual rulemakings for the 1-hour ozone, PM_{10} and lead NAAQS. *See* 78 FR 65651, at 65654 (October 30, 2012).

EPA notes that on January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* the D.C. Circuit remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule'' or ''Implementation Rule''). 706 F.3d 428 (D.C. Cir. 2013). While the D.C. Circuit, in its January 4, 2013 decision, remanded the 1997 $PM_{2.5}$ Implementation Rule to EPA to re-promulgate the Implementation Rule pursuant to subpart 4,[2] the court did not address the merits of that regulation, nor cast doubt on EPA's interpretation of the statutory provisions under its Clean Data Policy.

EPA has taken the Court's decision into consideration in evaluating the effects of a determination of attainment for the Chico nonattainment area under subpart 4, in addition to subpart 1.[3] Pursuant to EPA's Clean Data Policy interpretation, a determination that the area has attained the standard suspends the State's obligation to submit attainment-related planning requirements of subpart 4 (as well as the applicable provisions of subpart 1) for so long as the area continues to attain the standard. These include requirements to submit an attainment

[1] See letter from Sylvia Vanderspek, Chief, Air Quality Data Branch, Planning and Technical Support Division, CARB, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, certifying calendar year 2012 ambient air quality data and quality assurance data, May 16, 2013.

[2] EPA established the Implementation Rule pursuant to subpart 1 (''Nonattainment Areas in General'') of part D (''Plan Requirements for Nonattainment Areas'') of title I of the CAA. Subpart 4 (''Additional Provisions for Particulate Matter Nonattainment Areas'') includes more prescriptive SIP nonattainment area requirements than those set forth in subpart 1.

[3] For the purposes of evaluating the effects of this determination of attainment under subpart 4, we are considering Chico to be a ''moderate'' $PM_{2.5}$ nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as ''moderate'' nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a ''serious'' nonattainment area. Accordingly, the evaluation of the potential impact of subpart 4 requirements is limited to those applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include: an attainment demonstration (section 189(a)(1)(B)); provisions for RACM (section 189(a)(1)(C)); and quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)). In addition, EPA also evaluates the applicable requirements of subpart 1.

demonstration, RFP, RACM, and contingency measures, because the purpose of these provisions is to help reach attainment, a goal that has already been achieved. Thus, under both subpart 1 and subpart 4, a determination of attainment suspends a state's obligations to submit attainment-linked planning requirements for so long as the area continues in attainment.

EPA has long applied its Clean Data interpretation under subpart 4 in implementing the PM_{10} standard.[4] In EPA's proposed and final rulemakings determining that the San Joaquin Valley nonattainment area attained the PM_{10} standard, EPA set forth at length its rationale for applying the Clean Data Policy to subpart 4. The Ninth Circuit upheld EPA's final rulemaking, and specifically EPA's Clean Data Policy, in the context of subpart 4. *Latino Issues Forum* v. *EPA,* supra. Nos. 06–75831 and 08–71238 (9th Cir.), Memorandum Opinion, March 2, 2009. In rejecting petitioner's challenge to the Clean Data Policy under subpart 4 for PM_{10}, the Ninth Circuit stated, ''As the EPA explained, if an area is in compliance with PM_{10} standards, then further progress for the purpose of ensuring attainment is not necessary.''

EPA is determining, based on the most recent three years of complete, quality-assured data meeting the requirements of 40 CFR part 50, appendix N, that the Chico nonattainment area is currently attaining the 2006 24-hour $PM_{2.5}$ NAAQS. In conjunction with and based upon our determination that Chico nonattainment area has attained and is currently attaining the standard, EPA is also determining that the obligation to submit the following attainment-related planning requirements is not applicable for so long as the area continues to attain the $PM_{2.5}$ standard: The part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B); the RACM provisions of section 189(a)(1)(C); the RFP provisions of section 189(c); and the related attainment demonstration, RACM, RFP and contingency measure provisions requirements of subpart 1, section 172. This determination does not constitute a redesignation to attainment under CAA section 107(d)(3).

Please see the October 30, 2012 proposed rule for more detailed information concerning the $PM_{2.5}$ NAAQS, designations of $PM_{2.5}$ nonattainment areas, the regulatory basis for determining attainment of the NAAQS, the Chico nonattainment area's $PM_{2.5}$ monitoring network, and EPA's review and evaluation of the data.

II. Public Comments

EPA's proposed rule provided a 30-day public comment period. We received no comments.

III. EPA's Final Action

For the reasons provided in the proposed rule and summarized herein, EPA is taking final action to determine that the Chico nonattainment area in California has attained the 2006 24-hour $PM_{2.5}$ NAAQS based on three years of complete, quality-assured, and certified data in AQS for 2010–2012. Preliminary data for 2013 show that this area continues to attain the NAAQS.

EPA is also taking final action, based on the above determination of attainment, to suspend the requirements for the Chico nonattainment area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. EPA's final action is consistent and in keeping with its long-held interpretation of CAA requirements, as well as with EPA's regulations for similar determinations for ozone (*see* 40 CFR 51.918) for the 1997 8-hour ozone and in individual rulemakings for the 1-hour ozone, PM_{10} and lead NAAQS.

Today's final action does not constitute a redesignation of the Chico nonattainment area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS under CAA section 107(d)(3) because we have not yet approved a maintenance plan for the Chico nonattainment area as meeting the requirements of section 175A of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remain nonattainment for this area until such time as EPA determines that California has met the CAA requirements for redesignating the Chico nonattainment area to attainment.

If the Chico nonattainment area continues to monitor attainment of the 2006 24-hour $PM_{2.5}$ NAAQS, the requirements for the area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning requirements related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS will remain suspended. If after today's action 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 attainment planning requirements for the area would no longer exist, and the area would thereafter have to address such requirements.

IV. Statutory and Executive Order Reviews

This final action makes a determination of attainment based on air quality and suspends certain federal requirements, and thus, this action would not impose additional requirements beyond those imposed by state law. For this reason, the final 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 disproportionate human health or environmental effects with practical, appropriate, and legally permissible

[4] See, e.g., 75 FR 6571 (February 10, 2010) (Baton Rouge, Louisiana area); 71 FR 6352 (February 8, 2006) (Ajo, Arizona area); 71 FR 13021 (March 14, 2006) (Yuma, Arizona area); 71 FR 40023 (July 14, 2006) (Weirton, West Virginia area); 71 FR 44920 (August 8, 2006) (Rillito, Arizona area); 71 FR 63642 (October 30, 2006) (San Joaquin Valley, California area); 72 FR 14422 (March 28, 2007) (Miami, Arizona area); and 75 FR 27944 (May 19, 2010) (Coso Junction, California area). Thus EPA has established that, under subpart 4, an attainment determination suspends the obligations to submit an attainment demonstration, RACM, RFP, contingency measures, and other measures related to attainment.

methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes, and thus this action 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Particulate Matter, Sulfur oxides, Reporting and recordkeeping requirements.

Dated: August 22, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.247 is amended by adding paragraph (d) to read as follows:

§ 52.247 Control Strategy and Regulations: Fine Particle Matter.

* * * * *

(d) *Determination of Attainment:* Effective October 10, 2013, EPA has determined that, based on 2010 to 2012 ambient air quality data, the Chico $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment for as long as this area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. If EPA determines, after notice-and-comment rulemaking, that this area no longer meets the 2006 24-hour $PM_{2.5}$ NAAQS, the corresponding determination of attainment for that area shall be withdrawn.

[FR Doc. 2013–21877 Filed 9–9–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120918468–3111–02]

RIN 0648–XC856

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Western Regulatory Area of the Gulf of Alaska Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from trawl catcher/processors to catcher vessels using hook-and-line gear in the Western Regulatory Area of the Gulf of Alaska management area (GOA). This action is necessary to allow the 2013 total allowable catch of Pacific cod in the Western Regulatory Area of the GOA to be harvested.

DATES: Effective September 5, 2013, through 2400 hours, Alaska local time (A.l.t.), December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Gulf of Alaska exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2013 Pacific cod total allowable catch specified for trawl catcher/processors (C/Ps) in the Western Regulatory Area of the GOA is 496 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish in the GOA (78 FR 13162, February 26, 2013). The Administrator, Alaska Region (Regional Administrator) has determined that trawl C/Ps will not be able to harvest 100 mt of the 2013 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(A). In accordance with § 679.20(a)(12)(ii)(B), the Regional Administrator has also determined that catcher vessels using hook-and-line currently have the capacity to harvest this excess allocation and reallocates 100 mt to catcher vessels using hook-and-line gear in the Western Regulatory Area of the GOA.

The harvest specifications for Pacific cod in the Western Regulatory Area of the GOA included in the final 2013 harvest specifications for groundfish in the GOA (78 FR 13162, February 26, 2013) is revised as follows: 396 mt for trawl C/Ps and 390 mt for vessels using hook-and-line gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from trawl C/Ps to vessels using hook-and-line gear. Since the

fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 4, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 5, 2013.

James P. Burgess,

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

[FR Doc. 2013–21995 Filed 9–5–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 175
Tuesday, September 10, 2013

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.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 64

[Docket No. USCG–2012–0054]

RIN 1625–AC11

Waiver for Marking Sunken Vessels With a Light at Night

AGENCY: Coast Guard, DHS.

ACTION: Notice of correction.

SUMMARY: The Coast Guard is publishing this notice because we published a Notice of Proposed Rulemaking with an outdated Regulatory Identification Number. This notice announces that we have corrected that number.

DATES: The correction of the Regulatory Identification Number is effective on September 10, 2013.

ADDRESSES: You may view the public docket for this rulemaking online by going to *www.regulations.gov* and using ''USCG–2012–0054'' as your search term.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Paul Crissy, Coast Guard; telephone 202–372–1093 email *Paul.H.Crissy@uscg.mil.* If you have questions on viewing material in the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Coast Guard published a Notice of Proposed Rulemaking (NPRM) on May 28, 2013 (78 FR 31872) proposing to add to its regulations a provision in section 301 of the Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108–293), codified at 33 U.S.C. 409, that authorizes the Commandant to waive the requirement to mark a sunken vessel, raft, or other craft with a light at night if the Commandant determines it would be ''impracticable and granting such a waiver would not create an undue hazard to navigation.'' We received no comments on the proposed rule, no public meeting was requested, and none was held.

We note, however, that the NPRM was published with an incorrect Regulatory Identification Number (RIN) of 1625–AA97, which was withdrawn in 2008. We have assigned a new RIN, 1625–AC11, to this rule.

Dated: September 3, 2013.

Kathryn Sinniger,

Chief, Office of Regulations and Administrative Law U.S. Coast Guard.

[FR Doc. 2013–21937 Filed 9–9–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 140, 141, 142, 143, 144, 145, 146, and 147

[Docket No. USCG–2012–0779]

RIN 1625–AC05

Safety and Environmental Management System Requirements for Vessels on the U.S. Outer Continental Shelf

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard intends to promulgate regulations that will require vessels engaged in OCS activities (defined in 33 CFR Chapter I, Subchapter N) to develop, implement, and maintain a vessel-specific Safety and Environmental Management System (SEMS) that incorporates the management program and principles of the American Petroleum Institute's Recommended Practice for Development of a Safety and Environmental Management Program for Offshore Operations and Facilities, Third Edition, May 2004 (API RP 75). The Coast Guard intends for this SEMS to be developed and implemented by the vessel's owner or operator and compatible with a designated lease operator's SEMS required under Bureau of Safety and Environmental Enforcement (BSEE) regulations. The Coast Guard seeks comments on whether a SEMS that incorporates the management program and principles of API RP 75 is appropriate for vessels engaged in OCS activities, would reduce risk and casualties, and improve safety on the OCS. Comments should address the feasibility of implementing a SEMS that incorporates API RP 75, the compatibility with BSEE SEMS regulations, potential methods of oversight, safety issues, costs and regulatory burdens, and other issues of concern to the regulated community and general public. The Coast Guard would use such comments to assist in developing these new regulations.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before December 9, 2013 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0779 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.

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 advance notice of proposed rulemaking, call or email LCDR Marc J. Montemerlo, U.S. Coast Guard; telephone 202–372–1387, email *Marc.J.Montemerlo@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to respond to this advance notice of proposed rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0779), indicate the specific question number under Section V. 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 or by fax, mail, or hand delivery, but please use only one of these means. 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,* insert ''USCG–2012–0779'' in the ''Search'' box, and click ''Search.'' Filter the search results by placing a check in the box next to ''notice'' under the ''Document Type'' filter on the left side of the page. A link to this notice will appear in the results list. Click the ''Comment Now'' box next to the entry for this notice to submit your comment online. 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.

B. 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,* insert ''USCG–2012–0779'' in the ''Search'' box, and click ''Search.'' You can filter the results by document type using the filter options on the left side of the page. If you do not have access to the Internet, you may view the docket online by visiting 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.

C. 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).

D. Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting 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**.

II. Abbreviations

API RP 75 American Petroleum Institute's Recommended Practice for Development of a Safety and Environmental Management Program for Offshore Operations and Facilities, Third Edition, May 2004
BOEM Bureau of Ocean Energy Management
BSEE Bureau of Safety and Environmental Enforcement
CFR Code of Federal Regulations
DHS Department of Homeland Security
FOI Floating Offshore Installation
FPSO Floating Production and Storage Offload Units
FR Federal Register
ISM Code International Safety Management Code
MODU Mobile Offshore Drilling Unit
OCS Outer Continental Shelf
OCSLA Outer Continental Shelf Lands Act
OSV Offshore Supply Vessel
SEMS Safety and Environmental Management System
SMS Safety Management System
SOLAS International Convention for the Safety of Life at Sea 1974, as amended
USCG United States Coast Guard

III. Background

A. General

Under the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1356a) (OCSLA), the Coast Guard is responsible for developing and implementing regulations to protect the safety of life, property, and the environment on Outer Continental Shelf (OCS) installations, vessels, and units engaged in OCS activities,[1] including the regulation of workplace safety and health.[2] The Coast Guard's regulatory authority extends to matters relating to safety of life and property on OCS units attached to the seabed for the purpose of engaging in OCS activities, as well as units on the waters adjacent thereto (i.e., units, whether attached or unattached), that are engaged in OCS activities in support of attached units.[3]

The exploration, development, and production of oil and gas on the OCS require the careful coordination of multiple phases of complex activities. These activities are typically accomplished by a network of technical experts and specialists working for different companies, using a variety of technologies and procedures on vessels and facilities that are often operating simultaneously in close proximity to one another. For example, a floating offshore installation (FOI) producing oil and gas, a mobile offshore drilling unit (MODU) drilling a well, and other service vessels providing well stimulation and logistical support might work in close proximity to one another, and can create significant risk to personnel, the environment, property, and infrastructure. As illustrated by the Deepwater Horizon incident on April 20, 2010, the consequences of accidents and mishaps, though infrequent, can be severe. The Coast Guard believes that vessels engaged in OCS activities (whether attached to the seabed or in the waters adjacent thereto) should be required to develop, implement and maintain a vessel-specific SEMS program that proactively manages the risks inherent in OCS activities. This approach should be overseen by the Coast Guard and be compatible with the designated lease operator's SEMS program that BSEE requires.

In 1991, the Coast Guard, along with the Minerals Management Service (MMS, now BSEE) promoted the concept of a management system called a Safety Environmental Management Program. This concept was further developed by API, which, with assistance from the Coast Guard and MMS, published API RP 75 in 1993. API RP 75 provides an example of a

[1] An *OCS activity* is any offshore activity associated with the exploration for, or development or production of, the minerals of the Outer Continental Shelf (33 CFR 140.10).

[2] 43 U.S.C. 1347(c).

[3] 43 U.S.C. 1333(d)(1).

systematic and proactive management approach that will assist vessel owners and operators to safely plan, design, manage, and conduct offshore oil, gas and sulphur operations. However, only a limited subset of vessels that engage in OCS activities in support of offshore oil, gas and sulphur operations are required to implement a SEMS based on this standard, as illustrated in Table 1 of Part B of this section. Some of these vessels implement a SMS based on the ISM Code, but this Code assumes a vessel's mission is international transportation of cargo, not OCS activities. API RP 75 is a more appropriate standard and the Coast Guard intends to promulgate regulations that would expand the number of vessels required to have a vessel-specific SEMS based on API RP 75.

Implementing a vessel-specific SEMS that incorporates the management program and principles of API RP 75 would start with an assessment of operating and design requirements as well as a hazards analysis. Under regulations contemplated by this ANPRM, the SEMS would establish vessel-specific safe operating procedures, work practices, management-of-change procedures, and associated training. The SEMS would also incorporate procedures to ensure that the design, fabrication, installation, testing, inspection, monitoring, and maintenance of equipment comply with all applicable safety regulations (e.g., 33 CFR Subchapter N). Additionally, the SEMS would be subject to periodic safety audits, and would include procedures for emergency response and vessel owner/operator internal incident investigations to help mitigate risk and prevent future mistakes.

The Coast Guard estimates that approximately 2,200 foreign and domestic vessels engaged in OCS activities could be affected by this regulatory action, including: 1,800 Offshore Supply Vessels (OSVs), 150 liftboats, 125 MODUs, and 125 other vessels. The Coast Guard requests comments from the public regarding the accuracy of these population estimates.

B. Relationship to BSEE Regulations

BSEE works to promote safety, protect the environment, and conserve resources offshore through vigorous regulatory oversight and enforcement. Existing BSEE regulations in 30 CFR part 250, subpart S (30 CFR 250.1900 *et seq.*) require designated lease operators to develop, implement, and maintain a SEMS program based on API RP 75. These regulations also require designated lease operators to ensure that contractors have their own written safe work practices. While the designated lease operator's SEMS program required by BSEE includes elements of API RP 75, this program is focused on overall lease activities and the offshore oil, gas and sulphur operations of facilities on the lease. When a facility is also a vessel, the designated lease operator's SEMS is not focused on the unique nature of the facility/vessel and its marine support mission.

The majority of vessels engaged in OCS activities, including but not limited to, MODUs, well stimulation vessels, accommodation vessels, OSVs, and floating production and storage offload units (FPSOs) are contracted by designated lease operators. These vessels conduct a variety of tasks, such as seismic activities, exploration and completion drilling, production, well servicing, well stimulation, installation and construction, dive support, and supply and logistical services for one or multiple designated lease operators. Although BSEE's SEMS regulations hold the designated lease operators accountable for the overall safety of operations conducted on the OCS lease, the Coast Guard believes that vessel owners and operators should be responsible for developing a vessel-specific SEMS because the owners and operators manage vessel-based personnel, operations, maintenance, equipment, emergency responses, and alterations. This regulatory action would place such requirements on vessel owners and operators and seek to align Coast Guard regulations with current BSEE SEMS, both of which would incorporate the management program and principles of API RP 75.

Table 1 shows the current state of safety management system regulations on the OCS as it pertains to vessels:

TABLE 1

	BSEE		USCG		OSHA
	Falls within the scope of 30 CFR 250.1900–.1901 and meets the definition of "facility" in 30 CFR 250.105.	Does not fall within the scope of 30 CFR 250.1900–.1901 and does not meet the definition of "facility" in 30 CFR 250.105.	Meets the applicability of 33 CFR 96.110, 96.210 (i.e. self-propelled over 500 gross tons, engages on international voyages).	Does not meet the applicability of 33 CFR 96.110, 96.210.	
Mobile Offshore Drilling Unit	Designated lease operator must have a SEMS based on API RP 75.	No SEMS directlly required but may or may not be subject to a designated lease operator's SEMS.	Vessel owner/operator must have vessel-Specific SMS based on ISM Code.	No SMS required	No SEMS or SMS
Well Stimulation Vessel					
Floating Production Storage Offloading Unit					
Shuttle Tanker	No SEMS directly required but may or may not be subject to a designated lease operator's SEMS				
Offshore Supply Vessel					
Accommodation Vessel					

IV. Advance Notice of Proposed Rulemaking Discussion

The Coast Guard intends to promulgate regulations that will require all domestic and foreign-flagged vessels engaged in OCS activities to develop, implement, and maintain a SEMS that incorporates the management program and principles of API RP 75. As discussed in Section III, the Coast Guard would require a vessel-specific SEMS because vessel owners and operators manage vessel-specific risks. This requirement would apply to MODUs, well stimulation vessels, FPSOs, shuttle tankers, OSVs accommodation vessels, and other vessels engaged in OCS activities. One goal of a Coast Guard-required SEMS is to complement existing prescriptive vessel design, equipment, and operation safety standards and regulations. A Coast Guard-required SEMS would also help to prevent accidents, injuries, and environmental damage by reducing the probability and severity of uncontrolled releases and other undesirable events. By incorporating the management program and principles of API RP 75 as the basis for the Coast Guard's SEMS requirements for vessels, this regulatory action would leverage industry safety expertise and harmonize with BSEE's regulations for designated lease operators.

The Coast Guard recognizes that there are vessels currently operating on the OCS that comply with the Safety Management System (SMS) standards of the International Safety Management (ISM) Code (International Maritime Organization Resolution A.741(18)), and we believe that any new SEMS requirements for vessels based on API RP 75 should take this into account. In 1997, the Coast Guard promulgated SMS regulations (33 CFR part 96) for responsible persons and their vessels engaged on international and domestic voyages. The purpose of these regulations was to establish a national SMS standard that was consistent with Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) 1974, as amended, which requires that all vessels subject to SOLAS have an effective SMS to meet the performance elements of the ISM Code. The Coast Guard regulations followed the ISM Code by setting broad performance standards designed to be flexible and applicable to a wide variety of activities and vessel-types, including large cruise ships, container ships, and MODUs. Certain vessels that engage in OCS activities, including self-propelled MODUs, drillships, heavy lift vessels, and OSVs that engage in international voyages are currently required to comply with the ISM Code. The Coast Guard estimates that there are approximately 185 total vessels subject to the ISM Code currently engaged in OCS activities.

The Coast Guard believes that many elements of API RP 75 and the ISM Code are similar. In crafting regulatory requirements, the Coast Guard would consider whether ISM Code compliance should be an alternative means of satisfying elements of API RP 75. The Coast Guard is also aware that some vessels may be voluntarily implementing a safety management system based on frameworks other than API RP 75 or the ISM Code. These may include the International Association of Drilling Contractors Health Safety and Environmental Case (IADC HSE Case) or the International Standards Organization 9001 (ISO 9001:2008). The Coast Guard is currently researching whether compliance with these management programs would be appropriate alternatives to API RP 75.

V. Information Requested

1. Should the Coast Guard require a SEMS based on API RP 75 for vessels engaged in OCS activities?

2. Should the Coast Guard require that each SEMS be subject to a certification process? If so, who should certify the SEMS programs, and what should the certification process entail?

3. How can the Coast Guard ensure that its SEMS requirements are consistent with BSEE's SEMS requirements?

4. Should Coast Guard-required SEMS programs be subject to independent third-party audits? If so, how frequently should audits take place (e.g., ISM audits annually)? To what types of qualifications, certifications, and authorizing processes should independent third-party auditors be subject?

5. What are the differences and similarities between API RP 75 and the ISM Code? What would be required to bring ISM-compliant vessels into compliance with API RP 75? Please provide cost estimates if available.

6. Should the Coast Guard consider IADC HSE Case, ISO 9001:2008, or any other performance-based safety management alternatives or equivalencies to the proposed SEMS requirements outlined in this ANPRM? If so, what alternatives or equivalencies should the Coast Guard consider? Please provide specific details, if possible.

7. For vessel owners and operators, how many of your vessels have an active Safety Management Certificate issued under the ISM Code or employ another type of safety management system? Do any components of API RP 75 conflict with the ISM Code or vice versa? If employing a non-ISM Code SMS, please provide information on the management system.

8. For vessel owners and operators, is there a safety officer or similar position(s) dedicated to the management of safety onboard your vessels?

9. For vessel owners and operators, if you have an active Safety Management Certificate issued under the ISM Code or employ another type of safety management system, what costs have you incurred in implementing the safety management system? Please provide the cost for your company and per vessel if possible, including the following:

a. Costs for an assessment of operating and design requirements.

b. Costs for a hazards analysis.

c. Costs to establish safe operating procedures, work practices, and management-of-change procedures.

d. Costs for training on the SMS.

e. Costs for procedures to ensure that the design, fabrication, installation, testing, inspection, monitoring, and maintenance of equipment meet safety standards.

f. Costs for periodic safety audits, including procedures for emergency response and incident investigation.

10. For vessel owners and operators, if you have an active Safety Management Certificate issued under the ISM Code or employ another type of safety management system, have you seen improvements in safety and operation from implementing the SMS? If so, please specify and provide any supporting data if available.

11. For vessel owners and operators, if you have an active Safety Management Certificate issued under the ISM Code or employ another type of safety management system do you have any information or data, qualitative or quantitative, for any cost savings from operating with a safety management system? For vessel owners and operators that voluntarily implement an API RP 75-compliant SEMS, are there any cost savings of complying with API RP 75? Please provide cost savings information based on type and size of your operations, if possible.

12. For vessel owners and operators, if you do not have an active safety management system, what costs would you expect to incur per vessel for implementing a Coast Guard-required SEMS based on API RP 75?

13. For vessel owners or operators, what are the reasons not to use a SEMS? What type of operations may not benefit from a SEMS? Are there any operations (such as small or limited operations)

that may not necessitate a SEMS and why? Besides costs, what is the downside of using a SEMS?

14. Are there any data, literature, or studies that show that implementation of a SEMS leads to a reduction in oil spills, property damage, injury or deaths, or other casualties?

15. The Occupational Safety and Health Administration (OSHA) held a public meeting on September 20–21, 2012, on the use of performance-based regulatory models in the U.S. oil and gas industry, offshore and onshore (*see* 77 FR 50172). If you submitted comments during that public meeting or to the docket [OSHA–2012–0033] and want them considered in this rulemaking, please resubmit those comments to this docket [USCG–2012–0779].

16. Please provide any additional information or comments on the proposals in this ANPRM.

Dated: August 16, 2013.

Robert J. Papp, Jr.,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 2013–21938 Filed 9–9–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0335; FRL–9900–81–Region6]

Approval and Promulgation of Implementation Plans; Texas; Procedures for Stringency Determinations and Minor Permit Revisions for Federal Operating Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve portions of three revisions to the Texas State Implementation Plan (SIP) concerning the Texas Federal Operating Permits Program. EPA has determined that these SIP revisions, submitted on December 17, 1999, October 4, 2001 and August 11, 2003, comply with the Clean Air Act and EPA regulations and are consistent with EPA policies. This action is being taken under section 110 of the Act.

DATES: Comments must be received on or before October 10, 2013.

ADDRESSES: Comments may be mailed to Ms. Adina Wiley, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the Addresses section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, telephone (214) 665–2115; fax number (214) 665–6762; email address *wiley.adina@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 relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant 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 28, 2013.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2013–21866 Filed 9–9–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0453; FRL–9900–78–Region5]

Approval and Promulgation of Implementation Plans; Indiana; Volatile Organic Compound Emission Control Measures for Industrial Solvent Cleaning for Northwest Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On May 29, 2012, the Indiana Department of Environmental Management (IDEM) submitted revisions to its volatile organic compound (VOC) industrial solvent cleaning rule for manufacturers of coatings, inks, adhesives, and resins for approval into its State Implementation Plan (SIP). These revisions are approvable because they are consistent with EPA's Industrial Solvent Cleaning Control Technique Guideline (CTG) document and therefore satisfy the reasonably available control technology (RACT) requirements of the Clean Air Act (Act).

DATES: Comments must be received on or before October 10, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0453, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: aburano.douglas@epa.gov.*
- *Fax:* (312) 408–2279.
- *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's 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–2012–0453. 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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

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 Steven Rosenthal at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning & Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@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. What should I consider as I prepare my comments for EPA?
II. What is the background for this action?
III. What are Indiana's submitted VOC rule revisions and what is EPA's analysis of the revisions?
IV. What action is EPA taking?
V. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background for this action?

On February 24, 2010, EPA approved into Indiana's SIP several VOC rules in order to satisfy Indiana's VOC RACT requirements for the Lake and Porter County portion of the Chicago-Gary-Lake County, IL–IN, 1997 8-hour ozone nonattainment area. See 75 FR 8246. These rules included new rule 326 IAC 8–17 for Industrial Solvent Cleaning operations that was based on a CTG issued by EPA in 2006.

Subsequent to the approval of Indiana's rule, EPA concluded that low VOC content cleaning solvents were not adequate to clean process equipment and tanks at facilities that manufacture coatings, inks, adhesives and resins. As a result, EPA determined that RACT for these operations was the alternative requirements in the (California) Bay Area Air Quality Management District's rules, which are referenced in EPA's industrial solvent cleaning CTG.

EPA approved Wisconsin's industrial solvent cleaning rules for coating, ink, adhesive and resin manufacturing, based on the Bay Area rules, on August 7, 2012 (77 FR 46961). The American Coatings Association requested that that IDEM also adopt a solvent cleaning rule based on the Bay Area rules. In addition, IDEM realized that it had used limits in its rule that were inconsistent with RACT and EPA's 2006 CTG.

IDEM adopted these revisions on April 3, 2012, after public hearings on November 2, 2011, and February 1, 2012. IDEM submitted the revised rules to EPA on May 29, 2012.

III. What are Indiana's submitted VOC rule revisions and what is EPA's analysis of the revisions?

Indiana has revised its Industrial Solvent Cleaning rule, 326 IAC 8–17, for sources in Lake and Porter Counties as follows:

326 IAC 8–17–2(c)(11)—An exemption for the cleaning of application equipment used to apply solvent-borne fluoropolymer coatings has been added to the list of solvent cleaning operations exempted from the VOC content limitations in 326 IAC 8–17–4. This exemption corrects a mistake in Indiana's adoption of RACT and is consistent with EPA's 2006 CTG. It should not result in an increase in VOC emissions, as there are no known sources to which it will apply.

326 IAC 8–17–4(a)—The allowable VOC content for cleaning ultraviolet ink and electron beam application equipment, except for screen printing, has been increased from 4.2 to 5.4 pounds VOC/gallon. This corrects a mistake in Indiana's adoption of RACT and is consistent with EPA's 2006 CTG. It should not result in an increase in VOC emissions, as there are no known sources to which it will apply.

326 IAC 8–17–4(g)—Alternative cleaning requirements have been added for manufacturers of coatings, inks, adhesives and resins and corresponding recordkeeping requirements have been added in 326 IAC 8–17–7(f). These requirements are based on the Bay Area rules. These requirements apply to cleaning mixing vats, high dispersion mills, grinding mills, tote tanks, and roller mills, and consist of four options: (1) The solvent or solvent solution used must either contain less than 1.67 pounds VOC per gallon or have a VOC composite partial vapor pressure of less than or equal to 8 millimeters of mercury; (2) several work practices must be implemented, including storing all VOC-containing cleaning materials in closed containers; (3) the emissions from equipment cleaning must be collected and vented to an emission control system with an overall control efficiency of 80 percent or more on a mass basis; or (4) no more than 60 gallons of fresh solvent per month may be used and all VOC-containing cleaning materials must be stored in closed containers. The recordkeeping requirements in 326 IAC 8–17–7(f) have been added to determine whether the 60-gallon limit has been exceeded.

In addition, the owner or operator of a facility engaged in wipe cleaning may not use open containers for the storage of organic compounds to be used for cleaning, or for the storage or disposal of any material impregnated with organic compounds used for cleaning.

These alternative cleaning requirements are consistent with EPA's CTG, and will not result in an increase in emissions because there are no coating, ink, adhesive and resin manufacturers in Lake and Porter Counties, where they apply.

IV. What action is EPA taking?

EPA has determined that these revisions are consistent with this CTG and applicable EPA RACT guidance at *www.epa.gov/ttn/naaqs/ozone/ozonetech/#ref.* Therefore, EPA is proposing to approve the revisions to Indiana's Industrial Solvent Cleaning rules (in 326 IAC 8–17) as meeting the RACT requirements in the Act.

V. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR Part 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the 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 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 28, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–22026 Filed 9–9–13; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 78, No. 175

Tuesday, September 10, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of a Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Department's intention to request an extension for a currently approved information collection in support of the Dairy Tariff-rate Import Quota Licensing program.

DATES: Comments should be submitted no later than November 12, 2013 to be assured of consideration.

Additional Information and Comments: Contact Bettyann Gonzales, Dairy Import Specialist, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–1021, telephone (202) 720–1344. *Bettyann.Gonzales@fas.usda.gov*

SUPPLEMENTARY INFORMATION:

Title: Dairy Tariff-rate Import Quota Licensing Program.

OMB Number: 0551–0001.

Expiration Date of Approval: December 31, 2013.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The currently approved information collection supports the Dairy Tariff-rate Import Quota regulation (the Regulation) (7 CFR 6.20–6.37) which governs the administration of the import licensing system applicable to most dairy products subject to tariff-rate quotas (TRQs). The TRQs were established in the Harmonized Tariff Schedule of the United States (HTS) as a result of the entry into force of certain provisions in the Uruguay Round Agreements Act (PL 103–465) that converted existing absolute quotas to TRQs. Imports of nearly all cheeses made from cow's milk (except soft-ripened cheese such as Brie) and certain non-cheese dairy products (including butter and dried milk) are subject to TRQs and the Regulation. Licenses are issued each quota year to eligible applicants and are valid for 12 months (January 1 through December 31). Only licensees may enter specified quantities of the subject dairy articles at the applicable in-quota tariff-rates. Importers who do not hold licenses may enter dairy articles only at the over-quota tariff-rates.

Each quota year, all applicants must submit form FAS 923 (rev. 7–96). This form, available online, requires applicants to: (1) Certify they are an importer, manufacturer or exporter of certain dairy products; (2) certify they meet the eligibility requirements of § 6.23 of the Regulation; and (3) submit documentation required by § 6.23 and § 6.24 as proof of eligibility for import licenses. Applicants for non-historical licenses must also submit form FAS 923–A (rev. 7–96) (cheese) and/or FAS 923–B (rev. 7–96) (non-cheese dairy products). This form requires applicants to request licenses in descending order of preference for specific products and countries listed on the form.

After licenses are issued, § 6.26 requires licensees to surrender by October 1 on form FAS 924–A, License Surrender Form, any license amount that a licensee does not intend to enter that year. These amounts are reallocated, to the extent practicable, to existing licensees for the remainder of that year based on requests submitted on form FAS 924–B, Application for Additional License Amounts. Forms 924A and 924B require the licensee to complete a table listing the surrendered amount by license number, or listing the additional amounts requested by dairy article and supplying country in descending order of preference.

The estimated total annual burden of 426 hours in the Office of Management and Budget (OMB) inventory for the currently approved information collection will be increased by 10 hours to 436 hours. The public reporting burden for this collection of currently approved forms FAS 923, FAS 923–A and 923–B (one form) (rev.7–96) is estimated to average 436 hours; and FAS 924–A and FAS 924–B (one form) is 23 hours. The estimated increase in burden hours is due to the increased number of applications.

Estimate of Burden: The average burden, including the time for reviewing instructions, gathering data needed, completing forms, and record keeping is estimated at .75 hour for form FAS 923, 923–A, 923–B (rev.7–96) and .15 hour for form 924–A, 924–B.

Respondents: Importers and manufacturers of cheese and non-cheese dairy products, and exporters of non-cheese dairy products.

Estimated Number of Respondents: 550 for form FAS 923, 923–A, 923–B (rev.7–96) and 150 for form 924–A, 924–B (rev.7–96).

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden: 436 hours.

Requests for Comments: Send comments regarding (a) 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; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to Bettyann Gonzales, Dairy Import Specialist, Stop 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021, or telephone (202) 720–1344, or email *bettyann.gonzales@fas.usda.gov.*

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

FAS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general, to provide the

public the option of submitting information or transacting business electronically to the maximum extent possible. Electronic submission of the information collection was implemented on September 2009 in compliance with the GPEA.

Signed at Washington, DC on August 21, 2013.

Janet Nuzum,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2013–21999 Filed 9–9–13; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for New Approval of Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Foreign Agricultural Service (FAS) intends to request the approval of a new information collection process involving the Trade Show Evaluation forms used in support of FAS' Exporter Assistance Programs.

DATES: Comments on this notice must be received by November 12, 2013 to be assured of consideration.

Requests for Comments: Send comments regarding (a) 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; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments and questions regarding the Trade Show Evaluation forms should be sent to: Maria Nemeth-Ek, Deputy Director, Trade Services Staff, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 1020, Washington, DC 20250–1020. All written comments received will be available for public inspection at the above address during business hours from 8:00 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Maria Nemeth-Ek at the address stated above or telephone (202) 720–3623, or by email at: *Maria.Nemeth-Ek@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Trade Show Evaluation Forms

OMB Number: TBD

Type of Request: New information collection process.

Abstract: FAS is requesting the approval of a Trade Show Evaluation form to collect information from participants of USDA/FAS-endorsed trade shows. This form is used by FAS' Office of Trade Programs/Trade Services Staff (OTP/TSS) to gather feedback from participants in USDA-endorsed trade shows and helps to improve the services provided by FAS. This form will also allow FAS to capture information about the companies' experiences at the trade show in a more concise manner and update contact information of the offices responsible for managing the trade show program.

Each year a certain number of trade shows are selected to be endorsed by USDA/FAS and host a U.S.A. Pavilion for U.S. companies to promote their products to foreign buyers. A list of USDA endorsed shows is available at: *www.fas.usda.gov/agx/trade_events/trade_events.asp.*

The data collected through the Trade Show Evaluation form is tabulated by FAS to provide information on performance measures that track progress towards attaining FAS' export objectives. This information is necessary to manage, plan, and evaluate the effectiveness of FAS' services, which are intended to help U.S. companies market and sell their products overseas.

Estimate of Burden: The burden to U.S. exporters is estimated to average 0.13 hours (8 minutes) per response.

Respondents: U.S. agricultural exporters of food, farm, and forest products.

Estimated Number of Respondents: 1400 per annum.

Estimated Number of Responses per Respondent: 1 per annum.

Estimated Total Annual Burden of Respondents: 139 hours per annum.

Copies of this information collection can be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690–1578.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Persons with disabilities who require an alternative means to communicate information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

Dated: August 29, 2013.

Philip C. Karsting,

Administrator, Foreign Agricultural Service.

[FR Doc. 2013–21997 Filed 9–9–13; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Housing Service (RHS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested. The intention is to request a revision an extension for a currently approved information collection in support of the program for 7 CFR Part 3550, Direct Single Family Housing Loans and Grants and its accompanying Handbooks.

DATES: Comments on this notice must be received by November 12, 2013 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Shantelle C. Gordon, Program Analyst, USDA Rural Housing Service, Single Family Housing, 1400 Independence Avenue SW., STOP 0783, Washington, DC 20250–0783, Telephone: (202) 205–9567, Fax: (202) 720–2232. Email: *shantelle.gordon@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) required that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RHS is submitting to OMB for approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the

agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Direct Single Family Housing Loans and Grants.

OMB Number: 0575–0172.

Expiration Date of Approval: December, 31, 2013.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Rural Housing Service (RHS), through its direct single family housing loan and grant programs, provides financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings, which will provide modest, decent, safe and sanitary housing to eligible individuals in rural areas. To assist a customer, they must provide the Agency with a standard housing application (used by government and private lenders), and provide documentation to support the same. Documentation includes verification of income, financial information on assets and liabilities, etc. The information requested is comparable to that required by any private mortgage lender. To assist individuals in obtaining affordable housing, a borrower's house payment may be subsidized to an interest rate as low as one percent. The amount of subsidy is based upon the customer's household income. After receipt of this information, if the customer obtains a loan from RHS, they must update income information on an annual basis to renew the payment subsidy. The aforementioned information required by RHS is vital to be able to process applications for RHS assistance and make prudent loan underwriting and program decisions. It includes borrower financial information such as household income, assets and liabilities and monthly expenses. Without this information, the Agency is unable to determine if a customer would qualify for any services or if assistance has been granted to which the customer would not be eligible under current regulations and statutes. The Agency also encourages its customers to leverage our mortgage financing with that of other lenders to assist as many customers as possible within our limited resources. In many cases, another lender will leverage and participate with RHS in assisting the customer. In these cases, RHS and the other lender share documentation, with the customer's consent, to reduce duplication. Through our work with participating lenders, the Agency keeps abreast of information required by other lenders to ensure that RHS is not requiring unnecessary information. The Agency continually strives to ensure that information collection burden is kept to a minimum.

As mentioned, these loans are made directly by the Agency. RHS also services these loans for their term (30, 33, or 38 years) and provides tools to assist the customer in becoming a successful homeowner. As discussed, payment subsidies are renewed on an annual basis. In addition, the Agency provides credit counseling and other services to its customers in an effort to assist them in becoming successful. The Agency offers many servicing tools including a moratorium (stop) on payments, modifications to payment subsidies to reflect changes in the customer's income, loan re-amortization, payment workouts, etc. To obtain this assistance, the Agency must require certain information such as updated income and financial information, etc., to ensure the customer qualifies for the assistance, and is provided with the correct benefits based upon their circumstances.

Direct Single Family Housing loans are only provided to customers who cannot obtain other credit for their housing needs and are required by statute to refinance with another lender when they are financially able. To ensure the Agency meets its statutory responsibilities, existing customers may be requested to submit updated income and financial information for the Agency to make a determination as to whether they can ''graduate'' to other credit. In addition, should a customer default on a loan which results in liquidation, the Agency needs updated income and financial information to settle any outstanding indebtedness.

With the implementation of EGOV in June 2002, individuals are able to make application on line. We have 64 eForms which the public can access and print for personal use. RHS is committed to automation and reducing the burden upon the public.

Estimate of Burden: Public burden for this collection of information is estimated to average .30 hours per response.

Respondents: Approximately 33,000 applicants seeking direct single family housing loans and grants from the Agency and approximately 256,000 existing customers who have active loans and grants under the Section 502 and 504 programs.

Estimated Number of Respondents: 289,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Number of Responses: 1,318,807.

Estimated Total Annual Burden on Respondents (hours): 366,931.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch at (202) 692–0040.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of the RBS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. Comments may be sent to Jeanne Jacobs, Regulation and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 29, 2013.

Richard A. Davis,

Acting Administrator, Rural Housing Service.

[FR Doc. 2013–21912 Filed 9–9–13; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Housing Service (RHS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested. The intention is to request a revision for a currently approved information collection in support of the program for 7 CFR Part 1927–B, Real Estate Title Clearance and Loan Closing.

DATES: Comments on this notice must be received by November 12, 2013.

FOR FURTHER INFORMATION CONTACT: Shantelle C. Gordon, Program Analyst, USDA Rural Housing Service, Single Family Housing, 1400 Independence Avenue SW., STOP 0783, Washington, DC 20250–0783, Telephone: (202) 205–9567. Fax: (202) 720–2232. Email: *shantelle.gordon@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) required that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RHS is submitting to OMB for approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to:

Title: Real Estate Title Clearance and Loan Closing.

OMB Number: 0575–0147.

Expiration Date: December 31, 2013.

Type of Request: Revision of a currently approved information collection.

Abstract: Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings, farm buildings, and/or related facilities to provide decent, safe, and sanitary living conditions and adequate farm buildings and other structures in rural areas. Title clearance is required to assure the Agency (s) that the loan is legally secured and has the required lien priority.

RHS will be collecting information to assure that those participating in this program remain eligible to proceed with loan closing and to ensure that loans are made with Federal funds are legally secured. The respondents are individuals or households, businesses and non-profit institutions. The information required is used by the USDA personnel to verify that the required lien position has been obtained. The information is collected at the field office responsible for processing a loan application through loan closing. The information is also used to ensure the program is administered in manner consistent with legislative and administrative requirements. If not collected, the Agency would be unable to determine if the loan is adequately and legally secure. RHS continually strives to ensure that information collection burden is kept to a minimum.

Estimate of Burden: Public burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Individuals or households, businesses, closing agents/attorneys and the field office staff.

Estimated Number of Respondents: 12,280.

Estimated Number of Responses per Respondent: 1.

Estimate Number of Responses: 31,484.

Estimated Total Annual Burden on Respondents: 9,353 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of the RHS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. Comments may be sent to Jeanne Jacobs, Regulation and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 3, 2013.

Richard A. Davis,

Acting Administrator, Rural Housing Service.

[FR Doc. 2013–21913 Filed 9–9–13; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia 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 planning meeting and briefing meeting of the District of Columbia Advisory Committee to the Commission will convene at 9:30 p.m. (ET) on Tuesday, September 24, 2013, at 1331 Pennsylvania Avenue NW., Suite 1150, Washington, DC 20425. The purpose of the briefing meeting is to hear from government officials, advocates, and other experts on the issue of human trafficking in the District of Columbia. The planning meeting will discuss the next steps for the project and set forward a timeline for completing tasks related to the project.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Thursday, October 24, 2013. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Persons needing accessibility services should contact the Eastern Regional Office at least 10 working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern 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 Eastern Regional Office at the above phone number, email or street address.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated: September 5, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2013–21967 Filed 9–9–13; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire 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 planning and briefing meetings of the New Hampshire Advisory Committee to the Commission will convene at 9:30 a.m. (EDT) on September 30, 2013, at 33 N State St., Concord, NH 03301. The purpose of the briefing meeting is to hear from experts including, government officials, advocates, and other experts on human trafficking issues, racial profiling issues, mental health matters, and voting rights issues in New Hampshire. The planning meeting will discuss selecting a civil rights project and setting forward a timeline for completing tasks related to the project.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by October 30, 2013. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Persons needing accessibility services should contact the Eastern Regional Office at least 10 working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern 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 Eastern Regional Office at the above phone number, email or street address.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated on: September 5, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2013–21989 Filed 9–9–13; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–100–2013]

Foreign-Trade Zone 79—Tampa, Florida, Foreign-Trade Subzone 79C—Cutrale Citrus Juices USA, Inc., Approval of Additional Subzone Sites, Dade City and Leesburg, Florida

On June 24, 2013, the Acting Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the City of Tampa, grantee of FTZ 79, requesting two additional sites for Subzone 79C, subject to the existing activation limit of FTZ 79, on behalf of Cutrale Citrus Juices USA, Inc.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (78 FR 38922, 6/28/2013). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish two additional sites of Subzone 79C is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and subject to FTZ 79's 2,000-acre activation limit.

Dated: September 3, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–22030 Filed 9–9–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–818]

Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea (Korea) for the period of review (POR) January 1, 2011, through December 31, 2011. For information on the net subsidy for Dongbu Steel Co., Ltd. (Dongbu), Hyundai HYSCO Ltd. (HYSCO), and Pohang Iron & Steel Co. Ltd. (POSCO), the companies under review, *see* the ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results.[1]

DATES: *Effective Date:* September 10, 2013.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4161.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by this *Order*[2] is certain corrosion-resistant carbon steel flat products from Korea. These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel-, or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating.[3]

[1] *See* the ''Disclosure and Public Comment'' section of this notice.

[2] *See Countervailing Duty Orders and Amendments to Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Korea,* 58 FR 43752 (August 17, 1993) (*Order*).

[3] *See* the ''Decision Memorandum for Preliminary Results of 2011 Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea'' (Preliminary Decision Memorandum), dated concurrent with and adopted by this notice, for a complete description of the Scope of the Order.

Methodology

The Department is conducting this CVD review in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review, for the period January 1, 2011, through December 31, 2011.[4]

Preliminary Results of Review

We preliminarily determine the countervailable subsidy rates to be:

Company	Subsidy rate
Dongbu Steel Co., Ltd.	0.10 percent or *de minimis*.[5]
Hyundai HYSCO	0.45 percent or *de minimis*.
Pohang Iron & Steel Co., Ltd./Pohang Coated Steel Co., Ltd.	0.34 percent or *de minimis*.

Assessment and Cash Deposit Requirements

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of the final results of this review. If the final results remain the same as these preliminary results, the Department will instruct CBP to liquidate without regard to CVDs all shipments of subject merchandise produced by HYSCO, POSCO, and Dongbu, entered, or withdrawn from warehouse, for consumption from January 1, 2011, through December 31, 2011.

The Department notified CBP to discontinue the collection of cash deposits on entries of the subject merchandise, entered or withdrawn from warehouse, on or after February 14, 2012, the effective date of the revocation of this *Order*.[6]

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days after the date of publication of these preliminary results.[7] Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttals briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing the case briefs, as specified by 19 CFR 351.309(d).[8]

Interested parties that wish to request a hearing, or participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's IA ACCESS by 5:00 p.m. Eastern Standard Time within 30 days of publication of this notice.[9] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[10]

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: September 3, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Subsidies Valuation Information
5. Programs Determined To Be Countervailable
   - A. Promotion of Specialized Enterprises for Parts and Materials
   - B. Restriction of Special Taxation Act (''RSTA'') Article 26
   - C. Asset Revaluation (TERCL Article 56(2) of the Tax Reduction and Exemption Control Act (''TERCL''))
   - D. Exemption of VAT on Imports of Anthracite Coal
   - E. Other Subsidies Related to Operations at Asan Bay: Provision of Land and Exemption of Port Fees Under Harbor Act
   - F. Document Acceptance (''D/A'') Financing Provided Under KEXIM's Trade Rediscount Program and D/A Loans issued by the KDB and Other Government-Owned Banks
   - G. Reduction in Taxes for Operation in Regional and National Industrial Complexes
   - H. RSTA 22: Corporation Tax Exemption on Dividend Income from Investment in Overseas Resource Development
6. Programs Preliminarily Determined Not To Confer a Benefit During the POR
   - A. Overseas Resource Development Program: Loan from Korea Resources Corporation (''KORES'')
   - B. Overseas Resource Development Program: Loan from Korea National Oil Corporation (''KNOC'')
   - C. Pre-1992 Direct Credit
   - D. R&D Grants Under the Special Act on Balanced National Development
   - E. Research and Development Grants Under the Industrial Technology Innovation Promotion Act (''ITIPA'')
7. Programs Preliminarily Determined To Be Not Used [11]
8. Other Program
   - A. Tax Credits Received Under the Restriction of Special Taxation Act (''RSTA'')
9. Conclusion

[FR Doc. 2013–22029 Filed 9–9–13; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See* 19 CFR 351.106(c)(1).

[5] *Id.*

[6] *See Corrosion-Resistant Carbon Steel Flat Products from Germany and the Republic of Korea: Revocation of Antidumping and Countervailing Duty Orders,* 78 FR 16832 (March 19, 2013).

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(c); 19 CFR 351.309(d)(1).

[9] *See* 19 CFR 351.310(c).

[10] *Id.*

[11] For a list of the programs preliminarily determined to be not used, *see* the Preliminary Decision Memorandum.

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense gives notice that it is renewing the charter for the Strategic Environmental Research and Development Program Scientific Advisory Board. The Advisory Board may make recommendations to the Strategic Environmental Research and Development Program Council regarding technologies, research, projects, programs, activities, and, if appropriate, funding within the scope of the Strategic Environmental Research and Development Program Scientific Advisory Board.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: This committee is being renewed under the provisions of 10 U.S.C. 2904, 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.

Pursuant to 10 U.S.C. 2904(a), the Secretary of Defense and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall jointly establish the Strategic Environmental Research and Development Program Scientific Advisory Board. The Advisory Board, pursuant to 10 U.S.C. 2904, shall operate and comply with the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), and 41 CFR 102–3.50(a).

Pursuant to 10 U.S.C. 2902 and 2904(e), the Strategic Environmental Research and Development Program Council (hereafter referred to as the Council), shall refer to the Advisory Board, and the Advisory Board shall review, each proposed research project including its estimated cost, for research in and development of technologies related to environmental activities in excess of $1,000,000. The Council, pursuant to its responsibilities under 10 U.S.C. 2902(d)(1) and in an effort to enhance the Advisory Board's review process, has lowered the Advisory Board's dollar threshold to any proposed research projects in excess of $900,000. The Advisory Board shall make any recommendations to the Council that the Advisory Board considers appropriate regarding such project or proposal.

The Advisory Board may make recommendations to the Council regarding technologies, research, projects, programs, activities, and, if appropriate, funding within the scope of the Strategic Environmental Research and Development Program. In addition, the Advisory Board shall assist and advise the Council in identifying the environmental data and analytical assistance activities that should be covered by the policies and procedures prescribed pursuant to 10 U.S.C. 2902(d)(1).

Pursuant to 10 U.S.C. 2904(e), the Advisory Board shall make any recommendations to the Council that the Advisory Board considers appropriate regarding projects or proposals. The Advisory Board, pursuant to 10 U.S.C. 2904(a), shall be comprised of not more than 14 members. Pursuant to 10 U.S.C. 2904(b), the Advisory Board membership shall be comprised of the following:

a. Permanent members of the Advisory Board are the Science Advisor to the President, the Administrator of the National Oceanic and Atmospheric Administration, or their designees;

b. Non-permanent members of the Advisory Board shall be appointed from among persons eminent in the fields of basic sciences, engineering, ocean and environmental sciences, education, research management, international and security affairs, health physics, health sciences, or social sciences, with due regard given to the equitable representation of scientists and engineers who are women or who represent minority groups. One such member of the Advisory Board shall be a representative of environmental public interest groups, and one such member shall be a representative of the interests of State governments.

Pursuant to 10 U.S.C. 2904(b)(3), the Secretary of Defense and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall request that the:

a. Head of the National Academy of Science, in consultation with the head of the National Academy of Engineering and the head of the Institutes of Medicine of the National Academy of Sciences, nominate persons for appointment to the Advisory Board;

b. Council of Environmental Quality nominate for appointment to the Advisory Board at least one person who is a representative of environmental public interest groups; and

c. National Association of Governors nominate for appointment to the Advisory Board at least one person who is a representative of the interests of State governments.

The Advisory Board, pursuant to 10 U.S.C. 2904(d), shall develop procedures for carrying out its responsibilities. Such procedures shall define a quorum as a majority of the members, and shall provide for the annual election of the Advisory Board's chairperson.

The permanent Advisory Board members, defined above, shall be appointed as regular government employee members, and their appointments shall be based upon their official position in the Federal government. Both individuals may designate another regular government officer or employee from their offices to represent their interests before the Advisory Board.

Advisory Board members appointed by the Secretary of Defense and the Secretary of Energy, who are not full-time or permanent part-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employee members.

While the Council of Environmental Quality and the National Association of Governors nominate individuals to represent certain interests, these individuals are appointed by the Secretary of Defense and, these individuals, along with the other members, to include the regular government employee members, are appointed to provide advice on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Pursuant to 10 U.S.C. 2904(h), each member of the Advisory Board shall be required to file a financial disclosure report under title I of the Ethics in Government Act of 1978 (5 U.S.C. App.).

With the exception of those experts and consultants that are appointed members of the Advisory Board, all others, to include subject matter experts that are invited by the Advisory Board or experts and consultants that are from the general public attending meetings are not authorized to participate in the Advisory Board's deliberations.

The terms of member appointments shall not be less than two but not more than four years, as provided in 10 U.S.C. 2904(b)(4) and approved by the Secretary of Defense. All appointments shall be reviewed by the Secretary of Defense on an annual basis.

With the exception of travel and per diem for official travel, Advisory Board members shall serve without compensation.

With DoD approval, the Advisory Board is authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees shall operate under the

provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other appropriate Federal regulations.

Such subcommittees shall not work independently of the chartered Advisory Board, and shall report all their recommendations and advice to the Advisory Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Advisory Board; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Advisory Board members.

Subcommittee members, who are not Advisory Board members, shall be appointed in the same manner as the Advisory Board members. Such individuals, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employee members, whose appointments must be renewed on an annual basis. With the exception of per diem for official travel, subcommittee members shall serve without compensation.

The Advisory Board shall meet at the call of the Advisory Board's Designated Federal Officer, in consultation with the Chairperson. Pursuant to 10 U.S.C. 2904(d), the minimum number of Advisory Board meetings is four per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with governing DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all Advisory 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 Advisory 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 Strategic Environmental Research and Development Program Scientific Advisory Board's membership about the Advisory Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Strategic Environmental Research and Development Program Scientific Advisory Board.

All written statements shall be submitted to the Designated Federal Officer for the Strategic Environmental Research and Development Program Scientific Advisory Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Strategic Environmental Research and Development Program Scientific Advisory Board Designated Federal Officer can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Strategic Environmental Research and Development Program Scientific Advisory 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: September 4, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–21917 Filed 9–9–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for Medical Facilities Development and University Expansion at Naval Support Activity Bethesda, Bethesda, MD

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The United States Department of the Navy (DoN), after carefully weighing the environmental consequences of the proposed actions, announces its decision to construct and operate the Medical Facilities Development (MFD) at Naval Support Activity (NSA) Bethesda, Bethesda, MD. DoN also announces its decision to construct and operate the expansion of the Uniformed Services University of the Health Sciences (USU or the University Expansion) at NSA Bethesda. The DoN has decided to implement the preferred alternatives for the MFD and University Expansion, as described in the MFD and University Expansion Final Environmental Impact Statement (EIS) dated July 2013. The preferred alternatives are also the Environmentally Preferable Alternatives.

The preferred alternative for the MFD will fully meet the Congressional mandate in the Fiscal Year 2010 National Defense Authorization Act to achieve the new statutory world-class standards for military medicine at the Walter Reed National Military Medical Center (WRNMMC) by providing enduring medical facilities commensurate in quality, capability and condition as those provided by the 2005 Base Realignment and Closure investment. The preferred alternative for the University Expansion will provide adequate education and research space to meet Military Health System commitments to deliver training and post-graduate level education to the military medical community and enable USU to serve as the core academic health research center at WRNMMC. The proposed actions will enhance and support but not add to the missions of the installation, medical center, or the USU.

SUPPLEMENTARY INFORMATION: The complete text of the Record of Decision (ROD) is available on the project Web site at *http://www.wrnmmc.capmed.mil/PatientVisitors/SitePages/EIS.aspx*, along with the Final EIS and supporting documents. Single copies of the ROD are available upon request by contacting: NSA Bethesda Public Affairs Office, Attn: Joseph Macri, 8901 Wisconsin Avenue, Building 11, Room 216, Bethesda, MD 20889, Telephone: 301–295–1803, and Email: *NNMC.NSABethesdaEIS@health.mil.*

Dated: September 3, 2013.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–22000 Filed 9–9–13; 8:45 am]

BILLING CODE P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Senior Executive Service Performance Review Board; Membership

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice.

SUMMARY: This notice announces the membership of the Defense Nuclear Facilities Safety Board (DNFSB) Senior Executive Service (SES) Performance Review Board (PRB).

DATES: *Effective* September 10, 2013.

ADDRESSES: Send comments concerning this notice to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Deborah Biscieglia by telephone at (202) 694–7041 or by email at *debbieb@dnfsb.gov.*

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c)(1) through (5) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The PRB shall review and evaluate the initial summary rating of a senior executive's performance, the executive's response, and the higher level official's comments on the initial summary rating. In addition, the PRB will review and recommend executive performance bonuses and pay increases.

The DNFSB is a small, independent Federal agency; therefore, the members of the DNFSB SES Performance Review Board listed in this notice are drawn from the SES ranks of other agencies. The following persons comprise a standing roster to serve as members of the Defense Nuclear Facilities Safety Board SES Performance Review Board:

Christopher E. Aiello, Special Advisor to the Deputy to the Chairman and CFO, Federal Deposit Insurance Corporation.

David M. Capozzi, Executive Director, United States Access Board.

Barry S. Socks, Chief Operating Officer, National Capital Planning Commission.

Christopher W. Warner, DAEO and Senior Counselor to the Chair, U.S. Chemical Safety and Hazard Investigation Board.

Dated: September 4, 2013.

Jessie H. Roberson,

Chair, Executive Resources Board.

[FR Doc. 2013–21998 Filed 9–9–13; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2013–BT–BC–0036]

Activities and Methodology for Assessing Compliance With Building Energy Codes

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of reopening of public comment period.

SUMMARY: The U.S. Department of Energy (DOE) is re-opening the public comment period for a Request for Information (RFI) seeking stakeholder input on the process by which DOE will utilize and make available to states to evaluate compliance with building energy codes and general approaches towards compliance, made available for public comment on August 6, 2013. (78 FR 47677) This is being done in response to multiple stakeholder requests.

DATES: The public comment period ended on September 5, 2013. The comment period is being re-opened and will close on September 30, 2013.

ADDRESSES: Interested persons are encouraged to submit comments electronically. However, comments may be submitted by any of the following methods:

- *Email to the following address: STCodeCompliance2013BC0036@ee.doe.gov.* Include docket number EERE–2013–BT–BC–0036 in the subject line of the message.
- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–2J, Request for Information for Methodology for Energy Code Compliance Evaluation, Docket No. EERE–2013–BT–BC–0036, 1000 Independence Avenue SW., Washington, DC 20585–0121. Phone (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Phone: (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number.

Docket: The docket is available for review at *www.Regulations.gov.* All documents in the docket are listed in the index. A link to the docket Web page can be found at *http://www.regulations.gov/#!docketDetail;D=EERE–2013–BT–BC–0036.* The *Regulations.gov* Web site contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Ms. Kym Carey, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585, Telephone: (202) 287–1775, Email: *Kym.Carey@ee.doe.gov.*

Ms. Kavita Vaidyanathan, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, Mailstop GC–71, 1000 Independence Avenue SW., Washington, DC, 20585, Telephone: (202) 586–0669, Email: *Kavita.Vaidyanathan@hq.doe.gov.*

For information on how to submit or review public comments or view the docket, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–2945, Email: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

On August 6, 2013, DOE published a Request for Information in the **Federal Register** (78 FR 47677) seeking stakeholder input on the process by which DOE will utilize and make available to states to evaluate compliance with building energy codes and general approaches towards compliance. The comment period ended on September 5, 2013. Multiple stakeholders including the Responsible Energy Codes Alliance, National Association of State Energy Officials, Building Codes Assistance Project, and NYSERDA requested, DOE to extend the comment period to allow additional time to review the RFI and submit comments. DOE has determined that re-opening the public comment period in response to the requests is appropriate and hereby re-opens the comment period and extends it to September 30, 2013. Please refer to the original **Federal Register** notice for the content of the RFI at: *https://www.federalregister.gov/articles/2013/08/06/2013-18952/doe-activities-and-methodology-for-assessing-compliance-with-building-energy-codes.*

Issued in Washington, DC, on September 4, 2013.

Roland Risser,

Director, Building Technologies Office, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2013–22018 Filed 9–9–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2774–001.

Applicants: Virginia Electric and Power Company.

Description: Notice of Non-Material Changes in Fuel Procurement

Operations of Dominion Resources Services, Inc.
Filed Date: 8/30/13.
Accession Number: 20130830–5229.
Comments Due: 5 p.m. ET 9/20/13.

Docket Numbers: ER13–2223–001.
Applicants: Town Square Energy, LLC.
Description: Amendment to Application for Market Based Rate Authority to be effective 10/1/2013.
Filed Date: 9/3/13.
Accession Number: 20130903–5040.
Comments Due: 5 p.m. ET 9/24/13.

Docket Numbers: ER13–2300–000.
Applicants: Arizona Public Service Company.
Description: Modifications to Transmission Agreements between APS & YCA RS 198 to be effective 11/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5204.
Comments Due: 5 p.m. ET 9/20/13.

Docket Numbers: ER13–2301–000.
Applicants: Dominion Energy Marketing, Inc.
Description: Compliance Filing—Amded Filing Transfer of Tariff to DEMI as DF to be effective 9/3/2013.
Filed Date: 9/3/13.
Accession Number: 20130903–5000.
Comments Due: 5 p.m. ET 9/24/13.

Docket Numbers: ER13–2302–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Generator Special Facilities Agreement and Generator Interconnection Agreement for Los Esteros Critical Energy Facility of Pacific Gas and Electric Company.
Filed Date: 9/3/13.
Accession Number: 20130903–5017.
Comments Due: 5 p.m. ET 9/24/13.

Docket Numbers: ER13–2303–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3636; Queue No. X1–085 to be effective 8/12/2013.
Filed Date: 9/3/13.
Accession Number: 20130903–5038.
Comments Due: 5 p.m. ET 9/24/13.

Docket Numbers: ER13–2304–000.
Applicants: TEC Energy Inc.
Description: FERC Electric MBR Tariff to be effective 10/31/2013.
Filed Date: 9/3/13.
Accession Number: 20130903–5061.
Comments Due: 5 p.m. ET 9/24/13.

Docket Numbers: ER13–2305–000.
Applicants: RJF-Morin Energy, LLC.
Description: Notice of Cancellation to be effective 9/3/2013.
Filed Date: 9/3/13.
Accession Number: 20130903–5086.
Comments Due: 5 p.m. ET 9/24/13.

Docket Numbers: ER13–2306–000.
Applicants: SJH Energy, LLC.
Description: Notice of Cancellation to be effective 9/3/2013.
Filed Date: 9/3/13.
Accession Number: 20130903–5096.
Comments Due: 5 p.m. ET 9/24/13.

Take notice that the Commission received the following electric reliability filings:
Docket Numbers: RR13–11–000.
Applicants: North American Electric Reliability Corporation.
Description: Change of Address in the North American Electric Reliability Corporation Rules of Procedure.
Filed Date: 9/3/13.
Accession Number: 20130903–5019.
Comments Due: 5 p.m. ET 9/13/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings 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: September 3, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21962 Filed 9–9–13; 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: RP13–1290–000.
Applicants: MoGas Pipeline LLC.
Description: Annual Fuel and Gas Loss Retention Percentage Adjustment Filing to be effective 10/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5019.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1291–000.
Applicants: Midwestern Gas Transmission Company.
Description: LMS–MA and LMS–PA Modification to be effective 10/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5029.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1292–000.
Applicants: WBI Energy Transmission, Inc.
Description: 2013 Semi-annual Fuel and Electric Power Reimbursement to be effective 10/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5032.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1293–000.
Applicants: Enable Gas Transmission, LLC.
Description: F–185 Fuel Waiver to be effective 10/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5036.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1295–000.
Applicants: Ruby Pipeline, L.L.C.
Description: FL&U Effective October 1, 2013 to be effective 10/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5044.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1296–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Interim Fuel Tracker Filing 2013 to be effective 10/1/2013.
Filed Date: 8/30/13
Accession Number: 20130830–5050.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1297–000.
Applicants: Enable Mississippi River Transmission, L.
Description: Negotiated Rate Filing to Remove #4226 eff 9–01–2013 to be effective 9/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5059.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1299–000.
Applicants: Texas Eastern Transmission, LP.
Description: EQT Energy 8929760 9–1–2013 Negotiated Rate to be effective 9/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5103.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1300–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: Annual Fuel and LUF True-up Filing to be effective 10/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5105.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1301–000.
Applicants: Enable Gas Transmission, LLC.

Description: Negotitated Rate Filing—September 2013—Devon to be effective 9/1/2013.
Filed Date: 8/30/13
Accession Number: 20130830–5106.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1302–000.
Applicants: Ozark Gas Transmission, L.L.C.
Description: Neg Rate—Tenaska Marketing Ventures 9–1–2013 to be effective 9/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5119.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1305–000.
Applicants: Equitrans, L.P.
Description: Negotiated Rate Service Agreements—KIMCO, Mountain V & ANJA to be effective 9/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5150.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1306–000.
Applicants: Tallgrass Interstate Gas Transmission, L.
Description: Neg Rate 2013–08–30 Grasslands to be effective 9/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5164.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1308–000
Applicants: Columbia Gas Transmission, LLC.
Description: Negotiated Rate Agreement—Southwestern Energy to be effective 9/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5205.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1309–000.
Applicants: Northwest Pipeline LLC.
Description: 2013 Winter Fuel Filing to be effective 10/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5214.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1310–000.
Applicants: Gulf South Pipeline Company, LP.
Description: ENS Cycle Change to be effective 10/3/2013.
Filed Date: 9/3/13.
Accession Number: 20130903–5030.
Comments Due: 5 p.m. ET 9/16/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings 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: September 3, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21956 Filed 9–9–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–142–000.
Applicants: Osage Wind, LLC.
Description: Application for Authorization of Transaction under Section 203 of the Federal Power Act of Osage Wind, LLC.
Filed Date: 8/29/13.
Accession Number: 20130829–5196.
Comments Due: 5 p.m. ET 9/19/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2881–008; *ER10–2882–008; ER10–2883–008; ER10–2884–008; ER10–2885–008; ER10–2641–008; ER10–2663–008; ER10–2886–008; ER13–1101–003; ER13–1541–002.*
Applicants: Alabama Power Company, Southern Power Company, Mississippi Power Company, Georgia Power Company, Gulf Power Company, Oleander Power Project, Limited Partnership, Southern Company—Florida LLC, Southern Turner Cimarron I, LLC, Spectrum Nevada Solar, LLC, Camp Verde Solar, LLC.
Description: Notice of Non-Material Change in Status of Alabama Power Company, et al.
Filed Date: 8/30/13.
Accession Number: 20130830–5199.
Comments Due: 5 p.m. ET 9/20/13.

Docket Numbers: ER13–2284–000.
Applicants: Southwest Power Pool, Inc.
Description: 2065R2 Westar Energy, Inc. NITSA and NOA to be effective 8/1/2013.
Filed Date: 8/29/13.
Accession Number: 20130829–5180.
Comments Due: 5 p.m. ET 9/19/13.

Docket Numbers: ER13–2285–000.
Applicants: PJM Interconnection, L.L.C.
Description: Revisions to PJM OATT & OA re Day-ahead Energy Market Clearing to be effective 10/28/2013.
Filed Date: 8/29/13.
Accession Number: 20130829–5185.
Comments Due: 5 p.m. ET 9/19/13.

Docket Numbers: ER13–2286–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position S14; Original SA No. 3634 to be effective 7/31/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5068.
Comments Due: 5 p.m. ET 9/20/13.

Docket Numbers: ER13–2287–000.
Applicants: Southern California Edison Company.
Description: GIA and Distribution Service Agreement with Carson Cogeneration Company to be effective 9/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5072.
Comments Due: 5 p.m. ET 9/20/13.

Docket Numbers: ER13–2288–000.
Applicants: AEP Texas Central Company, AEP Texas North Company.
Description: TCC–TNC-South Texas Electric Cooperative And & Restated TSA to be effective 8/8/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5073.
Comments Due: 5 p.m. ET 9/20/13.

Docket Numbers: ER13–2289–000.
Applicants: AEP Texas North Company.
Description: TCC–TNC-South Texas EC And & Restated TSA Concurrence to be effective 8/8/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5074.
Comments Due: 5 p.m. ET 9/20/13.

Docket Numbers: ER13–2290–000.
Applicants: AEP Texas North Company, AEP Texas Central Company.
Description: TCC–TNC-Texas New Mexico Power Company ERCOT TSA to be effective 8/8/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5075.
Comments Due: 5 p.m. ET 9/20/13.

Docket Numbers: ER13–2291–000.
Applicants: AEP Texas North Company.
Description: TCC–TNC-Texas New Mexico Power Company ERCOT TSA Concurrence to be effective 8/8/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5077.
Comments Due: 5 p.m. ET 9/20/13.

Docket Numbers: ER13–2292–000.
Applicants: New England Power Pool Participants Committee.

Description: September 2013. Membership Filing to be effective 8/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5104.
Comments Due: 5 p.m. ET 9/20/13.

Docket Numbers: ER13–2293–000.
Applicants: EDP Renewables North America LLC.
Description: Petition for Limited Waiver of Tariff Provision and Request for Expedited Action of EDP Renewables North America LLC.
Filed Date: 8/30/13.
Accession Number: 20130830–5117.
Comments Due: 5 p.m. ET 9/13/13.

Docket Numbers: ER13–2294–000.
Applicants: Public Service Company of New Mexico.
Description: Modification to Section 18.3 and Schedule 7 to be effective 11/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5118.
Comments Due: 5 p.m. ET 9/20/13.

Docket Numbers: ER13–2295–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 08–30–2013 TCDC Filing to be effective 11/15/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5120.
Comments Due: 5 p.m. ET 9/20/13.

Docket Numbers: ER13–2296–000.
Applicants: California Independent System Operator Corporation.
Description: 2013–08–30_CommitmentCosts to be effective 11/1/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5134.
Comments Due: 5 p.m. ET 9/20/13.

Docket Numbers: ER13–2297–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 08–30–2013 ATC Att GG NUC & Annual Rate Filing to be effective 9/20/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5146.
Comments Due: 5 p.m. ET 9/20/13.

Docket Numbers: ER13–2298–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 08–30–2013 Module E–1 LRR to be effective 10/29/2013.
Filed Date: 8/30/13.
Accession Number: 20130830–5151.
Comments Due: 5 p.m. ET 9/20/13.

Docket Numbers: ER13–2299–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Request for Partial Waiver and Motion for Expedited Action of Midcontinent Independent System Operator, Inc.
Filed Date: 8/30/13.
Accession Number: 20130830–5169.
Comments Due: 5 p.m. ET 9/9/13.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES13–38–000.
Applicants: MDU Resources Group, Inc.
Description: MDU Resources Group, Inc.'s Second Amendment to July 30, 2013 Application to increase its short term borrowings.
Filed Date: 8/30/13.
Accession Number: 20130830–5170.
Comments Due: 5 p.m. ET 9/9/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings 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 30, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21961 Filed 9–9–13; 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: RP13–1311–000.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: In Field Transfers to be effective 10/3/2013.
Filed Date: 9/3/13.
Accession Number: 20130903–5109.
Comments Due: 5 p.m. ET 9/16/13.

Docket Numbers: RP13–1312–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Negotiated Rate Service Agreement—Contract No. 142902 to be effective 10/1/2013.
Filed Date: 9/3/13.
Accession Number: 20130903–5137.
Comments Due: 5 p.m. ET 9/16/13.

Docket Numbers: RP13–1294–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: Columbia Gulf Transmission, LLC Annual Cash-Out Report under RP13–1294.
Filed Date: 8/30/13.
Accession Number: 20130830–5042.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1298–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: Colorado Interstate Gas Company, L.L.C.'s Annual Operational Purchases and Sales Report under RP13–1298.
Filed Date: 8/30/13.
Accession Number: 20130830–5102.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1303–000.
Applicants: Cheyenne Plains Gas Pipeline Company LLC.
Description: Application to Request Limited Waiver of certain Capacity Release Tariff Provisions of Cheyenne Plains Gas Pipeline Company, L.L.C. under RP13–1303.
Filed Date: 8/30/13.
Accession Number: 20130830–5148.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1304–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: Application of Colorado Interstate Gas Company, L.L.C. requesting limited waiver of a capacity release tariff provision uner RP13–1304.
Filed Date: 8/30/13.
Accession Number: 20130830–5149.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP13–1307–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: Quarterly Fuel Adjustment Filing of MarkWest Pioneer, L.L.C. under RP13–1307.
Filed Date: 8/30/13.
Accession Number: 20130830–5168.
Comments Due: 5 p.m. ET 9/11/13.

Docket Numbers: RP08–257–000.
Applicants: Saltville Gas Storage Company L.L.C.
Description: Petition to Amend Stipulation and Agreement and Motion for Shortened Answer Period and Request for Expedited Action of Saltville Gas Storage Company L.L.C. under RP08–257.
Filed Date: 8/28/13.
Accession Number: 20130828–5195.
Comments Due: 5 p.m. ET 9/4/13.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–1105–002.
Applicants: Energy West Development, Inc.
Description: Compliance Filing to 151 to be effective 12/1/2012.
Filed Date: 9/4/13.
Accession Number: 20130904–5053.
Comments Due: 5 p.m. ET 9/16/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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, service and qualifying facilities filings 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: September 4, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21957 Filed 9–9–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–86–000]

Grand Valley Rural Power Lines, Inc., Holy Cross Electric Association, Inc., Intermountain Rural Electric Association, Inc., Yampa Valley Electric Association, Inc. v. Public Service Company of Colorado; Notice of Complaint

Take notice that on August 30, 2013, pursuant to Rules 206 and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 and 385.212 (2013) and sections 201, 206 and 306 of the Federal Power Act, 16 U.S.C. 824, 824(e) and 825(e) 2013, Grand Valley Rural Power Lines, Inc., Holy Cross Electric Association, Inc., Intermountain Rural Electric Association, Inc., and Yampa Valley Electric Association, Inc. (collectively, Complainants or Cooperative Customers) filed a formal complaint against the Public Service Company of Colorado (Respondent or PSCo), alleging that the ROE component to the production formula rate applicable to the Cooperative Customers under PSCo's Assured Power and Energy Requirements Service Tariff is unjust, unreasonable, and contrary to section 205 of the Federal Power Act. The Complainants request a determination that the appropriate ROE for the production formula rate is 9.04 percent.

The Complainants certify that copies of the complaint were served on the contacts for the Respondents as listed on the Commission's list of Corporate Officials and on parties of the regulatory agencies the Complainants reasonably expect to be affected by this complaint.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is 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: 5:00 p.m. Eastern Time on September 19, 2013.

Dated: September 3, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21958 Filed 9–9–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM08–13–000; RM08–13–001; RM11–16–000]

Transmission Relay Loadability Reliability Standard; Notice of Compliance Filing

Take notice that on February 19, 2013, the North American Electric Reliability Corporation (NERC) submitted a compliance filing in response to the Federal Energy Regulatory Commission's (Commission) Order Nos. 733 [1] and 759 [2] directing NERC to file a test for Planning Coordinators to identify sub-200kV critical facilities, and the results of that test on a representative sample of utilities in three Interconnections.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for

[1] *Transmission Relay Loadability Reliability Standard,* Order No. 733, 130 FERC ¶ 61, 221 (2010) (Order No. 733); *order on reh'g and clarification,* Order No. 733–A, 134 FERC ¶ 61,127 (2011); *clarified,* Order No. 733–B, 136 FERC ¶ 61,185 (2011).

[2] *Transmission Relay Loadability Reliability Standard,* 138 FERC ¶ 61,197 (2012)

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: 5:00 p.m. Eastern Time on September 20, 2013.

Dated: September 4, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–21973 Filed 9–9–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–2304–000]

TEC Energy Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of TEC Energy Inc.'s application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is September 23, 2013.

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 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) 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.

Dated: September 3, 2013

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21959 Filed 9–9–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–536–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

Take notice that on August 23, 2013, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York, 14221, filed in Docket No. CP13–536–000, an application pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to convert one injection/withdrawal well to an observation well and to abandon the associated well line in Colden Storage Field located in Erie County, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to David W. Reitz, Deputy General Counsel, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York, 14221, or phone (716) 857–7949.

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.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the

Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: September 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–21971 Filed 9–9–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–537–000]

Southeast Supply Header, LLC; Notice of Request Under Blanket Authorization

Take notice that on August 23, 2013, Southeast Supply Header, LLC (SESH), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP13–537–000, an application pursuant to sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, requesting authorization to offset and replace approximately 5,700 feet of the 42-inch Line 100 pipeline in Claiborne County, Mississippi. The authorizations are requested under SESH's blanket certificate issued in Docket No. CP07–46–000 [1], all as more fully set forth in the application which is on file with the Commission and open to public inspection.

SESH proposes to offset and replace approximately 5,700 feet of the 42-inch Line 100 pipeline via horizontal directional drilling (HDD). Once the new segment of Line 100 is installed, SESH will abandon by removal an approximate 4,000 foot section of the existing Line 100 and abandon in place the remainder. The estimated cost of the project is approximately $14,000,000.

The Project will have no impact on the certificated parameters of the SESH pipeline. In addition, there will be no abandonment or decrease in service to SESH customers as a result of the proposed Project. As described in the application, ground-disturbing activities necessary to construct the project will result in minimal environmental impacts.

The filing may also be viewed on the web 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application should be directed to P. Martin Teague, Associate General Counsel, Southeast Supply Header, LLC, P.O. Box 1642, Houston, Texas 77251–1642, phone (813) 282–6605, fax (813) 289–4438, or Email *pmteague@spectraenergy.com.*

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.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on November 4, 2013

Dated: September 4, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–21972 Filed 9–9–13; 8:45 am]

BILLING CODE 6717–01–P

[1] See Southeast Supply Header, LLC et al, 119 FERC ¶ 61,153 (2007).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD13–9–000]

Hydropower Regulatory Efficiency Act of 2013; Notice of Workshop

The Federal Energy Regulatory Commission (FERC or Commission) staff will hold a workshop on October 2, 2013, from 12:00 p.m. (EDT) to 4:00 p.m. (EDT) in the Commission Meeting Room at 888 First Street, NE., Washington, DC 20426. The workshop will be open to the public, and all interested parties are invited to attend and participate.

The purpose of the workshop is to begin investigating the feasibility of a two-year process for the issuance of a license for hydropower development at non-powered dams and closed-loop pumped storage projects in compliance with section 6 of the Hydropower Regulatory Efficiency Act of 2013. Participants should be prepared to discuss whether such a process is feasible, present ideas on the details of a two-year licensing process, discuss potential criteria for identifying projects that may be appropriate for a two-year licensing process, and recommend potential pilot projects to test a two-year licensing process.

This workshop will be transcribed. Transcripts of the workshop will be immediately available for a fee from Ace-Federal Reporters, Inc. at (202) 347–3700. A free webcast of this event will be available through *www.ferc.gov.* Anyone with internet access who wants to view this event can do so by navigating to the Calendar of Events at *www.ferc.gov* and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the workshop via phone-bridge for a fee. If you have any questions, visit

www.CapitolConnection.org or call (703) 993–3100.

Those interested in attending the workshop or viewing the webcast are encouraged to register at *https://www.ferc.gov/whats-new/registration/efficiency-act-10-02-13-form.asp* by September 25, 2013. A limited number of phone lines will be available on a first-come, first-served basis for interested parties to participate via teleconference. If you would like to participate via teleconference, please contact Ken Wilcox at (202) 502–6835 or *kenneth.wilcox@ferc.gov* by September 25, 2013. A workshop agenda will be issued under separate notice.

Commission workshops are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call (866) 208–3372 (toll free) or (202) 208–8659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

Those who wish to file written comments may do so by November 1, 2013. The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *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,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The first page of any filing should include docket number AD13–9–000.

All comments will be placed in the Commission's public files and will be available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the eLibrary link. Enter AD13–9 in the docket number field to access documents. For assistance, please contact FERC Online Support.

For more information about this workshop, please contact:

Brandon Cherry (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8328, *brandon.cherry@ferc.gov.*

Sarah McKinley (Logistical Information), Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8004, *sarah.mckinley@ferc.gov.*

Dated: September 3, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21960 Filed 9–9–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0291; FRL–9900–88–OECA]

Proposed Information Collection Request; Comment Request; State Review Framework

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit a request to renew an existing approved Information Collection Request (ICR) State Review Framework (EPA ICR No. 2185.05, OMB Control No. 2020–0031) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through December 31, 2013. 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.

DATES: Comments must be submitted on or before November 12, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2010–0291, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Christopher Knopes, Office of Enforcement and Compliance Assurance, Office of Compliance, MC: 2221A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–2337; fax number: 202–564–0027; email address: *knopes.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The State Review Framework (''Framework'') is an oversight tool designed to assess state performance in enforcement and compliance assurance. The Framework's goal is to evaluate state performance by examining existing data to provide a consistent level of oversight and develop a uniform mechanism by which EPA Regions, working collaboratively with their states, can ensure that state environmental agencies are consistently implementing the national compliance and enforcement program in order to

meet agreed-upon goals. Furthermore, the Framework is designed to foster dialogue on enforcement and compliance performance between the states that will enhance relationships and increase feedback, which will in turn lead to consistent program management and improved environmental results. The Framework is described in the April 26, 2005 **Federal Register** Notice (79 FR 21408). This amendment will allow OECA to collect information from enforcement and compliance files reviewed during routine on-site visits of state or local agency offices that will assist in the evaluation of the State Review Framework implementation from FY 2014 to the end of FY 2016. This request will allow EPA to make inquiries to assess the State Review Framework process, including the consistency achieved among the EPA Regions and states, the resources required to conduct the reviews, and the overall effectiveness of the program.

Form Numbers: None.

Respondents/affected entities: States, localities, and territories.

Respondent's obligation to respond: Required as part of program authorization under the Clean Water, Clean Air, and Resource Conservation and Recovery Acts.

Estimated number of respondents: 54.

Frequency of response: Once every five years.

Total estimated burden: 11,016 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $393,342.84 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: There is likely to be no change in hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: August 29, 2013.

Lisa Lund,

Office Director, Office of Compliance, Office of Enforcement & Compliance Assurance.

[FR Doc. 2013–21992 Filed 9–9–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9900–84–OA]

Notification of Public Teleconference of the Hydraulic Fracturing Research Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Hydraulic Fracturing Research Advisory Panel to receive written and oral comments from the public on new and emerging information related to hydraulic fracturing and drinking water resources.

DATES: The public teleconference will be held on November 20, 2013, from 12:00 p.m. to 5:00 p.m. (Eastern Daylight Time).

ADDRESSES: The teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the teleconference may contact Mr. Edward Hanlon, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; via telephone/voicemail at (202) 564–2134, fax at (202) 565–2098; or email at *hanlon.edward@epa.gov.* General information concerning the SAB can be found on the EPA Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB and the SAB Hydraulic Fracturing Research Advisory Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB Hydraulic Fracturing Research Advisory Panel will hold a public teleconference to receive written and oral comments from the public on new and emerging information related to hydraulic fracturing and drinking water resources.

In response to public concern, in August 2010 Congress urged EPA to study the relationship between hydraulic fracturing and drinking water. In March 2013, the SAB Staff Office formed an SAB panel to provide individual expert advice for the EPA's Office of Research and Development (ORD) on its ongoing research on the potential impacts of hydraulic fracturing on drinking water resources. Information about panel formation and activities can be found at *http://yosemite.epa.gov/sab/sabproduct.nsf/02ad90b136fc21ef85256eba00436459/b436304ba804e3f885257a5b00521b3b!OpenDocument&TableRow=2.0#2.*

The Panel held a May 7–8, 2013 meeting in Arlington Virginia where individual members of the Panel provided their individual expert comments on charge questions associated with research described in ORD's *Study of the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources: Progress Report,* released in December 2012. At the May 2013 meeting, the SAB Staff Office announced there would be opportunity for the public to provide new and emerging information related to hydraulic fracturing to the Panel. The information provided to the Panel will serve as background to assist the Panel in its review of the EPA's draft report on the potential impacts of hydraulic fracturing on drinking water resources. This report is scheduled for completion in December 2014. The SAB will hold a public teleconference to provide opportunity to receive information from the public.

Availability of Meeting Materials: The agenda and other materials in support of the November 20, 2013 teleconference call will be available on the SAB Web site at *http://www.epa.gov/sab* in advance of the teleconference call.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments for consideration by the Panel. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information.

For the November 20, 2013 telephone conference meeting, members of the public are encouraged to provide written and oral comments on new and emerging information related to hydraulic fracturing and drinking water resources. Members of the public wishing to provide comment should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference

will be limited to five minutes. Persons interested in providing oral statements at the November 20, 2013 teleconference meeting should contact Mr. Hanlon at the contact information provided above by November 13, 2013.

Written Statements: Written statements for the November 20, 2013 teleconference meeting should be received in the SAB Staff Office by November 13, 2013, so that the information may be made available to the SAB for its consideration prior to this meeting and teleconference call. Written statements should be supplied to the DFO in the following formats: either an electronic copy (preferred), via email (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format), or in hard copy. Submitters are asked to provide electronic versions of each document submitted without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Hanlon, at the phone number or email address noted above, preferably at least ten days prior to the meeting and teleconference call, to give the EPA as much time as possible to process your request.

Dated: August 29, 2013.

Thomas H. Brennan,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2013–22027 Filed 9–9–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT IMPORT BANK

[Public Notice 2013–6005]

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 92–34 Application for Short-Term Letter of Credit Export Credit Insurance Policy.

SUMMARY: The Export-Import Banks of the United States (Ex-Im Bank), as 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 of information is necessary, pursuant to 12 U.S.C. 635(a)(1), to determine eligibility of the applicant for Ex-Im Bank assistance.

The Application for Short Term Letter of Credit Export Credit Insurance Policy is used to determine the eligibility of the applicant and the transaction for Export Import Bank assistance under its insurance program. Export Import Bank customers are able to submit this form on paper or electronically.

The application tool can be reviewed at: *http://www.exim.gov/pub/pending/eib92-34.pdf.*

DATES: Comments must be received on or before November 12, 2013 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* or by mail to Michele Kuester, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–34 Application for Short-Term Letter of Credit Export Credit Insurance Policy.

OMB Number: 3048–0009.

Type of Review: Regular.

Need and Use: This form is used by a financial institution (or broker acting on its behalf) to obtain approval for coverage of a short-term letter of credit. The information allows the Ex-Im Bank staff to make a determination of the eligibility of the applicant and transaction for Ex-Im Bank assistance under its programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 11.

Estimated Time per Respondent: 1 hr.

Annual Burden Hours: 11.

Frequency of Reporting of Use: On occasion.

Government Reviewing Time per Year: 11 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $468.

(time*wages)

Benefits and Overhead: 20%.

Total Government Cost: $598.

Kalesha Malloy,

Agency Clearance Officer.

[FR Doc. 2013–21975 Filed 9–9–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 12, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov mailto:PRA@fcc.gov* and to *Cathy.Williams@fcc.gov mailto:Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0995.

Title: Section 1.2105, Bidding Application and Certification Procedures; Prohibition of Certain Communications.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Not-for-profit institutions, and State, local or Tribal government.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: 1.5 hours to 2 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i) and 309(j).

Total Annual Burden: 50 hours.

Total Annual Cost: $9,000.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the Commission. If the Commission requests applicants to submit 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.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting requirements) of this information collection. There is no change in the Commission's burden estimates.

Subject to certain exceptions, section 1.2105(c) of the Commission's rules prohibits auction applicants that are eligible to bid on any of the same geographic areas from cooperating or collaborating with respect to, discussing or disclosing to each other in any manner the substance of their bids or bidding strategies from the short-form application filing deadline to the post-auction down payment deadline, unless such applicants are members of a bidding consortium or other joint bidding agreement reported on their short-form applications.

The Commission has found that even when a communication of bids or bidding strategies is limited to one applicant's bids or bidding strategies, it may unfairly disadvantage the other bidders in the market by creating an asymmetry of information. Section 1.2105(c)(1) of the Commission's rules attempts to address this concern by prohibiting auction applicants from communicating their bids or bidding strategies to each other. In enforcing Section 1.2105(c)(1), however, the Commission has encountered auction applicants engaging in communications prohibited by the rule. In some instances, there has been concern expressed about the obligation of a bidder to report information received from another bidder that potentially violates the rule, and the Commission has previously counseled applicants on the safest course of action for a recipient of a prohibited communication during the period in which Section 1.2105(c)(1) prohibitions are in effect would be to terminate the discussion and promptly report communication to the Commission. The Commission believes that the anti-collusion rule to include such a reporting requirement, as a deterrent to would-be disseminators of prohibited information regarding bids or bidding strategies, will make clear the responsibility to report such behavior and will thereby enhance the competitiveness and fairness of its spectrum auctions. Under the amendment the Commission adopted in the Seventh Report and Order, an applicant's failure to report a prohibited communication pursuant to Section 1.2105(c) may constitute a rule violation distinct from any act of collusion that violates Section 1.2105(c)(1).

The information requirement will enable the Commission to ensure that no bidder gains an unfair advantage over other bidders in its spectrum auctions and thus enhance the competitiveness and fairness of its auctions. The information collected will be reviewed, and if warranted, referred to the Commission's Enforcement Bureau for possible investigation and administrative action. The Commission may also refer allegations of anticompetitive auction conduct to the Department of Justice (DoJ) for investigation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–21982 Filed 9–9–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council (TAC) will hold a meeting in the Commission Meeting Room to discuss progress on work proposals made at TAC's inaugural meeting.

DATES: September 23, 2013, 1 p.m. to 4 p.m., Washington, DC.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter Johnston, Chief, Electromagnetic Compatibility Division, 202–418–0807; *Walter.Johnston@FCC.gov*.

SUPPLEMENTARY INFORMATION: The FCC Technological Advisory Council will discuss progress on work areas announced at its initial meeting of the year on March 11, 2013. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the internet from the FCC Live Web page at *http://www.fcc.gov/live/*. The public may submit written comments before the meeting to: Walter Johnston, the FCC's Designated Federal Officer for Technological Advisory Council by email: *Walter.Johnston@fcc.gov* or U.S. Postal Service Mail (Walter Johnston, Federal Communications Commission, Room 7–A224, 445 12th Street SW., Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–22025 Filed 9–9–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, September 12, 2013 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes for August 22, 2013;

Draft Advisory Opinion 2013–04: Democratic Governors Association and Jobs & Opportunity;

Draft Advisory Opinion 2013–12: Service Employees International Union and Service Employees International Union Committee on Political Education;

Draft Advisory Opinion 2013–14: Martin Long;

OGC Enforcement Manual (To be held over to future meeting);

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2013–22067 Filed 9–6–13; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Final notice of submission for OMB review.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Federal Maritime Commission (FMC or Commission) hereby gives notice that it has submitted to the Office of Management and Budget a request for an extension of the existing collection requirements under 46 CFR Part 535—Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984. The FMC has requested an extension of an existing collection as listed below.

DATES: Written comments must be submitted on or before October 10, 2013.

ADDRESSES: Comments should be addressed to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for FMC, 725—17th Street NW., Washington, DC 20503, *OIRA_Submission@OMB.EOP.GOV*, Fax (202) 395–5806.

and to:

Vern Hill, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523–5800, *omd@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by contacting Donna L. Lee on 202–523–5800 or email: *dlee@fmc.gov.*

SUPPLEMENTARY INFORMATION: A notice that FMC would be submitting this request was published in the **Federal Register** on June 26, 2013 (78 FR 38335) allowing for a 60-day comment period. No comments were received.

The FMC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Information Collection Open for Comment

Title: 46 CFR Part 535—Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984.

OMB Control Number: 3072–0045 (Expires September 30, 2013).

Abstract: Section 4 of the Shipping Act of 1984, 46 U.S.C. 40301(a)–(c), identifies certain agreements between or among ocean common carriers and marine terminal operators (MTOs) that fall within the jurisdiction of that Act. Section 5 of the Act, 46 U.S.C. 40302, requires that carriers and MTOs file those agreements with the Federal Maritime Commission. Section 6 of the Act, 46 U.S.C. 40304, 40306, and 41307(b)–(d), specifies the Commission actions that may be taken with respect to filed agreements, including requiring the submission of additional information. Section 15 of the Act, 46 U.S.C. 40104, authorizes the Commission to require that common carriers, among other persons, file periodic or special reports. Requests for additional information and the filing of periodic or special reports are meant to assist the Commission in fulfilling its statutory mandate of overseeing the activities of the ocean transportation industry. These reports are necessary so that the Commission can monitor agreement parties' activities to determine how or if their activities will have an impact on competition.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission staff uses the information filed by agreement parties to monitor their activities as required by the Shipping Act of 1984. Under the general standard set forth in section 6(g) of the Act, 46 U.S.C. 41307(b)(1), the Commission must determine whether filed agreements are likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost. If it is shown, based on information collected under this rule, that an agreement is likely to have the foregoing adverse effects, the Commission may bring suit in the U.S. District Court for the District of Columbia to enjoin the operation of that agreement. Other than an agreement filed under section 5 of the Act, the information collected may not be disclosed to the public except as may be relevant to an administrative or judicial proceeding, and disclosure to Congress.

Frequency: This information is collected generally on a quarterly basis or as required under the rules.

Type of Respondents: The types of respondents are ocean common carriers and MTOs subject to the Shipping Act of 1984.

Number of Annual Respondents: The Commission estimates a potential annual respondent universe of 462 entities.

Estimated Time per Response: The average time for filing agreements, including the preparation and submission of information required on Form FMC–150, *Information Form for Agreements Between or Among Ocean Common Carriers,* is estimated to be 8.4 person-hours per response. The average time for completing Form FMC–151, *Monitoring Report for Agreements Between or Among Ocean Common Carriers,* is estimated to be between 20 and 155 person-hours per response, depending on the complexity of the required information. The average time for reporting for all responses is 9.1 person-hours.

Total Annual Burden: The Commission estimates the total person-hour burden at 13,629 person-hours.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–22008 Filed 9–9–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan 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 application also will 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 HOLA (12 U.S.C. 1467a(e)). 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 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). 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 October 4, 2013.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Arvest Bank Group, Inc., Bentonville, Arkansas, to acquire 100 percent of the voting shares of Metropolitan National Bank, Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, September 4, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–21910 Filed 9–9–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Request for Comments on the Draft Departmental Strategic Plan for FY 2014–2018

AGENCY: Office of the Secretary, Health and Human Services.

ACTION: Request for comments on the draft strategic plan FY 2014–2018.

SUMMARY: The Department of Health and Human Services (HHS) is seeking public comment on its draft Strategic Plan for fiscal years 2014–2018.

DATES: Submit comments on or before October 15, 2013

ADDRESSES: Written comments can be provided by email, fax or U.S. mail.

Email: strategicplanning@hhs.gov.

Fax: (202) 690–8252.

Mail: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Strategic Planning Team, Attn: Strategic Plan Comments, 200 Independence Avenue SW., Room 446F.8, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Sarah Potter, (202) 260–6518.

SUPPLEMENTARY INFORMATION: The draft Department of Health and Human Services FY 2014–2018 Strategic Plan is provided as part of the strategic planning process under the Government Performance and Results Modernization Act of 2010 (GPRA–MA) (Pub. L. 111–352) to ensure that Agency stakeholders are given an opportunity to comment on this plan.

This document articulates how the Department will achieve its mission through four strategic goals. These four strategic goals are (1) Strengthen Health Care, (2) Advance Scientific Knowledge and Innovation, (3) Advance the Health, Safety, and Well-Being of the American People, (4) Ensure Efficiency, Transparency, Accountability, and Effectiveness of HHS Programs. Each goal is supported by objectives and strategies.

The strategic planning consultation process is an opportunity for the Department to refine and strengthen the strategic goal structure currently in place. For comparison purposes, the current HHS Strategic Plan FY 2010–2015 can be viewed at *http://www.hhs.gov/secretary/about/priorities/priorities.html.*

The Department has made significant progress in its strategic and performance planning efforts. As we build on this progress we look forward to receiving your comments by October 15, 2013. The text of the draft Strategic Plan FY 2014–2018 is available through the Department of Health and Human Services Web site at *http://www.hhs.gov/open/recordsandreports/strategic-plan/index.html.*

For those who may not have Internet access, a hard copy can be requested from the contact point, Sarah Potter, 202–260–6518.

Dated: September 4, 2013.

Donald B. Moulds,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 2013–21993 Filed 9–9–13; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Patient Safety and Quality Improvement: Civil Money Penalty Inflation Adjustment

AGENCY: Office for Civil Rights, Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, the Office for Civil Rights has determined that an adjustment to the maximum civil money penalty amount for violations of the confidentiality provisions of the Patient Safety and Quality Improvement Rule is not required at this time.

FOR FURTHER INFORMATION CONTACT: Andra Wicks, 202–205–2292.

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Safety and Quality and Improvement Act of 2005 (Patient Safety Act), 42 U.S.C. 299b–21 to 299b–26, amended Title IX of the Public Health Service Act, 42 U.S.C. 299 et seq., the authorizing statute for the Agency for Healthcare Research and Quality. The Patient Safety and Quality Improvement Rule, 73 FR 70732 (Nov. 21, 2008), implemented the requirements in the Patient Safety Act. The Rule provides for the listing and delisting of Patient Safety Organizations, the confidentiality and privilege protections of Patient Safety Work Product (PSWP), and procedures for enforcement against violations of the regulations'

confidentiality requirements. In particular, under § 3.404, a person who discloses identifiable PSWP in knowing or reckless violation of the Patient Safety Act and 42 CFR part 3 shall be subject to a civil money penalty (CMP) of not more than $10,000 for each act constituting a violation.

Congress enacted the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701)) (Inflation Adjustment Act), based on its findings that the impact of CMPs had been reduced by inflation and that reducing the impact of CMPs had weakened their deterrent effect. Inflation Adjustment Act section 2, 28 U.S.C. 2461 note. In general, the Inflation Adjustment Act requires Federal agencies to issue regulations to adjust for inflation each CMP provided by law within their jurisdiction. The Inflation Adjustment Act applies to civil penalties found within the Public Health Service Act, such as the Patient Safety Act's CMP provision. The Inflation Adjustment Act directs agencies to issue regulations to adjust CMPs under their authority by October 23, 1996, and to make additional adjustments at least once every four years thereafter based on a specific calculation set forth in the Act. While the Inflation Adjustment Act CMP adjustment requirements apply to most federal statutes, they do not apply to CMPs included in the Social Security Act. The CMPs for title II, subtitle F (Administrative Simplification) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) are found at section 1176 of the Social Security Act. Thus, the Inflation Adjustment Act does not require, or provide authority for, the Department to adjust the HIPAA administrative simplification CMPs.

Because the Patient Safety Act was enacted after October 23, 1996, we interpret the Inflation Adjustment Act as requiring the Department to determine whether an adjustment for inflation is necessary for the Patient Safety Act's CMP amount at least once every four years, beginning from the Patient Safety Act's date of enactment, which was July 29, 2005. Accordingly, on August, 25, 2009, we published a direct final rule to amend the Patient Safety and Quality Improvement Rule by adjusting for inflation the maximum CMP amount for violations of the confidentiality provisions of the Rule. (74 FR 42777 (Aug. 25, 2009).) We chose to use direct final rulemaking because we did not expect to receive any adverse comment on the rule. The Department did not receive any adverse comments, and the direct final rule became effective and the Patient Safety and Quality Improvement Rule was amended on November 23, 2009. The amendment increased the maximum CMP amount from $10,000 to $11,000.

II. No Adjustment is Necessary

In accordance with the Inflation Adjustment Act, the Office for Civil Rights (OCR) has determined that an adjustment to the maximum CMP amount for violations of the confidentiality provisions of the Patient Safety and Quality Improvement Rule is not required at this time.

The Inflation Adjustment Act provides for the adjustment of a penalty amount through a three-step process.[1] First, we calculate an increase in the penalty amount by a ''cost-of-living adjustment.'' Inflation Adjustment Act section 5(a), 28 U.S.C. 2461 note. The Inflation Adjustment Act defines the cost-of-living adjustment as ''the percentage (if any) for each civil monetary penalty by which—(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.'' Inflation Adjustment Act section 5(b), 28 U.S.C. 2461 note. Second, we round the adjustment amount pursuant to the methodology set forth in section 5(a) of the Inflation Adjustment Act, which rounds the increase based on the size of the underlying penalty, as follows:

Any increase determined under this subsection shall be rounded to the nearest—

(1) multiple of $10 in the case of penalties less than or equal to $100;

(2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) multiple of $25,000 in the case of penalties greater than $200,000.

[1] Pursuant to the Debt Collection Improvement Act's amendment to the Federal Civil Penalties Inflation Adjustment Act of 1990, the third-step in adjusting a penalty amount requires that the first adjustment of the penalty be limited to ten percent of the penalty amount. This step is not applicable here because the first adjustment to the CMP with respect to the Patient Safety Act occurred on September 24, 2009.

With respect to step 1 of the adjustment, the Consumer Price Index (CPI) for June of 2012 (the calendar year preceding publication of this Notice) was 229.478. The CPI for June of 2009 (the calendar year the CMP was last adjusted for inflation) was 215.693. The percent change in these CPIs is an increase of 6.39 percent. This leads to an unrounded increase in the Patient Safety Act's CMP of $702.90.

With respect to step 2 of the adjustment, we rounded the amount of the increase ($702.90) to the nearest multiple of $5,000 because the current maximum CMP is $11,000, which places it in tier (4) above (i.e., penalties greater than $10,000 but less than or equal to $100,000). The nearest multiple of $5,000 for the $702.90 increase is zero.

Thus, based on the above, we are not amending 42 CFR 3.404(b) at this time, and the current maximum CMP remains at $11,000. As required by the Inflation Adjustment Act, we will consider whether an adjustment is needed again in four years.

Dated: September 3, 2013.

Leon Rodriguez,

Director.

[FR Doc. 2013–22006 Filed 9–9–13; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–13–13OE]

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

Image-Assisted Cytology Workload Assessment and Measure—New—Office of Surveillance, Epidemiology, and Laboratory Services (OSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC provides technical guidance to the Department of Health and Human Services (HHS) in coordination with the Centers for Medicare & Medicaid Services (CMS) and the Food and Drug Administration (FDA) for the implementation of the Clinical Laboratory Improvement Amendments (CLIA). The Clinical Laboratory Improvement Amendments of 1988 (CLIA) directed the Secretary of Health and Human Services to establish the maximum number of cytology slides that any individual may screen in a 24 hour period; to establish certain quality assurance standards; to set personnel standards; and to provide for periodic proficiency testing of cytotechnologists and pathologists involved in screening and interpreting cytological preparations.

The regulations implementing CLIA, published in the **Federal Register** of February 28, 1992, established that the maximum number of slides examined by an individual in each 24 hour period was not to exceed 100 slides and could not be examined in less than an eight hour day. The regulation further established that the technical supervisor is required to evaluate the performance of cytotechnologists at least every six months and determine their individual maximum daily workload limit. In 1992, when the regulation was published, all Pap slides were conventional ''Pap smears.'' In a conventional Pap smear, samples are smeared directly onto a glass microscope slide after collection. The cells are often obscured by blood or the smear may be too thick and contain contaminating artifacts. Today, almost all Pap tests in the U.S. are collected with a liquid-based method. Instead of ''smearing'' cervical cells directly onto a glass microscope slide, the cells are sent to the laboratory in a liquid preservative and processed by an automated processor. This processor disperses a uniform thickness representative sample on the slide that is free of obscuring blood, mucus, and non-diagnostic debris in a circle that covers less than one half of the slide.

CLIA's Federal Advisory Committee, the Clinical Laboratory Improvement Advisory Committee (CLIAC), has discussed cytology workload on numerous occasions from 1996 until present. On August 29, 2011 the American Society of Cytopathology's (ASC) Executive Board approved an ASC task force recommendation that the average laboratory cytotechnologist productivity should not exceed 70 slides and that an individual's screening time should not exceed seven (7) hours in a 24 hour period.

Each laboratory will receive an advance request to participate in the Image-Assisted Cytology Workload Practices Survey from a DLSS contractor that has been selected to collect the survey data and conduct the time measure study. Respondents will be cytology supervisors from the 1,245 cytology laboratories in the Unites States. Since a response to this survey is voluntary we would expect an 80% response rate or approximately 996 laboratories. Responses would be submitted in written format. The estimated burden per response is one half hour. In addition, individual cytotechnologists working in the laboratory will be asked to complete the Image-Assisted Cytology Workload Assessment Survey. There are 6,064 cytotechnologists in the United States. Response to this survey is voluntary, so we would expect an 80% response rate or approximately 4,581 cytotechnologists. Responses would be submitted in written format. The estimated burden per response is one half hour. CDC requests OMB approval to collect information for one year.

There are no costs to respondents other than their time.

The total estimated annual burden hours are 2,789.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Cytology Supervisor	Image-Assisted Cytology Workload Practices	996	1	30/60
Cytotechnologists	Image-Assisted Cytology Workload Assessment.	4,581	1	30/60

Leroy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–21911 Filed 9–9–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–13–0199]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to LeRoy Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should

be received within 60 days of this notice.

Proposed Project: Importation of Etiologic Agents (42 CFR 71.54) (OMB Control No. 0920–0199, exp. 1/31/2014)—Revision—Office of Public Health Preparedness and Response (OPHPR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 361 of the Public Health Service Act (42 U.S.C. 264), as amended, authorizes the Secretary of Health and Human Services to make and enforce such regulations as are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. Part 71 of Title 42, Code of Federal Regulations (Foreign Quarantine) sets forth provisions to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the United States. Subpart F—Importations—contains provisions for the importation of infectious biological agents, infectious substances, and vectors (42 CFR 71.54); requiring persons that import these materials to obtain a permit issued by the CDC.

CDC requests Office of Management and Budget approval to collect information for three years using the Application for Permit to Import Biological Agents, Infectious Substances and Vectors of Human Disease into the United States and Application for a Permit to Import or Transport Live Bats. We are also requesting a title change to read—*Application for Permit to Import Infectious Biological Agents into the United States (42 CFR 71.54.*

The Application for Permit to Import Biological Agents, Infectious Substances and Vectors of Human Disease into the United States form is used by laboratory facilities, such as those operated by government agencies, universities, and research institutions to request a permit for the importation of biological agents, infectious substances, or vectors of human disease. This form currently requests applicant and sender contact information; description of material for importation; facility isolation and containment information; and personnel qualifications. CDC plans to revise this application to request information on where the imported material will be stored at the recipient facility and who would be responsible for this location; verification that the permittee has implemented biosafety measures commensurate with the hazard posed by the infectious biological agent, infectious substance, and/or vector to be imported, and the level of risk given its intended use; and a secondary contact information for the permittee to provide in case the permittee is unavailable. These additional data requests will not affect the burden hours.

The Application for Permit to Import or Transport Live Bats form is used by laboratory facilities such as those operated by government agencies, universities, research institutions, and for educational, exhibition, or scientific purposes to request a permit for the importation, and any subsequent distribution after importation, of live bats. This form currently requests the applicant and sender contact information; a description and intended use of bats to be imported; and facility isolation and containment information. CDC plans to revise this application to request secondary contact information for the permittee to provide in case the permittee is unavailable. These additional data requests will not affect the burden hours.

Estimates of burden for the survey are based on information obtained from the CDC import permit database on the number of permits issued on annual basis since 2010. The total estimated burden for the one-time data collection is 545 hours.

There are no costs to respondents except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Applicants Requesting to Import Biological Agents, Infectious Substances and Vectors.	Application for Permit to Import Biological Agents, Infectious Substances and Vectors of Human Disease into the United States.	1,625	1	20/60	542
Applicants Requesting to Import Live Bats.	Application for a Permit to Import Live Bats.	10	1	20/60	3
Total					545

LeRoy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–21974 Filed 9–9–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1064]

Agency Information Collection Activities; Proposed Collection; Comment Request; Application for Participation in the Medical Device Fellowship Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the application for participation in the Medical Device Fellowship Program.

DATES: Submit either electronic or written comments on the collection of information by November 12, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Application for Participation in the Medical Device Fellowship Program—(OMB Control Number 0910–0551)—Extension

Sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of Title 5 of the United States Code authorize Federal Agencies to rate applicants for Federal jobs. Collecting applications for the Medical Device Fellowship Program will allow FDA's Center for Devices and Radiological Health (CDRH) to easily and efficiently elicit and review information from students and health care professionals who are interested in becoming involved in CDRH activities. The process will reduce the time and cost of submitting written documentation to the Agency and lessen the likelihood of applications being misrouted within the Agency mail system. It will assist the Agency in promoting and protecting the public health by encouraging outside persons to share their expertise with CDRH.

FDA based these estimates on the number of inquiries that have been received concerning the program and the number of requests for application forms over the past 3 years.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Form FDA No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Application Form (Form FDA 3608)	250	1	250	1	250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 4, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–21893 Filed 9–9–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0880]

Draft Guidance for Industry on Generic Drug User Fee Amendments of 2012: Questions and Answers (Revision 1); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Generic Drug User Fee Amendments of 2012: Questions and Answers (Revision 1).'' The Generic Drug User Fee Amendments of 2012 (GDUFA) is designed to speed the delivery of safe and effective generic drugs to the public and reduce costs to industry. GDUFA enables FDA to assess user fees to support critical and measurable enhancements to FDA's generic drugs program. GDUFA also requires that generic drug facilities, sites, and organizations located around the world provide identification information annually to FDA. This guidance is intended to provide updated answers to common questions from the generic drug industry and other interested parties involved in the development and/or testing of generic drug products regarding the requirements and commitments of GDUFA.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 12, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance 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.

FOR FURTHER INFORMATION CONTACT: Jaewon Hong, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., rm. 4145, Silver Spring, MD 20993, 301–796–6707, *Ask GDUFA@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

GDUFA (Pub. L. 112–144, Title III) was signed into law by the President on July 9, 2012. GDUFA is designed to speed the delivery of safe and effective generic drugs to the public and reduce costs to industry. GDUFA enables FDA to assess user fees to support critical and measurable enhancements to FDA's generic drugs program.

GDUFA establishes fees for abbreviated new drug applications (ANDAs), prior approval supplements (PASs) to ANDAs, and drug master files (DMFs), annual facility fees, and a one-time fee for original ANDAs pending with FDA on October 1, 2012 (backlog fees). Fees are incurred for ANDAs and PASs submitted on or after October 1, 2012. An application fee is also incurred the first time a DMF is referenced in an ANDA or PAS submitted on or after October 1, 2012. FDA previously announced GDUFA fees for fiscal year 2013 in the **Federal Register.** ANDA, PAS, and DMF fees were published on October 25, 2012 (77 FR 65198); the backlog fee was published on October 25, 2012 (77 FR 65199); and facility fees were published on January 17, 2013 (78 FR 3900). GDUFA fees for fiscal year 2014 were announced in the **Federal Register** of August 2, 2013 (78 FR 46977).

On August 27, 2012, FDA announced the availability of a draft guidance for industry entitled ''Generic Drug User Fee Amendments of 2012: Questions and Answers'' (77 FR 51814). The comment period on the draft guidance closed on October 26, 2012. In response to comments received in the docket and to address additional questions that have arisen since the launch of the GDUFA program, FDA has revised the draft guidance and is issuing it again in draft to solicit public comment. Revision 1 clarifies some of the questions and answers in the first version and adds several new questions and answers. The questions and answers address four key categories: Fees; self-identification of facilities, sites, and organizations; review of generic drug submissions; and inspections and compliance.

This revised draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on ''Generic Drug User Fee Amendments of 2012: Questions and Answers (Revision 1).'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). 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. 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.*

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: September 2, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–21891 Filed 9–9–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0503]

Guidance for Clinical Investigators, Sponsors, and Institutional Review Boards on Investigational New Drug Applications—Determining Whether Human Research Studies Can Be Conducted Without an Investigational New Drug Application; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for clinical investigators, sponsors, and institutional review boards (IRBs) entitled ''Investigational New Drug Applications (INDs)—Determining Whether Human Research Studies Can Be Conducted Without an IND.'' The guidance is intended to assist clinical investigators, sponsors, sponsor-investigators, and IRBs in determining whether human research studies must be conducted under an IND. The guidance describes the basic criteria for determining when an IND is required, describes specific situations in which an IND is not required, and addresses a range of issues that, in FDA's experience, have been the source of confusion or misperceptions about the application of the IND regulations.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448; or Outreach and Information Center (HFS–009), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance 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.

FOR FURTHER INFORMATION CONTACT: Peter Taschenberger, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2211, Silver Spring, MD 20993–0002, 301–796–2500, or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210, or David Hattan, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1293.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for clinical investigators, sponsors, and IRBs entitled

''Investigational New Drug Applications (INDs)—Determining Whether Human Research Studies Can Be Conducted Without an IND.'' FDA's primary objectives in requiring the submission of and reviewing an IND are to assure the safety and rights of subjects and, in Phases 2 and 3 of an investigation, to help assure the quality of the scientific evaluation of the drug is adequate to permit an evaluation of the drug's effectiveness and safety.

FDA receives frequent inquiries from external constituents, in particular the academic research community (e.g., clinical investigators, IRBs) and the pharmaceutical industry, about whether various types of human research studies can be conducted without an IND. These inquiries have addressed a range of issues concerning application of the IND requirements in 21 CFR part 312, including clinical investigations using marketed drugs, bioequivalence and bioavailability studies, studies using radiolabeled or cold isotopes, studies using foods or dietary supplements, studies using endogenous compounds, pathogenesis studies using modified organisms, studies using wild-type organisms in challenge models, and studies that do not have a commercial purpose. Because of the volume and nature of inquiries, this guidance is intended to assist clinical investigators, sponsors, sponsor-investigators, and IRBs in determining whether an IND should be submitted for their planned research.

This guidance provides an overview of the general requirements for determining whether a study involving human subjects requires submission of an IND, describes the types of studies that involve drugs but are exempt by regulation from the IND requirements, and addresses a range of issues that commonly arise in inquiries to FDA concerning the application of the IND requirements. This guidance also provides a process for seeking advice from FDA concerning the application of the IND regulations to a planned clinical investigation.

In the **Federal Register** of October 14, 2010 (75 FR 63189), FDA announced the availability of a draft version of this guidance. The October 2010 guidance gave interested persons an opportunity to submit comments through January 12, 2011. All comments received during the comment period have been carefully reviewed and, where appropriate, incorporated in the guidance. Most of the comments related to requests to provide additional clarifications on specific recommendations in the draft guidance. As a result of the public comment, certain sections of the guidance have been reworded to improve clarity. In addition, information has been added to explain the application of the IND regulations to studies of ingredients or products marketed as cosmetics, studies intended to evaluate conventional foods, and studies intended to support a health claim.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on determining whether human research studies can be conducted without an IND. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). 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. 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.*

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/default.htm,* or *http://www.regulations.gov.*

Dated: September 2, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–21889 Filed 9–9–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Draft Guidance for Industry on Bioequivalence Recommendations for Fluticasone Propionate; Salmeterol Xinafoate; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Bioequivalence Recommendations for Fluticasone Propionate; Salmeterol Xinafoate.'' The recommendations provide specific guidance on the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for fluticasone propionate; salmeterol xinafoate.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 12, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance 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.

FOR FURTHER INFORMATION CONTACT: Bhawana Saluja, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–8465.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.* As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. This notice announces the availability of draft BE recommendations for fluticasone propionate; salmeterol xinafoate.

Advair Diskus (fluticasone propionate; salmeterol xinafoate), new drug application 021077, was initially approved by FDA in August 2000. There are no approved ANDAs for this product. FDA is now issuing a draft guidance for industry on BE recommendations for generic fluticasone propionate; salmeterol xinafoate (Draft Fluticasone Propionate; Salmeterol Xinafoate BE Recommendations).

In December 2009, GlaxoSmithKline (GSK), manufacturer of the reference listed drug Advair Diskus, submitted a citizen petition requesting that FDA withhold approval of any ANDA or 505(b)(2) application for generic oral inhalation products containing fluticasone propionate and/or salmeterol xinafoate unless certain conditions were satisfied, including conditions related to demonstrating BE (Docket No. FDA–2009–P–0597). FDA is reviewing the issues raised in the petition. FDA will consider any comments on the Draft Fluticasone Propionate; Salmeterol Xinafoate BE Recommendations before responding to GSK's citizen petition.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the design of BE studies to support ANDAs for fluticasone propionate; salmeterol xinafoate. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). 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. 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.*

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: September 3, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–21892 Filed 9–9–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps (NHSC).

DATES: *Dates and Times:* September 26, 2013, 2:00 p.m.–3:30 p.m. (EST).

Place: The meeting will be via audio conference call.

Status: The meeting will be open to the public.

Agenda: The Council is holding a meeting via conference call to discuss the National Health Service Corps role in the Affordable Care Act. The public can join the meeting via audio conference call on the date and time specified above using the following information: Dial-in number: 1–800–857–5081; Passcode: 1060359. There will be an opportunity for the public to comment towards the end of the call.

FOR FURTHER INFORMATION CONTACT: Njeri Jones, Bureau of Clinician Recruitment and Service, Health Resources and Services Administration, Parklawn Building, Room 13–64, 5600 Fishers Lane, Rockville, Maryland 20857; email: *NJones@hrsa.gov;* telephone: 301–443–2541.

Dated: September 4, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–21966 Filed 9–9–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request: Awareness and Beliefs About Cancer Survey, National Cancer Institute (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 19, 2013, Vol. 78, page 36788 and allowed 60-days for public comment. One public comment was received on June 21, 2013 requesting the data collection plans and instruments. This information was sent to the individual on June 24, 2013. Another comment was received on August 14, 2013. Data collection plans and instruments were sent to the requester on August 14, 2013. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Sarah Kobrin, Division of Cancer Control and Population Sciences, 9609 Medical Center Dr., MSC 9761, Rockville, MD 20852, or call non-toll-free number 240–276–6931 or Email your request, including your address to: *kobrins@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Awareness and Beliefs about Cancer Survey, 0925–NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The objective of the study is gather data about American adults' awareness and beliefs about cancer. The ultimate goal is to determine how individuals' perceptions of cancer may influence their decisions to report signs and symptoms to health care providers, perhaps affecting the disease stage of diagnosis and the effectiveness of treatment. Data will be collected from approximately 2,000 adults aged 50 years or older across the United States will be recruited for the NCI Awareness and Beliefs about Cancer survey over a one-year period.

OMB approval is requested for one year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,334.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Screener	General Public	8,000	1	5/60	667
Survey	Adults 50+ years old	2,000	1	20/60	667

Dated: September 4, 2013.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2013–21977 Filed 9–9–13; 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 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 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; Conflicts R01/K22.

Date: October 30, 2013.

Time: 12:00 p.m. to 2:00 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 E. 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: September 4, 2013.

Michelle Trout,

Program Analyst, Office of the Federal Advisory Committee Policy.

[FR Doc. 2013–21948 Filed 9–9–13; 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 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 a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: October 22, 2013.

Closed: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Intramural Research Program, National Institute on Drug Abuse, NIH, Johns Hopkins Bayview Campus, Baltimore, MD 21223.

Contact Person: Joshua Kysiak, Program Specialist, Biomedical Research Center, Intramural Research Program, National Institute on Drug Abuse, NIH, DHHS, 251 Bayview Boulevard, Baltimore, MD 21224, 443–740–2465, *kysiakjo@nida.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: *September 4, 2013.*

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–21947 Filed 9–9–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Heart Failure.
Date: October 3, 2013.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: DoubleTree by Hilton Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Alicja L. Markowska, Ph.D., DSC, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; AD Registry.
Date: October 30, 2013.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Rebecca J. Ferrell, Ph.D., Scientific Review Officer, National Institute On Aging, Gateway Building Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *ferrellrj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 4, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–21950 Filed 9–9–13; 8:45 am]

BILLING CODE 4140–01–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; PAR10–197 Adjunctive Metabolic Support in Diabetic Ketoacidosis (U34)
Date: October 21, 2013.
Time: 9:30 a.m. to 11:30 a.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: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Digestive Diseases and Nutrition.
Date: October 22, 2013.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.
Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special, Emphasis Panel; DDK–C Conflicts
Date: October 22, 2013.
Time: 4:00 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.
Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.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: September 4, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–21945 Filed 9–9–13; 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: Center for Scientific Review Special Emphasis Panel Member Conflict: Behavioral Genetics and Epidemiology.
Date: September 25, 2013.
Time: 2:00 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member conflict: Multi-sensory structures and functions in the cerebral cortex.
Date: September 30–October 1, 2013.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181 MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group Mechanisms of Sensory, Perceptual, and Cognitive Processes Study Section.
Date: October 3–4, 2013.
Time: 8:00 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW, Washington, DC 20037.

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group Intercellular Interactions Study Section.
Date: October 3–4, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Garden Inn, 7301 Waverly Street, Bethesda, MD 21045.
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: Center for Scientific Review Special Emphasis Panel Member Conflict: Immunology.
Date: October 4, 2013.
Time: 10:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW, Washington, DC 20037.
Contact Person: Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group Biochemistry and Biophysics of Membranes Study Section.
Date: October 7–8, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.
Contact Person: Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group, Development—1 Study Section.
Date: October 8, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Torrance Marriott South Bay, 3635 Fashion Way, Torrance, CA 90503.
Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group Cardiovascular Differentiation and Development Study Section.
Date: October 9, 2013.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20817–7814, 301–435–0904, *sara.ahlgren@nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group Instrumentation and Systems Development Study Section.
Date: October 9–10, 2013.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Kathryn Kalasinsky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158 MSC 7806, Bethesda, MD 20892, 301–402–1074, *kalasinskyks@mail.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group Vector Biology Study Section.
Date: October 9, 2013.
Time: 8:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street NW., Washington, DC 20037.
Contact Person: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–402–5671, *zhengli@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: September 4, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–21942 Filed 9–9–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Institute on Aging Initial Review Group; Clinical Aging Review Committee.
Date: October 3–4, 2013.
Time: 4:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree by Hilton Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Alicja L. Markowska, Ph.D., DSC, National Institute On Aging, National Institutes Of Health, Gateway Building 2c212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 4, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–21951 Filed 9–9–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Institute on Deafness and Other Communication Disorders Special Emphasis Panel.
Date: September 30, 2013.
Time: 2:00 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301–402–3587, *rayk@nidcd.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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 4, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–21941 Filed 9–9–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering Amended; Notice of Meeting

Notice is hereby given a change in the meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, November 6, 2013, 8:00 a.m. to 5:00 p.m., National Institutes of Health, Democracy II, Suite 951, 6707 Democracy Boulevard, Bethesda, Maryland 20892 which was published in the **Federal Register** on August 27, 2013, 78FR52938.

The meeting notice is amended to change the title from ''K Award Teleconference Review Meeting'' to ''K Awards Review Meeting.'' The meeting time has been changed from 8:00 a.m.–5:00 p.m. to 10:00 a.m.–5:00 p.m. The meeting is closed to the public.

Dated: September 4, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–21944 Filed 9–9–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; R25–T32 Training Grant Review.

Date: October 22, 2013.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 951, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Steven J. Zullo, Ph.D., Scientific Review Officer, National Institutes of Health/NIBIB, 6707 Democracy Boulevard/Room 227, Bethesda, MD 20892, 301–451–4774, *Steven.zullo@nih.gov*.

Dated: September 4, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–21943 Filed 9–9–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Mentored Transition to Independence.

Date: October 3–4, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854, 301–983–7019.

Contact Person: Giuseppe Pintucci, Ph.D. Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301–435–0287, *Pintuccig@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 4, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–21946 Filed 9–9–13; 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: Center for Scientific Review Special Emphasis Panel; Chronic Disease Epidemiology.

Date: September 23, 2013.

Time: 12:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.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.

Name of Committee: Vascular and Hematology Integrated Review Group; Atherosclerosis and Inflammation of the Cardiovascular System Study Section.

Date: October 1–2, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katherine M Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0912, *Katherine_Malinda@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Immunopathology and Immunotherapy Study Section.

Date: October 3, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott at Metro Center, 775 12th Street NW., District of Columbia, DC 20005.

Contact Person: Denise R Shaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Clinical Molecular Imaging and Probe Development.

Date: October 3–4, 2013.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: David L Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *williamsdl2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–11–216: Early Phase Clinical Trials in Imaging and Image-Guided Interventions.

Date: October 4, 2013.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: David L Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *williamsdl2@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.

Date: October 7, 2013.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurotoxicology and Alcohol Study Section.

Date: October 7, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Christine Melchior, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176 MSC 7844 Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Molecular Neuropharmacology and Signaling Study Section.

Date: October 7–8, 2013.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

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: Brain Disorders and Clinical Neuroscience Integrated Review Group; Aging Systems and Geriatrics Study Section.

Date: October 7–8, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: James P Harwood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168 MSC 7840 Bethesda, MD 20892, (301) 435–1256, *harwoodj@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Medical Imaging Study Section.

Date: October 7–8, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Xiang-Ning Li, MD, 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.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Developmental Therapeutics Study Section.

Date: October 7–8, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Sharon K Gubanich, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 408–9512, *gubanics@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology B Study Section.

Date: October 7–8, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

Contact Person: Lee Rosen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology A Study Section.

Date: October 7–8, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

Contact Person: Behrouz Shabestari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–2409, *shabestb@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Pathobiology of Kidney Disease Study Section.

Date: October 7, 2013

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.

Date: October 7–8, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Avenue Hotel Chicago, 150 E. Huron Street, Chicago, IL 60611.

Contact Person: George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biochemistry and Biophysics of Membranes.

Date: October 7, 2013.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: John L. Bowers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1725, *bowersj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; R15: Skeletal Biology, Dermatology, Dental, Muscle, Biomaterial and Tissue Engineering.

Date: October 8, 2013.

Time: 7:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Learning and Memory Study Section.

Date: October 8, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5181 MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@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: September 4, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–21949 Filed 9–9–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2013–0020]

Privacy Act of 1974; Department of Homeland Security Transportation Security Administration—DHS/TSA–019 Secure Flight Records System of Records

AGENCY: Department of Homeland Security.

ACTION: Notice of modified Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/Transportation Security Administration—DHS/TSA–019 Secure Flight Records System of Records.'' This system of records allows the Department of Homeland Security/Transportation Security Administration to collect and maintain records on aviation passengers and certain non-travelers to screen such individuals, before they access airport sterile areas or board aircraft, in order to identify and prevent a threat to aviation security or the lives of passengers and others. TSA is reissuing this system of records to update the categories of records to include whether a passenger will receive expedited, standard, or enhanced screening. The primary impact of this change will be the identification of additional passengers who are eligible for expedited screening at participating airport security checkpoints. This updated system will be included in the Department of Homeland Security's inventory of system of records.

DATES: Submit comments on or before October 10, 2013. This updated system will be effective upon publication except that the change to the categories of records will be effective 30 days after date of publication in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number DHS–2013–0020 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Peter Pietra, Privacy Officer, TSA–36, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6036; email: *TSAPrivacy@dhs.gov.* For privacy questions, please contact: Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS)/Transportation Security Administration (TSA) proposes to update and reissue a current DHS system of records titled, ''DHS/TSA–019 Secure Flight Records System of Records.'' This system of records notice was last updated on November 19, 2012.[1] TSA is modifying the DHS/TSA–019 Secure Flight Records system of records Categories of Records section in subsection (a) to add records containing the results from TSA's intelligence-driven risk-based analysis of Secure Flight Passenger Data (SFPD). Secure Flight Passenger Data is full name, gender, date of birth, redress number or Known Traveler number, passport information (if applicable), reservation control number, record sequence number, record type, passenger update indicator, traveler reference number, and itinerary information. 49 CFR § 1560.

Under sec. 4012(a)(1)–(2) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA),[2] Congress directed TSA and DHS to assume from aircraft operators the function of comparing aircraft operator passenger information to data in the Terrorist Screening Database (TSDB) maintained by the Terrorist Screening Center (TSC).[3]

[1] 77 FR 69491 (Nov. 19, 2012).

[2] Public Law 108–458, 118 Stat. 3638 (December 17, 2004).

[3] The TSC maintains the Federal government's consolidated and integrated terrorist watch list, known as the TSDB. The TSC was established by the Attorney General in coordination with the Secretary of State, the Secretary of Homeland Security, the Director of the Central Intelligence Agency, the Secretary of the Treasury, and the Secretary of Defense. The Attorney General, acting

In order to implement this statutory directive, TSA promulgated the Secure Flight Program regulations [4] for the purpose of enhancing the security of air travel in the United States and to support the federal government's counter-terrorism efforts by assisting in the detection of individuals on federal government watch lists who seek to travel by air, and to facilitate the secure travel of the public. TSA fully assumed the watch list matching function from aircraft operators and air carriers by November 2010.

TSA established the Secure Flight system of records and published the System of Records Notice (SORN) in the **Federal Register** on August 23, 2007.[5] TSA updated and republished the SORN in the **Federal Register** on November 9, 2007,[6] and again on November 19, 2012.[7] Information collection falls under OMB Control Number 1652–0046.

As part of TSA's ongoing efforts to identify appropriate security screening for commercial aviation travelers, TSA plans to implement a risk-based analysis of passenger and flight data provided through the computer system that processes Secure Flight and other data. TSA is amending the Secure Flight SORN to reflect this addition to TSA's passenger prescreening capabilities. Prescreening involves the use of information to make decisions *before* the passenger receives a boarding pass, to determine what level of physical screening the passenger will receive when he or she arrives at the TSA airport security checkpoint. This change is part of TSA's ongoing efforts to identify appropriate screening for travelers, including those who present a lower security risk. The primary result of this change will be the identification of passengers who are eligible for expedited screening at participating airport security checkpoints.[8]

Risk-based Analysis of Passenger and Flight Data

TSA's risk-based analysis is designed to increase the number of airline passengers who may be eligible for expedited screening.[9] The risk-based analysis is applied to secure flight passenger data, including travel itinerary, that TSA already receives pursuant to the Secure Flight regulations, and to frequent flyer information that aircraft operators submit to TSA. TSA is not collecting any new passenger information for the risk-based analysis.

TSA's risk-based analysis of SFPD also may be used to give greater scrutiny to a particular flight or individual when, based on current intelligence or other factors, TSA concludes that there is greater risk. That greater scrutiny could result in more passengers receiving Selectee screening, fewer passengers receiving expedited screening, or other security procedures not visible to the general public.

The risk-based analysis includes a level of randomness to ensure unpredictable results. One potential result of the randomness is that a passenger who might otherwise receive expedited screening as a result of this process may instead be randomly selected to receive standard screening or enhanced screening, such as explosives detection testing.

Passengers who are a match to a watch list will continue to receive an appropriate screening; this change will not affect those populations. For all other passengers, the passenger prescreening computer system will conduct risk-based analysis of passenger data using the SFPD that TSA already receives from aircraft operators pursuant to the Secure Flight regulations, and frequent flyer information that aircraft operators submit to TSA. TSA will then review this information using intelligence-driven, risk-based analysis to determine whether individual passengers will receive expedited, standard, or enhanced screening; the results will be indicated on the passenger's boarding pass.

No one will be denied the ability to fly or to enter the sterile area [10] of an airport based on the results of the risk-based analysis. The primary result of the risk-based analysis will be the identification of passengers who are eligible for expedited screening at participating airport security checkpoints.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/TSA–019 Secure Flight Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

DEPARTMENT OF HOMELAND SECURITY (DHS)/TRANSPORTATION SECURITY ADMINISTRATION (TSA)-019.

SYSTEM NAME:

DHS/TSA–019 Secure Flight Records.

SECURITY CLASSIFICATION:

Unclassified; Sensitive Security Information.

SYSTEM LOCATION:

Records are maintained at the Transportation Security Administration (TSA), 601 South 12th Street, Arlington, VA, and at other secure TSA facilities in Annapolis Junction, Maryland and Colorado Springs, Colorado. Records also may be maintained at the secured facilities of contractors or other parties that perform functions under the Secure Flight program.

through the Director of the Federal Bureau of Investigation (FBI), established the TSC in support of Homeland Security Presidential Directive 6 (HSPD–6), dated September 16, 2003, which required the Attorney General to establish an organization to consolidate the Federal Government's approach to terrorism screening and to provide for the appropriate and lawful use of terrorist information in screening processes.

[4] 73 FR 64018 (Oct. 28, 2008).

[5] 72 FR 48392.

[6] 72 FR 63711.

[7] 77 FR 69491.

[8] Passengers who are eligible for expedited screening are referred to a TSA Pre□™ expedited screening lane where they typically will be able to leave on their shoes, light outerwear, and belt, to keep their laptop in its case, and to keep their 3–1–1 compliant liquids/gels bag in a carry-on. TSA Pre□™ lanes are available at 40 airports nationwide, with additional expansion planned. See *TSA Pre□™ Now Available at 40 Airports Nationwide: Expedited Screening Begins at Raleigh-Durham International Airport, http://www.tsa.gov/press/releases/2013/03/28/tsa-pre%E2%9C%93%E2%84%A2-now-available-40-airports-nationwide-expedited-screening-begins.*

[9] Individuals who are a match to a watch list, however, are not eligible for expedited screening.

[10] ''Sterile area'' means a portion of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which the access generally is controlled by TSA, an aircraft operator, or a foreign air carrier through the screening of persons and property. 49 CFR § 1540.5.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who attempt to make reservations for travel on, have traveled on, or have reservations to travel on a flight operated by a U.S. aircraft operator, or a flight into, out of, or overflying the United States that is operated by a foreign air carrier, or flights operated by the U.S. government, including flights chartered or leased by the U.S. government;

(b) Non-traveling individuals who seek to obtain authorization from an aircraft or airport operator to enter the sterile area of an airport;

(c) For flights that TSA grants a request by the operators of leased or charter aircraft with a maximum take-off weight over 12,500 pounds to screen the individuals using Secure Flight, the following individuals: (1) individuals who seek to charter or lease an aircraft with a maximum take-off weight over 12,500 pounds or who are proposed to be transported on or operate such charter aircraft; and (2) owners and/or operators of such chartered or leased aircraft;

(d)(1) Known or suspected terrorists identified in the Terrorist Screening Database (TSDB) maintained by the Terrorist Screening Center (TSC); and (2) individuals identified on classified and unclassified governmental databases such as law enforcement, immigration, or intelligence databases;

(e) Individuals who have been distinguished from individuals on a watch list through a redress process, or other means; and

(f) Individuals who are identified as Known Travelers for whom the federal government has conducted a security threat assessment and determined do not pose a security threat.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Records containing passenger and flight information (*e.g.,* full name, date of birth, gender, redress number, known traveler number, passport information, frequent flyer designator code or other identity authentication/verification code obtained from aircraft operators, and itinerary); records containing the results of risk-based analysis in the TSA passenger prescreening system, including boarding pass printing results; records containing information about non-traveling individuals seeking access to an airport sterile area for a purpose approved by TSA; and records containing information about individuals who seek to charter, lease, operate or be transported on aircraft with a maximum take-off weight over 12,500 pounds if TSA grants the request of an aircraft owner or operator to use Secure Flight;

(b) Records containing information from an individual's form of identification or a physical description of the individual;

(c) Records obtained from the TSC of known or suspected terrorists in the TSDB; and records regarding individuals identified on classified and unclassified governmental watch lists;

(d) Records containing the matching analyses and results of comparisons of individuals to the TSDB and other classified and unclassified governmental watch lists.

(e) Records related to communications between or among TSA and aircraft operators, airport operators, owners and/or operators of leased or charter aircraft with a maximum take-off weight over 12,500 pounds, TSC, law enforcement agencies, intelligence agencies, and agencies responsible for airspace safety or security, regarding the screening status of passengers or non-traveling individuals and any operational responses to individuals identified in the TSDB;

(f) Records of the redress process that include information on known misidentified persons, including any Redress Number assigned to those individuals;

(g) Records that track the receipt, use, access, or transmission of information as part of the Secure Flight program;

(h) Electronic System for Travel Authorization status code generated by U.S. Customs and Border Protection (CBP) for international travelers; and

(i) Records containing information about individuals who are identified as Known Travelers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 114, 40113, 44901, 44903, and 44909.

PURPOSE(S):

The Secure Flight Records system will be used to identify and protect against potential and actual threats to transportation security and support the Federal Government's counterterrorism efforts by assisting in the identification of individuals who warrant further scrutiny prior to boarding an aircraft or seek to enter a sterile area or who warrant denial of boarding or denial of entry to a sterile area on security grounds. It also will be used to identify individuals who are lower risk and therefore may be eligible for expedited screening at the airport security checkpoint. Both of these functions are designed to facilitate the secure travel of the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To the TSC in order to: (a) Determine whether an individual is a positive identity match to an individual identified as a known or suspected terrorist in the watch list; (b) allow redress of passenger complaints; (c) facilitate an operational response, if one is deemed appropriate, for individuals who are a positive identity match to an individual identified as a known or suspected terrorist in the watch list; (d) provide information and analysis about terrorist encounters and known or suspected terrorist associates to appropriate domestic and foreign government agencies and officials for counterterrorism purposes; and (e) perform technical implementation functions necessary for the Secure Flight program.

(2) To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

(3) To aircraft operators, foreign air carriers, airport operators, the Department of Transportation, and the Department of Defense or other U.S. government agencies or institutions, to communicate individual screening status, and facilitate an operational response, where appropriate, to individuals who pose or are suspected of posing a risk to transportation or national security.

To aircraft operators or foreign air carriers, to communicate individual screening status, where appropriate, to individuals who are a low risk to transportation or National security

(4) To owners or operators of leased or charter aircraft to communicate individual screening status and facilitate an operational response, where appropriate, to individuals who pose or are suspected of posing a risk to transportation or national security.

(5) To the appropriate federal, state, local, tribal, territorial, or foreign, agency regarding or to identify individuals who pose, or are under reasonable suspicion of posing, a risk to transportation or national security.

(6) To the Department of Justice (DOJ) or other Federal agency for purposes of conducting litigation or administrative proceedings, when: (a) the Department

of Homeland Security (DHS), or (b) any employee or former employee of DHS in his/her official capacity, or (c) any employee or former employee of DHS in his/her individual capacity where the DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or proceeding or has an interest in such litigation or proceeding.

(7) To the National Archives and Records Administration (NARA) or other Federal agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

(8) To a congressional office in response to an inquiry from that congressional office made at the request of the individual.

(9) To the Government Accountability Office or other agency, organization, or individual for the purposes of performing authorized audit or oversight operations, but only such information as is necessary and relevant to such audit and oversight functions.

(10) To the appropriate federal, state, local, tribal, territorial, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order regarding a violation or potential violation of civil or criminal law, regulation, or order when such disclosure is proper and consistent with the performance of the official duties of the person making the disclosure.

(11) To international and foreign governmental authorities in accordance with law and formal or informal international agreements when such disclosure is proper and consistent with the performance of the official duties of the person making the disclosure.

(12) To appropriate agencies, entities, and persons when (a) TSA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) TSA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TSA or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with TSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(13) To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, including the World Health Organization, for purposes of assisting such agencies or organizations in preventing exposure to or transmission of communicable or quarantinable disease or for combating other significant public health threats; appropriate notice will be provided of any identified health threat or risk.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained at the Transportation Security Administration, 601 South 12th Street, Arlington, VA, and at other secure TSA facilities in Annapolis Junction, Maryland and Colorado Springs, Colorado. Records also may be maintained at the secured facilities of contractors or other parties that perform functions under the Secure Flight program. The records are stored on magnetic disc, tape, digital media, and CD–ROM, and may also be retained in hard copy format in secure file folders or safes.

RETRIEVABILITY:

Data are retrievable by the individual's name or other identifier, as well as non-identifying information such as itinerary.

SAFEGUARDS:

All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. The system is also protected through a multi-layer security approach. The protective strategies are physical, technical, administrative and environmental in nature and provide role-based access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, including encryption, authentication of sending parties, compartmentalizing databases; auditing software and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

Information in this system is safeguarded in accordance with applicable rules and policies, including any applicable TSA and DHS automated systems security and access policies. The system will be in compliance with Office of Management and Budget and National Institute of Standards and Technology guidance. Access to the computer system containing the records in this system of records is limited to those individuals who require it to perform their official duties. The computer system also maintains a real-time audit of individuals who access the system.

RETENTION AND DISPOSAL:

Records relating to an individual determined by the automated matching process to be neither a match nor or potential match to a watchlist will be destroyed within seven days after completion of the last leg of the individual's directional travel itinerary. Records relating to an individual determined by the automated matching process to be a potential watch list match will be retained for seven years after the completion of the individual's directional travel itinerary. Records relating to an individual determined to be a confirmed watchlist match will be retained for 99 years after the date of match confirmation.

Lists of individuals stored in Secure Flight, such as individuals identified as Known Travelers and individuals who have been disqualified from eligibility to receive expedited screening as a result of their involvement in certain security incidents, will be deleted or destroyed when superseded by an updated list.

SYSTEM MANAGER AND ADDRESS:

Secure Flight Mission Support Branch Manager, Transportation Security Administration, TSA–19, 601 South 12th Street, Arlington, VA, 20598–6019.

NOTIFICATION PROCEDURE:

To determine whether this system contains records relating to you, write to the Freedom of Information Act Office, Transportation Security Administration, TSA–20, 601 South 12th Street, Arlington, VA 20598–6020.

RECORD ACCESS PROCEDURES:

Requests for records access must be in writing and should be addressed to the Freedom of Information Act Office, Transportation Security Administration, TSA–20, 601 South 12th Street, Arlington, VA, 20598–6020. Requests should conform to the requirements of 6 CFR part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS. The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under

penalty of perjury. Some information may be exempt from access provisions. An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

Individuals who believe they have been improperly denied entry by CBP, refused boarding for transportation, or identified for additional screening may submit a redress request through the DHS Traveler Redress Program (''TRIP'') (see 72 FR 2294, January 18, 2007). TRIP is a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs—like airports and train stations or crossing U.S. borders. Through TRIP, a traveler can correct erroneous data stored in Secure Flight and other data stored in other DHS databases through one application. Additionally, for further information on the Secure Flight program and the redress options please see the accompanying Privacy Impact Assessment for Secure Flight published on the DHS Web site at *www.dhs.gov/privacy.* Redress requests should be sent to: DHS Traveler Redress Inquiry Program (TRIP), TSA–901, 601 South 12th Street, Arlington, VA 20598–6036 or online at *http://www.dhs.gov/trip.*

CONTESTING RECORD PROCEDURES:

Same as ''Notification Procedure'' and ''Record Access Procedure'' above.

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from U.S. aircraft operators, foreign air carriers, the owners and operators of leased or charter aircraft with a maximum take-off weight over 12,500 pounds who request TSA screening, the TSC, TSA employees, airport operators, Federal executive branch agencies, Federal judicial and legislative branch entities, State, local, international, and other governmental agencies, private entities for Known Traveler program participants, and the individuals to whom the records in the system pertain.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemption will be asserted with respect to identifying information, or flight information, obtained from passengers, non-travelers, and aircraft owners or operators.

This system, however, may contain records or information recompiled from or created from information contained in other systems of records, which are exempt from certain provisions of the Privacy Act. For these records or information only, in accordance with 5 U.S.C. 552a(j)(2) and (k)(2), TSA claims the following exemptions for these records or information from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f); and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information. Certain portions or all of these records may be exempt from disclosure pursuant to these exemptions. A Final Rule was promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and can be found at 72 FR 63706 (Nov. 9, 2007).

Dated: September 4, 2013.

Jonathan R. Cantor,

Acting Chief Privacy Officer. Department of Homeland Security.

[FR Doc. 2013–21980 Filed 9–9–13; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2013–0040]

Privacy Act of 1974; Department of Homeland Security/Transportation Security Administration—DHS/TSA–021 TSA Pre✓™ Application Program System of Records

AGENCY: Department of Homeland Security.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to establish a new Department of Homeland Security system of records titled, ''Department of Homeland Security/Transportation Security Administration—DHS/TSA–021 TSA Pre✓™ Application Program System of Records.'' This system of records allows the Department of Homeland Security/Transportation Security Administration to collect and maintain records on individuals who voluntarily submit information to the Transportation Security Administration for use by the agency to perform a security threat assessment. The security threat assessment will be used to identify persons who pose a low risk to transportation security and therefore may be eligible for expedited screening at participating U.S. airport security checkpoints. Additionally, the Department of Homeland Security is issuing a Notice of Proposed Rulemaking elsewhere in the **Federal Register** to exempt some records from this system of records from certain provisions of the Privacy Act. This newly established system will be included in the Department of Homeland Security's inventory of systems of records.

DATES: Submit comments on or before October 10, 2013. This new system will be effective October 10, 2013.

ADDRESSES: You may submit comments, identified by docket number DHS–2013–0040 by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 202–343–4010.
- Mail: Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Peter Pietra, TSA Privacy Officer, TSA–036, 601 South 12th Street, Arlington, VA 20598–6036; or email at *TSAprivacy@dhs.gov.* For privacy questions, please contact: Jonathan R. Cantor, (202) 343–1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS)/Transportation Security Administration (TSA) proposes to establish a new DHS system of records titled, ''DHS/TSA–021 TSA Pre✓™ Application Program System of Records.''

TSA is establishing this new system of records to inform the public of the collection, maintenance, dissemination, and use of records on individuals who voluntarily submit personally identifiable information to the TSA Pre✓™ Application Program. TSA will use the information provided by applicants [1] to the Program to perform a

[1] Further information on information collection can be found in Intent To Request Approval From OMB of One New Public Collection of Information: TSA Pre✓™ Trusted Traveler Program; Republication, 78 FR 45256 (July 26, 2013) (republished for technical correction).

security threat assessment to identify individuals who present a low risk to transportation security. This passenger prescreening enables TSA to determine the appropriate level of security screening the passenger will receive before the passenger receives a boarding pass.

TSA Pre✓™ Application Program. TSA Pre✓™ is a passenger prescreening initiative for low risk passengers who are eligible to receive expedited screening at participating U.S. airport security checkpoints.[2] TSA Pre✓™ is one of several expedited screening initiatives that TSA is implementing. TSA Pre✓™, as well as the larger set of expedited screening initiatives, enhance aviation security by permitting TSA to better focus its limited security resources on passengers who are more likely to pose a threat to civil aviation, while also facilitating and improving the commercial aviation travel experience for the public.

TSA is implementing the TSA Pre✓™ Application Program pursuant to its authority under section 109(a)(3) of the Aviation and Transportation Security Act (ATSA), Public Law 107–71 (115 Stat. 597, 613, Nov. 19, 2001, codified at 49 U.S.C. 114 note). That section authorizes TSA to ''[e]stablish requirements to implement trusted passenger programs and use available technologies to expedite security screening of passengers who participate in such programs, thereby allowing security screening personnel to focus on those passengers who should be subject to more extensive screening.''

Members of the public who apply to the TSA Pre✓™ Application Program will be required to pay a fee. Section 540 of the DHS Appropriations Act, 2006, Public Law 109–90 (119 Stat. 2064, 2088–89, Oct. 18, 2005), authorizes TSA to establish and collect a fee for any registered traveler program by publication of a notice in the **Federal Register**. The Department of Homeland Security is issuing a separate notice of the fee for the TSA Pre✓™ Application Program elsewhere in the **Federal Register**.

To apply to the TSA Pre✓™ Application Program, individuals will submit biographic and biometric information to TSA. TSA will use the information to conduct a security threat assessment of law enforcement, immigration, and intelligence databases, including a fingerprint-based criminal history records check conducted through the Federal Bureau of Investigation (FBI). The results will be used by TSA to decide if an individual poses a low risk to transportation or national security. TSA will provide individuals who meet the standards of the security threat assessment a Known Traveler Number (KTN).[3]

The list of individuals approved under the TSA Pre✓™ Application Program, including their name, date of birth, gender, and KTN, will be provided to the TSA Secure Flight passenger prescreening system.[4] The Secure Flight system will not receive other applicant information that is maintained in the TSA Pre✓™ Application Program system of records.[5]

Eligibility for the TSA Pre✓™ Application Program is within the sole discretion of TSA, which will notify applicants who are denied eligibility in writing of the reasons for the denial. If initially deemed ineligible, applicants will have an opportunity to correct cases of misidentification or inaccurate criminal or immigration records. Consistent with 28 CFR 50.12 in cases involving criminal records, and before making a final eligibility decision, TSA will advise the applicant that the FBI criminal record discloses information that would disqualify him or her from the TSA Pre✓™ Application Program. Within 30 days after being advised that the criminal record received from the FBI discloses a disqualifying criminal offense, the applicant must notify TSA in writing of his or her intent to correct any information he or she believes to be inaccurate. The applicant must provide a certified revised record, or the appropriate court must forward a certified true copy of the information, prior to TSA approving eligibility of the applicant for the TSA Pre✓™ Application Program. With respect to immigration records, within 30 days after being advised that the immigration records indicate that the applicant is ineligible for the TSA Pre✓™ Application Program, the applicant must notify TSA in writing of his or her intent to correct any information believed to be inaccurate. TSA will review any information submitted and make a final decision. If neither notification nor a corrected record is received by TSA, TSA may make a final determination to deny eligibility. Individuals whom TSA determines are ineligible for the program will continue to be screened at airport security checkpoints according to TSA standard screening protocols.

To be eligible for expedited screening in a TSA Pre✓™ lane, the passenger will provide his or her KTN to the airline when making flight reservations. When the airline sends the passenger's Secure Flight Passenger Data (SFPD)[6] that includes a KTN to the Secure Flight passenger prescreening system, TSA will compare that information against the TSA Pre✓™ Application Program list (as well as watch lists) in Secure Flight before issuing an appropriate boarding pass printing instruction. If the passenger's identifying information matches the entry on the TSA Pre✓™ Application Program list, the passenger will be eligible for expedited screening.

Enrollment into the TSA Pre✓™ Application Program, and use of the associated KTN, does not guarantee that an individual always will receive expedited screening at airport security checkpoints. The Program retains a component of randomness to maintain the element of unpredictability for security purposes. Accordingly, persons who have been enrolled in the TSA Pre✓™ Application Program may be randomly selected for standard physical screening on occasion. In addition, although the number of TSA Pre✓™ lanes at U.S. airports is increasing, TSA Pre✓™ is not yet available for all airports, all airlines or all flights.

DHS Information Sharing. Consistent with DHS's information-sharing mission, TSA may share information stored in the DHS/TSA–021 TSA Pre✓™ Application Program system of records with other DHS components

[2] Passengers who are eligible for expedited screening through a dedicated TSA Pre✓™ lane typically will receive more limited physical screening, *e.g.,* will be able to leave on their shoes, light outerwear, and belt, to keep their laptop in its case, and to keep their 3–1–1 compliant liquids/gels bag in a carry-on. TSA Pre✓™ lanes are available at 40 airports nationwide, with additional expansion planned. See *TSA Pre✓™ Now Available at 40 Airports Nationwide: Expedited Screening Begins at Raleigh-Durham International Airport, http://www.tsa.gov/press/releases/2013/03/28/tsa-pre%E2%9C%93%E2%84%A2-now-available-40-airports-nationwide-expedited-screening-begins.*

[3] The Known Traveler Number is a component of Secure Flight Passenger Data (SFPD), both of which are defined in the Secure Flight regulations at 49 CFR 1560.3. *See also* the Secure Flight regulations at 49 CFR Part 1560.

[4] See the Privacy Impact Assessment for the Secure Flight Program, DHS/TSA/PIA–018(e), at *http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_tsa_secureflight_update018(e).pdf. See also* the Secure Flight SORN, DHS/TSA 019, *https://www.federalregister.gov/articles/2012/11/19/2012-28058/privacy-act-of-1974-system-of-records-secure-flight-records.* The Secure Flight SORN is being updated for other reasons.

[5] This System of Records Notice does not cover all individuals who may be eligible for TSA Pre✓™ expedited screening through some other means (for example, U.S. Customs and Border Protection Global Entry members, Members of the Armed Forces). This system only covers individuals who apply to TSA for enrollment in the TSA Pre✓™ Application Program.

[6] SFPD consists of name, gender, date of birth, passport information (if available), redress number (if available), Known Traveler number (if available), reservation control number, record sequence number, record type, passenger update indicator, traveler reference number, and itinerary information.

that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, TSA may share information with appropriate Federal, state, local, tribal, territorial, or foreign government agencies consistent with the routine uses set forth in this system of records notice.

Notice of Proposed Rulemaking. DHS is issuing a notice of proposed rulemaking to accompany this SORN elsewhere in the **Federal Register** to exempt some records from this system of records (*see* ''Exemptions claimed for the system'') from certain provisions of the Privacy Act. This newly established system will be included in DHS's inventory of record systems which can be found at *www.DHS.gov/privacy*.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/TSA–021 TSA Pre✓™ Application Program System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/Transportation Security Administration (TSA) DHS/TSA–021

SYSTEM NAME:

DHS/TSA–021 TSA Pre✓™ Application Program

SECURITY CLASSIFICATION:

Classified, unclassified, Sensitive Security Information.

SYSTEM LOCATION:

Records will be maintained at the Transportation Security Administration (TSA), 601 South 12th Street, Arlington, VA 20598, and at TSA facilities in Annapolis Junction, Maryland, and Colorado Springs, Colorado. Records also may be maintained at other authorized TSA or DHS facilities, or by TSA contractors or other parties that perform functions under this program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply to, or participate in the TSA Pre✓™ Application Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system may contain any, or all, of the following information regarding individuals covered by this system:

(a) Name (including aliases or variations of spelling);

(b) Gender;

(c) Current and historical contact information (including, but not limited to, address, telephone number, and email address);

(d) Date and place of birth;

(e) Physical description, fingerprint and/or other biometric identifier, including photograph;

(f) Control number, Social Security Number (SSN), or other unique identification number assigned to an individual;

(g) Information necessary to assist in tracking submissions, payments, and transmission of records;

(h) Other data as required by Form FD–258 (fingerprint card) or other standard fingerprint cards used by the federal government;

(i) Information provided by individuals covered by this system in support of their application, such as driver's license, passport or other documents used to verify identity, confirm immigration status, or other eligibility requirements;

(j) Criminal history records;

(k) Records obtained from the Terrorist Screening Center of known or suspected terrorists in the Terrorist Screening Database; and records regarding individuals identified on classified and unclassified governmental watch lists used or maintained by TSA;

(l) Records containing the matching analyses and results of comparisons of individuals to the TSDB and other classified and unclassified governmental databases, such as law enforcement, immigration, or intelligence databases, and individuals who have been distinguished from individuals on a watch list through a redress process or other means;

(m) Other information provided by federal, state, local, tribal, territorial, and foreign government agencies or other entities relevant to the security threat assessment and adjudication of the application;

(n) Results of any analysis performed for security threat assessments and adjudications; and

(o) Communications between TSA and applicants regarding the results of the security threat assessments and adjudications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 109(a)(3) of the Aviation and Transportation Security Act, Public L. 107–71 (Nov. 19, 2001, codified at 49 U.S.C. 114 note).

PURPOSE(S):

The purpose of the TSA Pre✓™ Application Program is to:

(a) perform security threat assessments and to identify individuals who are a low risk to transportation or national security and are therefore eligible to receive expedited security screening;

(b) assist in the management and tracking of the status of security threat assessments of individuals who apply to the TSA Pre✓™ Application Program;

(c) permit the retrieval of the results of security threat assessments, including criminal history records checks and searches in other governmental data systems, performed on the individuals covered by this system;

(d) permit the retrieval of information from other terrorist-related, law enforcement, immigration, and intelligence databases on the individuals covered by this system; and

(e) track the fees incurred, and payment of those fees, when appropriate, for services related to security threat assessments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other federal agencies conducting litigation or in proceedings before any court, or adjudicative or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:
1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;
2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and
3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS' efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, territorial, or foreign government law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, including criminal, civil, or regulatory violations, and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the TSC in order to:
1. determine whether an individual is a positive identity match to an individual identified as a known or suspected terrorist in the watch list;
2. allow redress for passenger complaints;
3. facilitate an operational response, if one is deemed appropriate, for individuals who are a positive identity match to an individual identified as a KST in the watch list;
4. provide information and analysis about terrorist encounters and KST associates to appropriate domestic and foreign government agencies and officials for counterterrorism purposes; and
5. perform technical implementation functions necessary for the TSA Pre✓™ Application Program.

I. To the appropriate federal, state, local, tribal, territorial, foreign governments, or other appropriate authority, regarding or to identify individuals who pose, or are under reasonable suspicion of posing, a risk to transportation or national security.

J. To foreign governmental and international authorities, in accordance with law and formal or informal agreements.

K. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage:

The records in this system are stored in secure facilities on paper and in computer-accessible storage, and may be retained in hard copy format in secure file folders or safes.

RETRIEVABILITY:

Records may be retrieved by the individual's name, SSN, other case number assigned by DHS/TSA or other entity/agency, biometric, or a unique identification number, or any other identifying particular assigned or belonging to the individual.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

TSA intends to use existing information technology infrastructure and systems, and other established processes to collect information and conduct the security threat assessment for the TSA Pre✓™ Application Program. In accordance with NARA approved retention and disposal policy N1–560–06–006, records for individuals who:

A. were not identified as a possible security threat will be destroyed one year after DHS/TSA is notified that access based on security threat assessment is no longer is valid;

B. were identified as a possible security threat and subsequently cleared will be destroyed seven years after completion of the security threat assessment or one year after being notified that access to the TSA Pre✓™ Application Program based on the security threat assessment is no longer is valid, whichever is later; and

C. were an actual match to a watchlist or otherwise identified as a potential or actual threat to transportation security will be destroyed 99 years after the security threat assessment or seven years after DHS/TSA is notified the individual is deceased, whichever is earlier.

SYSTEM MANAGER AND ADDRESS:

TSA Pre✓™ Application Program Manager, Transportation Security Administration, TSA–19, 601 South 12th Street, Arlington, VA 20598–6019.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted certain records from this system from the notification, access, and amendment procedures of the Privacy Act because it may contain records or information related to law enforcement or national security purposes. However, DHS/TSA will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may submit a request in writing to the DHS/TSA FOIA Officer. Written requests may be submitted to DHS/TSA FOIA Officer, Freedom of Information Act Office, Transportation Security Administration, TSA–20, 601 South 12th Street, Arlington, VA 20598–6020; or to *foia.tsa@dhs.gov.* If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Acting Chief Privacy Officer and Acting Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature either must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Acting Chief Privacy Officer and Acting Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information contained in this system may be obtained from TSA Pre✓™ Application Program applicants, the TSC, law enforcement, immigration, and intelligence agency record systems, other government databases, and other DHS systems. The sources of information in the criminal history records obtained from the Federal Bureau of Investigation are set forth in the Privacy Act system of records notice entitled Department of Justice Federal Bureau of Investigation–009 Fingerprint Identification Records System (72 FR 3410, January 1, 2007).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system will be exempted from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) pursuant to 5 U.S.C. 552a(k)(1) and (k)(2). In addition, to the extent a record contains information from other exempt systems of records, TSA will rely on the exemptions claimed for those systems. TSA will publish a notice of proposed rulemaking for exemptions to accompany this system of records notice.

Dated: September 4, 2013.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2013–21979 Filed 9–9–13; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0813]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Committee Management; Notice of Committee Re-Establishment.

SUMMARY: The Secretary of Homeland Security has determined that the re-establishment of the Chemical Transportation Advisory Committee (CTAC) is necessary and in the public interest in connection with the performance of duties of the U.S. Coast Guard.

Name of Committee: Chemical Transportation Advisory Committee.

ADDRESSES: If you desire to submit comments on this action, they must be submitted by October 10, 2013. Comments must be identified by (USCG–2013–0813) and may be submitted by using one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments, which are explained in the ''Submitting Comments'' section of the **SUPPLEMENTARY INFORMATION** below.

(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 for the Docket Management Facility is 202–366–9329.

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 the re-establishment of the CTAC, call or email Mr. Patrick Keffler, Commandant (CG–ENG–5), Attention CTAC, U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE STOP 7126, Washington DC 20593–7126; email: *patrick.a.keffler@uscg.mil*; fax: (202) 372–1926. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this notice (USCG–2013–0813), 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 (via *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 deliver, 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 telephone 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*, insert ''USCG–2013–0813'' in the ''Keyword'' box, and click ''Search.'' Then click on the ''Comment'' link on the line associated with this notice. 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 comments 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.

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*, insert ''USCG–2013–0813,'' and click ''Search.'' Click the ''Open Docket Folder'' on the line associated with this notice. You may also visit 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.

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).

Re-Establishment of the Committee

For the reasons set forth below, the Secretary of Homeland Security has determined that the re-establishment of the CTAC is necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

The CTAC is being re-established in accordance with the provisions of the Federal Advisory Committee Act (FACA) 5 U.S.C. App. (Pub. L. 92–463). The charter has been modified to clearly describe the points of view that each member will represent.

The CTAC provides advice and recommendations to the Department of Homeland Security (DHS) on matters relating to the safe and secure marine transportation of hazardous material activities insofar as they relate to matters within United States Coast Guard's (USCG) jurisdiction. The Committee's unique industry perspective will provide critical support to the Coast Guard's efforts to ensure the safety of the U.S. merchant marine. This information would otherwise have to be drawn from the broad population involved in marine chemical transportation. There is no other current entity which can provide the level of technical expertise and experience that is afforded by this advisory committee.

Balanced Membership Plans

The CTAC will consist of a maximum twenty-five (25) members appointed by the Secretary of Homeland Security. Each member must represent a point of view directly relevant to at least one of the following activities associated with marine transportation of hazardous materials: chemical manufacturing, marine handling or transportation of chemicals; vessel design and construction; marine safety or security; and marine environmental protection. To ensure diverse points of view are consistently maintained, the number of members representing each activity may vary with the nature of the CTAC's expected assignments and the relevant experience of the members. All members are appointed to represent the activities of their respective authority, association, and/or organization and are not Special Government Employees as defined in Title 18, United States Code, section 202(a).

Duration: Continuing.

Responsible DHS Officials: CTAC will provide advice and recommendations to the Secretary of the Department of Homeland Security through the Commandant, USCG and the Deputy Commandant for Operations.

Dated: September 3, 2013.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2013–21954 Filed 9–9–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Passenger and Crew Manifest

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Passenger and Crew Manifest (Advance Passenger Information System). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before November 12, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, Office of Regulations and Rulings, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and

Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Passenger and Crew Manifest (Advance Passenger Information System)

OMB Number: 1651–0088

Form Number: None

Abstract: The Advance Passenger Information System (APIS) is an automated method in which U.S. Customs and Border Protection (CBP) receives information about passengers and crew onboard inbound and outbound international flights before their arrival in or departure from the United States. APIS data includes biographical information for international air passengers arriving in or departing from the United States, allowing the data to be checked against CBP databases.

The information is submitted for both commercial and private aircraft flights. Specific data elements required for each passenger and crew member include: full name; date of birth; gender; citizenship; document type; passport number; country of issuance and expiration date; and alien registration number where applicable.

APIS is authorized under the Aviation and Transportation Security Act, Public Law 107–71. Under this statute, the transmission of passenger and crew manifest information is required even for flights where the passengers and crew have already been pre-screened or pre-cleared at the foreign location for admission to the United States. APIS is required under 19 CFR 122.49a, 122.49b, 122.49c, 122.75a, 122.75b, and 122.22.

Respondents submit their electronic manifest either through a direct interface with CBP, or using eAPIS which is a web-based system that can be accessed at *https://eapis.cbp.dhs.gov/.*

Current Actions: This submission is being made to request an extension with no change to the burden hours or to the information collected.

Type of Review: Extension with no change

Affected Public: Businesses, Individuals

Commercial Airlines:

Estimated Number of Respondents: 1,130

Estimated Number of Total Annual Responses: 1,850,878

Estimated Time per Response: 10 minutes

Estimated Total Annual Burden Hours: 307,245

Estimated Costs: $68,361,719

Commercial Airline Passengers (3rd party):

Estimated Number of Respondents: 184,050,663

Estimated Number of Total Annual Responses: 184,050,663

Estimated Time per Response: 10 seconds

Estimated Total Annual Burden Hours: 496,937

Private Aircraft Pilots:

Estimated Number of Respondents: 460,000

Estimated Number of Total Annual Responses: 460,000

Estimated Time per Response: 15 minutes

Estimated Total Annual Burden Hours: 115,000

Dated: September 4, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–22001 Filed 9–9–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information: 1651–0086.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers (ADPs). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (78 FR 36560) on June 18, 2013, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 10, 2013.

ADDRESS: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers.

OMB Number: 1651–0086.

Form Number: None.

Abstract: This collection of information is used by CBP to make distributions of funds pursuant to the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA). 19 U.S.C. 1675c (repealed by the Deficit Reduction Act of 2005, Pub. L. 109–171, § 7601 (Feb. 8, 2006)). This Act prescribes the administrative procedures under which antidumping and countervailing duties assessed on imported products are distributed to affected domestic producers (ADPs) that petitioned for or supported the issuance of the order under which the duties were assessed. The amount of any distribution afforded to these domestic producers is based upon certain qualifying expenditures that they incur after the issuance of the order or finding up to the effective date of the CDSOA's repeal, October 1, 2007. This distribution is known as the

continued dumping and subsidy offset. The claims process for the CDSOA program is provided for in 19 CFR 159.61 and 159.63.

A notice is published in the **Federal Register** in June of each year in order to inform claimants that they can make claims under the CDSOA. In order to make a claim under the CDSOA, CBP Form 7401 may be used. This form is accessible at *http://www.cbp.gov/xp/cgov/toolbox/forms/* and can be submitted electronically through *https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=8776895.*

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours as a result of updated estimates of the number of CDSOA claims prepared on an annual basis. There are no changes to the information collected.

Type of Review: Extension (with change)

Affected Public: Businesses

Estimated Number of Respondents: 1,600

Estimated Number of Responses per Respondent: 1.75

Estimated Total Annual Responses: 2,800

Estimated Time per Response: 60 minutes

Estimated Total Annual Burden Hours: 2,800

Dated: September 4, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–22002 Filed 9–9–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5689–N–07]

60-Day Notice of Proposed Information Collection: Quality Control for Rental Assistance Subsidy Determinations

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* November 12, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Dr. Yves Djoko, Office of Economic Affairs, Department of Housing and Urban Development, 451 7th Street SW., Room 8216, Washington, DC 20410; telephone 202–402–5851 (not a toll-free number). Copies of the proposed forms and other available documents submitted to OMB may be obtained from Dr. Djoko.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). The Department is required by the Improper Payments Act of 2002 to submit annual reports on improper payments associated with its assisted housing programs. The information must meet statistical accuracy tests and requires on-site file reviews and tenant interviews that cannot be accomplished with remote monitoring or HUD data systems. This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including if the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology that will reduce respondent burden (*e.g.,* permitting electronic submission of responses).

A. Overview of Information Collection

Title of Proposal: Quality Control for Rental Assistance Subsidy Determinations.

OMB Approval Number: 2528–0261.

Type of Request: Regular.

Form Number: N/A.

Description of the need for the information and proposed use: The Department is conducting under contract a study to update its estimates of the extent and type of errors associated with income, rent, and subsidy determinations for the 4.3 million households covered by the Public Housing and Section 8 housing subsidies. The Quality Control process involves selecting a nationally representative sample of assisted households to measure the extent and types of errors in rent and income determinations, which in turn cause subsidy errors. On-site tenant interviews, file reviews, third-party income verifications, and income matching with other Federal data are conducted. The data obtained are used to identify the most serious problems and their associated costs. HUD program officers are then responsible for designing and implementing corrective actions. In addition to providing current estimates of error, results will be compared with those from previous years' studies. These comparisons will indicate whether corrective actions initiated since the 2000 study have been effective and if changes in priorities are needed.

The first QC study was completed in 1996 and found that about one-half of the errors measured using on-site tenant interviews and file reviews could not be detected with the 50058/50059 from data collected by the Department, which is why HUD and other agencies with means-tested programs have determined that on-site reviews and interviews are an essential complement to remote monitoring measures. The 2000 study showed that the calculation errors detectable with 50058/50059 data had decreased, probably because this information was increasingly subject to automated computational checks. HUD has initiated a program of corrective actions and increased monitoring since 2000 and recent studies of tenant certification and recertification actions showed significant error reductions in income and rent determinations.

Future studies are planned on an annual basis, as required by legislation. Program monitoring and income matching policies being implemented may eliminate the need for an independent, statistically valid measure of program errors provided by the current study design, but such procedures have yet to be fully implemented and evaluated. The Improper Payments Act of 2002 requires that the Department report on the error measurements annually. This proposed

data collection approval request is for studies to be conducted in 2011, 2012, 2013 and 2014 of prior year certification and recertification actions.

B. Solicitation of Public Comment

These studies will provide current information on the quality of tenant interviews (*e.g.,* whether they are being asked about all sources of income) and the reliability of eligibility determinations and income verification.

Members of affected public: Recipients of Public Housing and Section 8 Housing Assistance subsidies.

Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of response: For each study, approximately 600 PHA/program sponsor staff will need to be asked about recertification procedures, training, interview procedures, and problems encountered in conducting (re)certifications. Although more than one staff member may need to be contacted to obtain answers to all questions, the questionnaire will be administered once at each participating project and the total interview times are expected to be less than 40 minutes per PHA or project. Researchers will survey approximately 2,400 program participants to obtain information on household composition, expenses, and income. The time required for these interviews will vary, but is estimated to require an average of about 50 minutes per interview.

The time estimates provided are based on the 2011 QC survey. The proposed surveys will continue to make use of Computer Assisted Interviewing (CAI) questionnaires and equipment, which are being used in part because they reduce interview times. The software also provides for consistency check and ensures that all needed data have been collected, thereby reducing the need for the follow-up contacts. Status of the Proposed Information Collection: Pending OMB approval.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 29, 2013.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2013–22023 Filed 9–9–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Number FR–5623–N–04]

Federal Housing Administration (FHA) Healthcare Facility Documents: Notice of Information Collection—Proposed Documents Eligible for Electronic Submission

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: On March 14, 2013, HUD published in the **Federal Register** a notice that announced that FHA's healthcare facility documents completed the notice and comment processes under the Paperwork Reduction Act of 1995, and had been assigned a control number, 2502–0605, by the Office of Management and Budget. The assignment of a control number concluded a 10-month process through which HUD solicited public comment to update 115 healthcare facility documents to reflect current policy and practices, to improve accountability by all parties involved in FHA's healthcare facility transactions and strengthen risk management.

Through this notice, HUD solicits public comment solely on the issue of which healthcare facility documents are eligible for electronic submission. HUD did not address this issue as part of the previous notice and comment process, but recognizes the importance, efficiency, and reduction of burden that electronic submission of documents can achieve, and now solicits public comment on the healthcare facility documents that HUD has determined may be submitted, but are not required to be submitted, electronically.

DATES: *Comment Due Date:* November 12, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this notice. Communications must refer to the above docket number and title. There are two methods for submitting public comments:

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Comments may be submitted electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications will be available for public inspection and downloading at *www.regulations.gov* under the docket number for this notice.

FOR FURTHER INFORMATION CONTACT: John M. Hartung, Director, Policy and Risk Management Division, Office of Residential Care Facilities, Office of Healthcare Programs, Office of Housing, U.S. Department of Housing and Urban Development, 1222 Spruce Street, Room 3.203, St. Louis, MO 63103–2836; telephone (314) 418–5238 (this is not a toll-free number). Persons with hearing or speech disabilities may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—Prior Public Comment on Substance of Healthcare Facility Documents

On May 3, 2012, at 77 FR 26304, and consistent with the Paperwork Reduction Act of 1995 (PRA), HUD published a notice in the **Federal Register** seeking public comment for a period of 60 days (60-day Notice) on HUD's proposed update and revisions to a set of production, underwriting, asset management, closing, and other documents used in connection with transactions involving healthcare facilities, excluding hospitals (collectively, the healthcare facility documents), that are insured pursuant to section 232 of the National Housing Act (Section 232). In conjunction with publication of the 60-day Notice, the proposed revised healthcare facility documents (115 documents) were made available at: *www.hud.gov/232forms*. In addition to presenting unmarked versions of the documents, this Web

site, to the extent applicable, presented the proposed healthcare facility documents as a redline/strikeout against the updated multifamily rental project closing documents to highlight the changes made to facilitate a healthcare transaction. Where the proposed healthcare facility documents were based on existing healthcare facility documents, the proposed healthcare facility documents, in addition to being presented in an unmarked format, were presented in redline/strikeout format so that reviewers could see the changes proposed to the existing healthcare facility documents.[1]

As a special outreach to the public on proposed changes to the healthcare facility documents and Section 232 program regulations, HUD hosted a forum on May 31, 2012, in Washington, DC. (See *http://portal.hud.gov/hudportal/HUD?src=/press/multimedia/videos.*) While comments were raised and discussed at the forum, HUD encouraged forum participants to file written comments through the *www.regulations.gov* Web site so that all comments would be more easily accessible to interested parties. All comments, whether submitted through *www.regulations.gov* or raised at the forum, were considered in the development of the revised documents which were published on November 21, 2012 (77 FR 69870), and for which, consistent with the PRA, comment was solicited for an additional 30 days (30-day Notice).

In the 30-day Notice, HUD identified substantive changes that were made to the healthcare facility documents in response to public comments submitted on the 60-day Notice, responded to significant issues raised by the commenters, and identified proposed additional changes based on further consideration of certain issues. As was the case with the 60-day Notice, HUD posted on its Web site the further revised healthcare facility documents in (1) a clean format, and (2) in redline/strikeout format, to show the changes made from the versions posted with issuance of the 60-day Notice.

On March 14, 2013, at 78 FR 16279, HUD published in the **Federal Register** a notice that announced the approval of the healthcare facility documents under the PRA and an assignment of a control number, 2502–0605, by the Office of Management and Budget (OMB). In addition to announcing the assignment of an OMB control number, HUD advised in the May 14, 2013, notice that additional changes were made to the healthcare facility documents in response to comments submitted on the 30-day Notice. In the March 14, 2013, notice, HUD highlighted additional changes made to the healthcare facility documents, and once again, provided on HUD's Web site at *www.hud.gov/232forms,* the final versions of the documents in clean and redline/strikeout formats so that reviewers could see the final changes made to the documents and the clean final versions of the documents.

II. Solicitation of Comment on Electronic Submission of Healthcare Facility Documents

As a result of the significant solicitation of public comment on the substance of the healthcare facility documents, this solicitation of public comment is devoted solely to the issue of which healthcare facility documents may be submitted electronically. Consistent with current practice, HUD requires applications for mortgage insurance be submitted electronically. Any healthcare facility documents submitted as part of an application for mortgage insurance must be submitted electronically. Of the other healthcare facility documents, HUD has identified 13 documents that HUD has determined must be submitted with original signatures, in hard copy format. These documents are the following: Healthcare Regulatory Agreement—Borrower (HUD–92466–ORCF); Healthcare Regulatory Agreement—Operator (HUD–92466A–ORCF); Management Certification—Residential Care Facility (HUD–9839–ORCF); Lender Certification (HUD–92434–ORCF); Offsite Bond—Dual Obligee (HUD–92479–ORCF); Performance Bond—Dual Obligee (HUD–92452–ORCF); Payment Bond (HUD–92452A–ORCF); Request for Endorsement (HUD–92455–ORCF); Request for Final Endorsement (HUD–92023–ORCF); Guide for Opinion for Mater Tenant's Counsel (HUD–92335–ORCF); Healthcare Regulatory Agreement—Master Tenant (HUD–92337–ORCF); Guide for Opinion of Borrower's Counsel (HUD–91725–ORCF); and Guide for Opinion of Operator's Counsel and Certification (HUD–92325–ORCF). For any of the remaining healthcare facility documents other than application documents or these 13 documents, HUD does not require that any of these remaining documents be submitted electronically, but presents electronic submittal as an option.

In HUD's 30-day Notice, HUD listed in a table all the documents for which approval under the PRA was sought and provided the burden hours and costs calculated for preparation of and submission of each of documents and provided a total aggregate annual cost of $4,393,301. (See 77FR 69887–69889).

In the table below, HUD provides a breakdown of the estimated costs involved in hard copy preparation and shipping, and estimates a $450,000 annual savings in costs if documents are submitted electronically rather than in hard copy.

Item	Cost per item	Costs
Printing by Lender	1,500 pages at $.04 per page	$60.00
Lender Box Preparation	$50 per hour and two hours per box	$100.00
Shipping by Lender to HUD in Field	1–40 lb. box	$20.00
HUD processing preparation (Field and HQ)	$50 per hour and 1 hour per box	$50.00
Shipping by HUD Field to HQ	1–40 lb. box	$20.00
Total		$250.00 per box
Estimated # Boxes per project	3	
Estimated # of projects per year	600	
Total Annual Costs	(# of boxes × # of projects × cost per box)	$450,000.00

[1] Along with the 60-day Notice, HUD published in the **Federal Register** on May 3, 2012, at 77 FR 26218, a proposed rule that proposed to strengthen regulations for HUD's Section 232 program to reflect current policy and practices, and to improve accountability and strengthen risk management. A final rule following the May 3, 2012, proposed rule, and taking into consideration public comment received on the proposed rule, was published on September 7, 2012, at 77 FR 55120.

Therefore, in accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and interested parties on:

(1) Whether the documents identified by HUD for originally signed, hard copy submission are necessary in such format for proper performance of the transactions in which the documents are used;

(2) Whether any of the documents not identified as necessary for originally signed, hard copy submission should be submitted only in originally signed, hard copy;

(3) The accuracy of the agency's estimate of the reduced burden and reduced costs for submission of documents electronically;

(4) Whether electronic submission of application documents enhances the utility and efficiency of the transactions in which the documents are used;

(5) Whether electronic submission of other documents enhances the utility and efficiency of the transactions in which the documents are used; and

(6) Additional ways, through information technology, to minimize the burden of the collection of information on those who are to respond.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received by *November 12, 2013.* Comments must refer to the proposal by name and docket number (FR–5354–N–01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395–6947, and

Colette Pollard, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4178, Washington, DC 20410.

Dated: September 4, 2013.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing—Associate Deputy Federal Housing Commissioner.

[FR Doc. 2013–22024 Filed 9–9–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[XXXD4523WD DWDFSE000.RV0000 DS68664000]

Privacy Act of 1974, as Amended; Notice of a New System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of creation of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior is issuing a public notice regarding the Department of the Interior system of records titled ''Oracle Federal Financials.'' The Oracle Federal Financials application is a financial software package that clients may use to perform budgeting, purchasing, and procurement functions. The related system of records contains information relating to corporations and other business entities as well as individuals. Records in this system are subject to the Privacy Act only if they are about an individual within the meaning of the Act, and not if they are about a business or other non-individual.

DATE: Comments must be received by October 21, 2013. This new system will be effective October 21, 2013.

ADDRESSES: Submit comments either by mail or by hand-delivery to the OS/IBC Privacy Act Officer, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 2650 MIB, Washington, DC 20240; or by email to *privacy@IBC.gov.*

FOR FURTHER INFORMATION CONTACT: Chief, Application Management Branch, Finance & Procurement Systems Division, U.S. Department of the Interior, Interior Business Center, 625 Herndon Parkway, Herndon, VA 20170, or by telephone at (703) 735–4131.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Interior's (DOI) Interior Business Center (IBC) is a service provider that performs services for other Federal government agencies, both inside and outside the DOI. The IBC's service offerings include providing and maintaining various types of business management systems for its clients, including human resources and financial management applications. The Oracle Federal Financials (OFF) application will offer IBC clients a suite of customized Oracle financial management modules that combine to provide a comprehensive financial software package. The OFF modules address budgeting, purchasing, Federal procurement, accounts payable, fixed assets, general ledger, inventory, and accounts receivable. The OFF application is hosted by the IBC; each client agency accesses the system remotely to populate and manage its own data. Clients can contract with the IBC for an OFF package that includes a full set of modules or for a more limited set. The IBC is responsible for system administration functions, while each client has one or more designated managers who are responsible for maintaining the client's data in the OFF system.

Some OFF records are covered by three existing system of records notices (SORNs), which are GSA/GOVT–3, Travel Charge Card Program; GSA/GOVT–4, Contracted Travel Services Program; and GSA/GOVT–6, GSA SmartPay Purchase Charge Card Program. This notice incorporates GSA/GOVT–3, GSA/GOVT–4, and GSA/GOVT–6 by reference.

Client data maintained within the OFF System is covered by this SORN. Clients that remove records from OFF for use outside of the system will be responsible for ensuring the use of the records is consistent with this SORN, or other published SORN, as indicated above, and the requirements of the Privacy Act.

The system will be effective as proposed on *October 21, 2013,* unless comments are received which would require a contrary determination. DOI will publish a revised notice if changes are made based upon a review of the comments received.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' personal information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. As a matter of policy, DOI extends Privacy Act protections to all individuals. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act Regulations, 43 CFR Part 2.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains and the routine uses made of the information in each system. The purposes of the notice are to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and

to assist individuals to more easily find these records within the agency. Below is the description of the OFF system of records.

In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. 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 26, 2013.

David D. Alspach,

OS/IBC Privacy Act Officer.

SYSTEM OF RECORDS:

DOI–91.

SYSTEM NAME:

Oracle Federal Financials (OFF).

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

1. Finance and Procurement Systems Division, Interior Business Center, U.S. Department of the Interior, 12201 Sunrise Valley Drive, MS–206, Reston, VA 20192.

2. Finance and Procurement Systems Division, Interior Business Center, MS D–2790, 7401 West Mansfield Avenue, Denver, CO 80235–2230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information about employees of various Federal agencies that are Interior Business Center (IBC) clients using OFF, as well as employees or agents for third party vendors, contractors and suppliers who provide OFF clients with related financial services. In addition, the system contains information about individuals, either employees or non-employees, who owe debts to the Federal agencies that use the system.

Note: This system also contains records relating to corporations and other business entities. These records are not subject to the Privacy Act. Only records relating to individuals containing personal information are subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the information shown in the following table:

The system contains information about . . .	That includes . . .
(1) Accounts receivable for IBC's OFF clients, including individuals who may be employees or non-employees and employees who owe money to OFF clients and are the subject of collections actions.	first and last names, home addresses, employee identification numbers, and Social Security numbers.
(2) Accounts payable information about non-employee individuals and sole proprietors, including individuals who provide services to IBC's OFF clients.	names, home or business addresses, Social Security numbers, banking account numbers for electronic fund transfer payments, invoices and claims for reimbursement.
(3) Employees of IBC's OFF clients who submit claims for reimbursable expenses.	names, employee identification numbers, Social Security Numbers, work address, receipts and claims for reimbursement.
(4) Employees of IBC's OFF clients who hold government bank or debit cards for purchases or travel.	names, employee identification numbers, Social Security Numbers, work address, card numbers and purchase histories.

The system contains additional business and financial records for IBC's OFF clients that do not include personal information.

Records in this system are subject to the Privacy Act only if they are about an individual within the meaning of the Act, and not if they are about a business or other non-individual. This includes information provided by individuals operating solely in a business or entrepreneurial capacity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Office of Management and Budget Circular A–127, Policies and Standards for Financial Management Systems; 31 U.S.C. 3512, Executive Agency Accounting and Other Financial Management Reports and Plans; 5 U.S.C. 4111, Acceptance of Contributions, Awards, and Other Payments; 5 U.S.C. 5514, Installment deduction for indebtedness to the United States; 5 U.S.C. 5701, et seq. Travel And Subsistence Expenses, Mileage Allowances; 31 U.S.C. 3512, Executive agency accounting and other financial management reports and plans; 31 U.S.C. 3711, Collection and Compromise.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) The system will support financial management for Federal agencies by providing a standardized, automated capability for performing administrative control of funds, general accounting, billing and collecting, payments, management reporting, and regulatory reporting. In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, disclosures outside DOI may be made as a routine use under 5 U.S.C. 552a(b)(3) as shown in the following table:

Information will be disclosed to . . .	If . . .
(1) The U.S. Department of Justice (DOJ)	the circumstances in paragraph (b) are met.
(2) A court or an adjudicative or other administrative body	the circumstances in paragraph (b) are met.
(3) A party in litigation before a court or an adjudicative or other administrative body.	the circumstances in paragraph (b) are met.
(4) A DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for their private representation.	the circumstances in paragraph (b) are met.
(5) A congressional office	an individual covered by the system, or the heir of the individual if the covered individual is deceased, has made a written request to the office.

Information will be disclosed to . . .	If . . .
(6) The Executive Office of the President	that office makes an inquiry either: (i) at the request of the subject of a record or a third party on that person's behalf; and (ii) for a purpose compatible with the purpose for which the records are collected or maintained.
(7) A criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign).	(i) a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature; and (ii) disclosure is compatible with the purpose for which the records were compiled.
(8) An official of another Federal agency	needed in the performance of official duties related to reconciling or reconstructing data files or to enable the agency to respond to an inquiry by the individual to whom the record pertains.
(9) Federal, state, territorial, local, tribal, or foreign agencies	(i) they have requested information relevant to hiring, firing, or retention of an employee or contractor, or to issuance of a security clearance, license, contract, grant or other benefit; and (ii) disclosure is compatible with the purpose for which the records were compiled.
(10) Representatives of the National Archives and Records Administration.	necessary to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.
(11) State and local governments and tribal organizations	necessary to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.
(12) An expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf.	necessary to carry out the purposes of the system.
(13) Appropriate agencies, entities, and persons when:	the conditions in paragraph (c) are met.
(14) The Office of Management and Budget during the coordination and clearance process.	necessary in connection with legislative affairs as mandated by OMB Circular A–19.
(15) The Department of the Treasury	necessary to recover debts owed to the United States.
(16) A consumer reporting agency	the disclosure requirements of the Debt Collection Act, as outlined at 31 U.S.C. 3711(e)(1), have been met.
(17) A commercial credit card contractor(s)	necessary for accounting and payment of employee obligation for travel, purchasing and fleet management credit card usage.
(18) IBC's OFF clients	necessary for using and maintaining their agency's data in the OFF system.

(b) DOI will disclose information under paragraphs (a)(1) through (a)(4) only if all of the conditions in the following paragraphs (b)(1) and (b)(2) are met.

(1) One of the following must be a party to the proceeding or have an interest in the proceeding:

(i) DOI or a component of DOI;

(ii) Another other Federal agency appearing before the Office of Hearings and Appeals;

(iii) A DOI employee acting in his or her official capacity;

(iv) A DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(v) The United States, when DOJ determines that DOI is likely to be affected by the proceeding.

(2) DOI must deem the disclosure to be both:

(i) Relevant and necessary to the proceeding; and

(ii) Compatible with the purpose for which the records were compiled.

(c) DOI will disclose information under paragraph (a)(13) only if all of the following conditions are met:

(1) DOI suspects or confirms that the security or confidentiality of information in the system of records has been compromised;

(2) DOI determines that as a result of the compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(3) The disclosure is made to agencies, entities, and persons who are reasonably necessary to assist the Department's efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy the harm caused by the compromise.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are maintained on servers located at IBC's data centers in Denver, CO and Herndon, VA. Records are accessed only by authorized personnel who have a need to access the records in the performance of their official duties. Paper records are contained in file folders stored in file cabinets in accordance with 383 Departmental Manual 8.

RETRIEVABILITY:

The personal identifiers that can be used to retrieve information on individuals are name, Social Security number, employee identification numbers, bank account number, government travel/small purchase bank card number, employee number and supplier number.

SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and all other applicable security rules and policies. Paper records are maintained in locked file cabinets under the control of authorized personnel.

There are five available levels of electronic security to prevent unauthorized access, which include network access security limits, physical and logical access controls for the data center hosting the system, operating system controls, application passwords, and application data group security levels. Access to servers containing system records is limited to authorized

personnel with a need to know the information to perform their official duties and requires a valid username and password. Unique user identification and authentication, such as passwords, least privileges and audit logs are utilized to ensure appropriate permissions and access levels. Access to the system is also limited by network access or security controls such as firewalls, and system data is encrypted. Facilities that host the system are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures. Server rooms are locked and accessible only by authorized personnel.

RETENTION AND DISPOSAL:

Each Federal agency client storing data in the system has its own National Archives and Records Administration (NARA) approved records schedule for the retention of its reports and data. Data is disposed of in accordance with client-agency approved data disposal procedures. Paper records are disposed of by shredding or pulping, and records contained on electronic media are degaussed or erased in accordance with NARA Guidelines and 384 Departmental Manual 1.

SYSTEM MANAGER AND ADDRESS:

Chief, Application Management Branch, Finance & Procurement Systems Division, U.S. Department of the Interior, Interior Business Center, 625 Herndon Parkway, Herndon, VA 20170.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should be clearly marked ''PRIVACY ACT INQUIRY.'' A request for notification must meet the requirements of 43 CFR 2.235.

RECORDS ACCESS PROCEDURES:

An individual requesting access to records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS''. The request letter should describe the records sought as specifically as possible. A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORDS PROCEDURES:

An individual requesting corrections or contesting information contained in his or her records must send a signed, written request to the System Manager identified above. A request for corrections or removal must meet the requirements of 43 CFR 2.246.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from IBC's Federal agency clients, as well as third party vendors, contractors and suppliers who provide related financial services to the clients using the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2013–21955 Filed 9–9–13; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2013–N190; FXES11130800000–134–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before October 10, 2013.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicant

Permit No. TE–208907

Applicant: Thomas Juhasz, Pasadena, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–117947

Applicant: Kevin B. Clark, San Diego, California

The applicant requests a permit renewal to take (harass by survey, locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) and the California least tern (*Sternula antillarum browni*) (*Sterna a. b.*); take (locate and monitor nests; play taped vocalizations; handle, band, color-band, and release) the least Bell's vireo (*Vireo belli pusillus*); take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*); and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey and nest monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–208907

Applicant: Kelly E. Bayne, Sacramento, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–082237

Applicant: California State Parks, San Simeon, California

The applicant requests a permit renewal to take (locate, capture, handle, measure, relocate, and release) the Morro shoulderband snail (*Helminthoglypta walkeriana*) and take (capture, handle, and release) the Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*) in conjunction with population monitoring, relocation, and habitat enhancement activities in San Luis Obispo County, California, for the purpose of enhancing the species' survival.

Permit No. TE–06145B

Applicant: Andrew F. Borcher, Santee, California

The applicant requests an amendment to a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–11271B

Applicant: Heron Pacific LLC, Rocklin, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*); take (survey, capture, handle, measure, and release) the giant kangaroo rat (*Dipodomys ingens*); and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–831207

Applicant: Natural Resources Assessment, Riverside, California

The applicant requests a permit renewal to take (survey, capture, handle, and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*), Stephens' kangaroo rat (*Dipodomys stephensi*), and San Bernardino kangaroo rat (*Dipodomys merriami parvus*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–028223

Applicant: Jonathan E. Stead, Oakland, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–72047A

Applicant: Matrina Pernicano, Golden, Colorado

The applicant requests a permit amendment to take (harass by survey and locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey and population monitoring activities throughout the range of each species in Nevada, Arizona, New Mexico, Texas, Utah, and Colorado for the purpose of enhancing the species' survival.

Permit No. TE–211099

Applicant: Kenneth A. Glass, Fresno, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*); and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–142436

Applicant: Eric Renfro, Torrance, California

The applicant requests an amendment to a permit to take (survey by pursuit) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–206822

Applicant: Brian S. Shomo, Torrance, California

The applicant requests a permit renewal and amendment to take (survey, capture, handle, collect genetic material, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–094845

Applicant: Matthew P. Bettelheim, Concord, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–13628B

Applicant: Anderson J. Andrew, Chico, California

The applicant requests a permit to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys and soil inoculum collection activities in Butte, Glenn, Tehama, Shasta, Sacramento, Placer, and Sutter Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–13632B

Applicant: Elena C. Greg, Chico, California

The applicant requests a permit to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys and soil inoculum collection activities in Butte, Glenn, Tehama, Shasta, Sacramento, Placer, and Sutter Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–13703B

Applicant: California Living Museum, Bakersfield, California

The applicant requests a permit to take (collect and acquire injured and/or sick animals, captive rear, perform general husbandry, release healthy individuals, and retain animals unfit for reintroduction) the following species in conjunction with rehabilitation, exhibition, public education and outreach programs, research, captive propagation, and population enhancement studies throughout the range of each species in California for the purpose of enhancing the species' survival:

- Arroyo toad (arroyo southwestern) (*Anaxyrus californicus (Bufo microscaphus c.*))
- Mountain yellow-legged frog (southern California DPS) (*Rana muscosa*)
- California tiger salamander (Sonoma County and Santa Barbara DPS) (*Ambystoma californiense*)
- California condor (*Gymnogyps californianus*)
- Riparian brush rabbit (*Sylvilagus bachmani riparius*)
- Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*)
- Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*)
- Giant kangaroo rat (*Dipodomys ingens*)
- Stephens' kangaroo rat (*Dipodomys stephensi*)
- Riparian woodrat (San Joaquin Valley woodrat) (*Neotoma fuscipes riparia*)
- San Joaquin kit fox (*Vulpes macrotis mutica*)
- San Miguel Island fox (*Urocyon littoralis littoralis*)
- Santa Catalina Island fox (*Urocyon littoralis catalinae*)
- Santa Cruz Island fox (*Urocyon littoralis santacruzae*)
- Santa Rosa Island fox (*Urocyon littoralis santarosae*)
- Sierra Nevada bighorn sheep (*Ovis canadensis sierrae*)
- Nelson bighorn (Peninsular Ranges DPS, Peninsular bighorn sheep) (*Ovis canadensis nelsoni*)

The applicant also requests a permit to take (captive propagate and release) the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), in conjunction with rehabilitation, exhibition, public education and outreach programs, research, captive propagation, and population enhancement studies throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–022649

Applicant: Joseph E. Messin, Temecula, California

The applicant requests a permit renewal and amendment to take (survey, capture, handle, collect genetic material, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–13636B

Applicant: Michaela L. Hoffman, Pismo Beach, California

The applicant requests a permit to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–006328

Applicant: Michael B. Drake, Tehachapi, California

The applicant requests an amendment to a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) and Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–13639B

Applicant: Anastasia G. Ennis, San Francisco, California

The applicant requests a permit to take (survey, capture, handle, collect genetic material, and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–091857

Applicant: Denise Duffy & Associates, Monterey, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, collect genetic material, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with survey and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–200339

Applicant: Sarah Foster, Sacramento, California

The applicant requests a permit to take (survey and nest monitor) the California clapper rail (*Rallus longirostris obsoletus*) in conjunction with population studies in Marin, Sonoma, Napa, Solano, Contra Costa, San Mateo, Santa Clara, and Alameda Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–13691B

Applicant: Christine L. Slocomb, San Diego, California

The applicant requests a permit to take (survey, capture, handle, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*) and San Bernardino kangaroo rat (*Dipodomys merriami parvus*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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.

Michael M. Long,

Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2013–21922 Filed 9–9–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2013–N184; FXES11130300000–134–FF03E00000]

Approved Recovery Plan for the Dwarf Lake Iris

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the approved recovery plan for the dwarf lake iris (*Iris lacustris*), a species that is federally listed as threatened under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). This plan includes specific recovery objectives and criteria to achieve removal of the species from the protections of the Act.

ADDRESSES: You may obtain a copy of the recovery plan by sending a request to Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823 (printed copies will be available for distribution within 4 to 6 weeks) or by accessing our Web site at *http://midwest.fws.gov/Endangered.*

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Hosler, at the above address or by telephone at (517) 351–6326. TTY users may contact Ms. Hosler through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the federally listed threatened and endangered species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for reclassification and delisting, and provide estimates of the time and costs for implementing the recovery measures needed.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires public notice and opportunity for public review and comment during recovery plan development. We provided the draft dwarf lake iris recovery plan to the public and solicited comments from May 30, 2012, through June 29, 2012 (77 FR 31869). We considered information we received during the public comment period and information from peer reviewers in our preparation of the recovery plan, and also summarized that information in Appendix 7 of this approved recovery plan.

The dwarf lake iris was listed as threatened on October 28, 1988, under the provisions of the Endangered Species Act of 1973, as amended. The species grows along the northern shorelines of Lakes Michigan and Huron in Wisconsin, Michigan, and Ontario, Canada. Of 167 known occurrences, many lie on private property where awareness of the species' presence and significance is limited. Direct loss of plants and habitat is continuing, and is expected to accelerate due to the high demand of shoreline properties for development and recreation.

Dwarf lake iris typically grows in shallow soil over moist calcareous sands, gravel, and beach rubble. Sunlight is one of the most critical factors to the growth and reproduction of the species, and partly shaded or sheltered forest edges are optimal for sexual reproduction. Some form of disturbance is also required to maintain the forest openings that provide these partial shade conditions. The species is most often associated with shoreline coniferous forests dominated by northern white cedar and balsam fir. The principal limiting factor for dwarf lake iris is the availability of this suitable shoreline habitat.

The principal recovery strategy is to conserve the habitat that supports dwarf lake iris populations by implementing a variety of protection strategies, including landowner notification, education, and the preparation of management and monitoring plans. Additional efforts will focus on improving the baseline understanding of dwarf lake iris ecology. Outreach materials will be developed to improve awareness of the species' presence and its status as a threatened species.

The dwarf lake iris will be considered for delisting when the likelihood of the species becoming threatened in the foreseeable future has been eliminated by the achievement of three criteria:

Criterion 1. The species has a 95-percent probability of persistence within the next 20 years, based on data obtained from accepted standardized monitoring methods and on population viability analysis. In order to meet this criterion, the following must be verified: 1.a. There is a sufficient number and geographical distribution of element occurrences required to ensure long-term persistence, and 1.b. Each element occurrence needed to ensure a 95-percent probability of persistence within the next 20 years must meet a minimum viable population size and exhibit an increasing or stable population trend over a 10-year period.

Criterion 2. Management plans have been developed and are being implemented to protect and manage the habitat associated with the element occurrences identified in Criterion 1.b.

Criterion 3. A plan to provide public outreach and education for dwarf lake iris has been developed and is being implemented. Additional detail on these delisting criteria is available in the draft recovery plan.

We will achieve these criteria through the following actions: (1) Protect occurrences; (2) Manage and restore habitat; (3) Inventory and monitor known sites; (4) Conduct population viability analysis; (5) Develop an education program about dwarf lake iris, other federally listed shoreline species, natural communities, and their protection and management; (6) Improve understanding of baseline dwarf lake iris ecology; and (7) Review and track recovery progress.

Authority: Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 30, 2013.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. 2013–21921 Filed 9–9–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–PCE–UPARR–13996; PPWOSLAD00, PUA00UA08.GA0000]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Urban Park and Recreation Recovery Program Grants

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on October 31, 2013. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before October 10, 2013.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB—OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 1849 C Street NW. (2601), Washington, DC 20240 (mail); or *madonna_baucum@nps.gov* (email). Please include ''1024–0048'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elisabeth Fondriest at 202–354–6916 (telephone) or *elisabeth_fondriest@nps.gov* (email). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1024–0048.

Title: Urban Park and Recreation Recovery Program Grants, 36 CFR part 72.

Service Form Number(s): 10–911, 10–912, and 10–915.

Type of Request: Revision of a currently approved collection.

Description of Respondents: Cities and urban communities.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of annual responses	Completion time per response (hours)	Total annual burden hours *
Recovery Action Program	1	1	80	80
Recovery Action Program Grant Applications	1	1	3.5	4
Preapplication for Rehabilitation or Innovation Grants	1	1	10	10
Final Application for Rehabilitation or Innovation Grants	1	1	10.5	11
Grant Amendments	1	1	3.5	4
Performance Reports	1	1	1	1
Conversion of Use Request	1	1	70	70
Recordkeeping	1	1	2	2
Totals	8	8		182

* rounded

Estimated Annual Nonhour Burden Cost: None.

Abstract: The Urban Park and Recreation Recovery (UPARR) Act (16 U.S.C. 2501 et seq.) was passed as Title X of the National Parks and Recreation Act of 1978. The UPARR Act authorized the Secretary of the Interior to establish a grant program to help economically distressed urban areas improve recreation opportunities for their residents. We administer the UPARR program in accordance with regulations at 36 CFR part 72, which: (1) Explain the policies to be followed for awarding grants, (2) List the requirements and criteria to be met for each type of grant and discretionary eligibility, (3) Discuss fundable uses and limitations, (4) Explain how proposals will be selected and funded, and (5) Describe the application process and administrative procedures for awarding grants. The three types of grants available under the program are:

- Rehabilitation—renovate or redesign existing close-to-home recreation facilities.
- Innovation—specific activities that either increase recreation programs or improve the efficiency of the local government to operate existing programs.
- Planning—development of a Recovery Action Program plan.

The information collection requirements associated with the UPARR Program are currently approved under three OMB control numbers, all of which expire on October 31, 2013. During our review for this renewal, we identified some additional requirements that need OMB approval. See our May 2, 2013, **Federal Register** notice (78 FR 25760) for specifics on the information we collect.

Congress has not appropriated funds for new UPARR grants since FY 2002. We are not currently accepting applications, and there are no open grants for which performance reports must be submitted. However, we still receive requests for conversion of properties improved or developed with UPARR grants through FY 2002 to other than public recreation uses. In anticipation of future funding, we are requesting OMB approval for the information collection requirements for UPARR grants. If OMB approves this revision, we will discontinue OMB Control Numbers 1024–0028 and 1024–0089.

Comments: On May 2, 2013, we published in the **Federal Register** (78 FR 25760) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on July 1, 2013. We did not receive any comments.

We again invite comments concerning this information collection 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.

Comments that you submit 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 4, 2013.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2013–21981 Filed 9–9–13; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–13905;PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 17, 2013. Pursuant to § 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th Floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 25, 2013. 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 22, 2013.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARIZONA

Coconino County

Albright, Horace M., Training Center, Albright Ave. & Center Rd., Grand Canyon, 13000784

ARKANSAS

Faulkner County

Hall—Hogan Grocery Store, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) 1364 Mitchell, Conway, 13000785

Independence County

Walnut Grove Cemetery, Walden Rd., Cord, 13000786

Perry County

Camp House, 4684 W. AR 60, Aplin, 13000787

Pope County

Hankins, Thomas J., House, W. side of AR 7 approx. 375 ft. N. of jct. with AR 123, Pelsor, 13000788

Pulaski County

Dunbar, Paul Laurence, School Neighborhood Historic District, (Historically Black Properties in Little Rock's Dunbar School Neighborhood MPS) Roughly bounded by Wright Ave. S. Chester, S. Ringo & W. 24th Sts., Little Rock, 13000789

Southern Trust Building, 221 W. 2nd St., Little Rock, 13000790

Union County

McWilliams, W.F. & Estelle, House, 314 Summit Ave., El Dorado, 13000791

CALIFORNIA

Contra Costa County

Chung Mei Home Historic District, 1760 Elm St., El Centro, 13000792

Los Angeles County

Saint Elizabeth of Hungary Catholic Church, 1845 Lake Ave., Altadena, 13000793

FLORIDA

Marion County

Morgan—Townsend House, 13535 N. FL 19, Salt Springs, 13000794

IOWA

Des Moines County

Lagomarcino—Grupe Company, 101–111 Valley St., Burlington, 13000796

MICHIGAN

Livingston County

Sexton, William K. and Nellie, House, 205 Mason Rd. (Marion Township), Howell, 13000797

Mason County

Lake Michigan Beach House, Ludington State Park, 8800 W. MI 116 (Hamlin Township), Hamlin Lake, 13000798

Midland County

Schwartz, Robert E. and Barbara, House, 3201 W. Sugnet Rd., Midland, 13000799

Wayne County

Balogh, Tivadar and Dorothy, House, 49800 Joy Rd. (Plymouth Charter Township), Cherry Hill, 13000800

Kessler, William and Margot, House, 1013 Cadieux Rd., Grosse Pointe Park, 13000801

NEW HAMPSHIRE

Sullivan County

Saint-Gaudens National Historic Site Historic District, 139 Saint Gaudens Rd., Cornish, 13000802

NORTH CAROLINA

Pender County

Penderlea Homesteads Historic District, Bounded by Sills Cr., Webber, Crooked Run, Lake, Lamb & Raccoon Rds., Willard, 13000803

OREGON

Benton County

North Palestine Baptist Church, Near 7300 NE. Arnold Ave., Adair Village, 13000804

Multnomah County

Green, Harry A. and Ada, House, 3316 SE. Ankeny St., Portland, 13000805

Wallowa County

Enterprise Public Library, (Downtown Enterprise MPS) 101 NE. 1st St., Enterprise, 13000806

VIRGINIA

Fairfax County

Hollin Hills Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS) Roughly Beechwood, Elba, Glasgow, Martha's, Paul Springs, Range & Stafford Rds., Mason Hill, Rebecca & Whiteoaks Drs., Alexandria, 13000807

WISCONSIN

Oneida County

Three Lakes Rod and Gun Club, 1230 State Trunk Hwy. 32, Three Lakes, 13000808

In the interest of preservation a request for a three day comment period has been made for the following resource:

HAWAII

Maui County

Ma'alaea General Store, 132 Ma'alaea Rd., Wailuku, 13000795

A request for removal has been made for the following resources:

ARKANSAS

Calhoun County

Tinsman School, SW corner of AR 274 and CR 38, Tinsman, 06001265

Cleveland County

Hall Morgan Post 83, American Legion Hut, 208 Sycamore St., Rison, 03000399

Pulaski County

Bruner House, 1415 Cantrell Rd., Little Rock, 77000267

[FR Doc. 2013–21920 Filed 9–9–13; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2977]

Certain Optical Disc Drives, Components Thereof, and Products Containing the Same; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade

Commission has received a complaint entitled *Certain Optical Disc Drives, Components Thereof, and Products Containing the Same,* DN 2977; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *EDIS* [1], and 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 United States International Trade Commission (USITC) at *USITC* [2]. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *EDIS* [3]. 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 has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Optical Devices, LLC on September 3, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain optical disc drives, components thereof, and products containing the same. The complaint names as respondents Lenovo Group Ltd. of Hong Kong; Lenovo (United States) Inc. of NC; LG Electronics, Inc. of South Korea; LG Electronics U.S.A., Inc. of NJ; Nintendo Co., Ltd. of Japan; Nintendo of America, Inc. of WA; Panasonic Corp. of Japan; Panasonic Corporation of North America of NJ; Samsung Electronics Co., Ltd. of South Korea; Samsung Electronics America, Inc. of NJ; Toshiba Corporation of Japan; Toshiba America Information Systems, Inc. of CA; MediaTek, Inc. of Taiwan; and MediaTek USA Inc. of CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing products during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No2977'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures* [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS* [5].

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: September 4, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–21902 Filed 9–9–13; 8:45 am]

BILLING CODE 7020–02–P

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–501 and 731–TA–1226 (Preliminary)]

Chlorinated Isocyanurates From China and Japan; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–501 and 731–TA–1226 (Preliminary) under sections 703(a) and 733(a) of the Tariff

Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from chlorinated isocyanurates from China and Japan, provided for in subheadings 2933.69.60 and 3808.99.95 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value by Japan and alleged to be subsidized by China. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by October 11, 2013. The Commission's views are due at Commerce within five business days thereafter, or by October 22, 2013.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* August 29, 2013.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: *Background.*—These investigations are being instituted in response to a petition filed on August 29, 2013 by Clearon Corp., South Charleston, WV; and Occidental Chemical Corp. Dallas, TX.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on September 19, 2013, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be filed with *William.Bishop@usitc.gov* and *Sharon.Bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before September 17, 2013. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before September 24, 2013, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: September 4, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–21903 Filed 9–9–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–800]

Certain Wireless Devices With 3G Capabilities and Components Thereof Commission Determination To Review the Final Initial Determination Finding No Violation of Section 337 in Its Entirety

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety, the final initial determination issued by the presiding administrative law judge (''ALJ'') finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, (''section 337'') in the above identified investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3042. 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 August 31, 2011, based on a complaint filed by InterDigital Communications, LLC of King of Prussia, Pennsylvania; InterDigital Technology Corporation of Wilmington, Delaware; and IPR Licensing, Inc. of Wilmington, Delaware (collectively, ''InterDigital''). 76 *FR.* 54252 (Aug. 31, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless devices with 3G capabilities and components thereof by reason of infringement of certain claims of United States Patent Nos. 7,349,540 (terminated from the investigation); 7,502,406; 7,536,013; 7,616,970; 7,706,332; 7,706,830; and 7,970,127. The notice of investigation named the following entities as respondents: Huawei Technologies Co., Ltd. of Shenzhen, China; FutureWei Technologies, Inc. d/b/a Huawei, Technologies (USA) of Plano, Texas; Nokia Corporation of Espoo, Finland; Nokia Inc. of White Plains, New York; ZTE Corporation of Shenzhen, China; and ZTE (USA) Inc. of Richardson, Texas (collectively, ''Respondents''). The complaint and notice of investigation were subsequently amended to allege infringement of certain claims of United States Patent No. 8,009,636 (the '636 patent) and to add the following entities as respondents: LG Electronics, Inc. of Seoul Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; and LG Electronics Mobilecomm U.S.A., Inc. of San Diego, California (collectively, ''LG''). 76 *FR* 81527 (Dec. 28, 2011). The complaint and notice of investigation were further amended to include Huawei Device USA of Plano, Texas as a respondent. 77 *FR* 26788 (May 7, 2012).

InterDigital Communications, LLC subsequently moved for leave to amend the Complaint and Notice of Investigation to reflect the fact that it converted from a Pennsylvania limited liability company to a Delaware corporation, and changed its name to InterDigital Communications, Inc. The ALJ issued an ID granting the motion and the Commission determined not to review. *See* Order No. 91 (Jan. 17, 2013); Notice of Commission Determination Not to Review an Initial Determination Granting Complainants' Motion for Leave to Amend the Complaint and Notice of Investigation (Feb. 4, 2013).

On June 4, 2012, the ALJ granted a motion by LG under 19 CFR 210.21(a)(2) to terminate the investigation as to LG based on an arbitration agreement. *See* Order No. 30 (June 4, 2012). The Commission determined not to review. *See* Notice of Commission Determination Not to Review an Initial Determination Terminating Certain Respondents From the Investigation (July 6, 2012). InterDigital appealed LG's termination from this investigation, and the Federal Circuit reversed the Commission's determination. *InterDigital Commc'ns, LLC* v *Int'l Trade Comm'n,* No. 2012–1628 (Fed. Cir. June 7, 2013).

On June 28, 2013, the ALJ issued his final ID, finding no violation of section 337 by Respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction, *in rem jurisdiction* over the accused products, and *in personam* jurisdiction over the respondents. The ALJ also found that the importation requirement of section 337 (19 U.S.C. 1337(a)(1)(B)) has been satisfied. The ALJ, however, found that the accused products do not infringe asserted claims 1–3 and 5 of the '830 patent; asserted claims 1, 2, 4, and 6–8 of the '636 patent; asserted claims 6, 13, 20, 26, and 29 of the '406 patent; asserted claims 2–4, 7–11, 14, 22–24, and 27 of the '332 patent; asserted claims 1–7 of the '127 patent; asserted claims 16–19 of the '013 patent; or asserted claims 10–18 of the '970 patent. The ALJ found that the accused products meet each limitation of claims 1–9 of the '970 patent but found that all the asserted claims, claims 1–18, of the '970 patent are invalid in view of the prior art. The ALJ also found that asserted claims 1–7 of the '127 patent and asserted claims 16–19 of the '013 patent are invalid in view of the prior art. The ALJ, however, found that Respondents failed to establish by clear and convincing evidence that the asserted claims of the '830, '636, '406 or '332 patents were invalid in light of the cited prior art references. The ALJ also found that the Respondents failed to prove that they hold licenses under the asserted patents and failed to prevail on their equitable/FRAND defenses. The ALJ further found that InterDigital established the existence of a domestic industry.

On July 15, 2013, InterDigital filed a petition for review of the ID. That same day, the Commission Investigative Attorney and Respondents filed separate petitions for review. Respondents also filed a contingent petition for review. On July 23, 2013, the parties filed responses to the petitions and contingent petition for review.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in its entirety.

In connection with its review, the Commission is particularly interested in responses to the following question:

> Please discuss, in light of the statutory language, legislative history, the Commission's prior decisions, and relevant court decisions, including *InterDigital Commc'ns, LLC* v. *Int'l Trade Comm'n,* 690 F.3d 1318 (Fed. Cir. 2012), and 707 F.3d 1295 (Fed. Cir. 2013), whether establishing a domestic industry based on licensing under 19 U.S.C. 1337 (a)(3)(C) requires proof of ''articles protected by the patent'' (*i.e.,* a technical prong). If so, please identify and describe the evidence in the record that establishes articles protected by the asserted patents.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. The Commission, however, is not interested in receiving written submissions that address the form of remedy and bonding, if any, or the public interest at this time.

Written Submissions: The parties to the investigation are requested to file written submissions on the issue identified in this notice. The written submissions must be filed no later than close of business on September 27, 2013. Initial submissions are limited to 15 pages. Reply submissions must be filed no later than the close of business on October 4, 2013. Reply submissions are limited to 10 pages. No further submissions on this issue will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–800'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.

Issued: September 4, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–21935 Filed 9–9–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–023]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 20, 2013 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 701–TA–491–493, 495, and 497 (Final) (Frozen Warmwater Shrimp from China, Ecuador, India, Malaysia, and Vietnam). The Commission is currently scheduled to complete and file its determinations and views of the Commission on or before October 1, 2013.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: September 6, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–22073 Filed 9–6–13; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Gap Association

Notice is hereby given that, on August 12, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Gap Association (''AGA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the ratification of industry standards for Gap Year Education, the further development of a Board of Advisors, and the further development of a Board of Directors.

On June 6, 2012, AGA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 6, 2012 (77 FR 40085).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–21908 Filed 9–9–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on August 6, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, John G. Sgouros (individual), London, UNITED KINGDOM; 3E Company, Carlsbad, CA; and SIB Swiss Institute of Bioinformatics, Genopode, Lausanne, SWITZERLAND, have been added as parties to this venture. Also, HCL Technologies Ltd, Berkshire, UNITED KINGDOM, has withdrawn as a party to this venture.

In addition, BioXpr has changed its name to Progenus, Namur, BELGIUM.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on May 16, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 13, 2013 (78 FR 35646).

Patricia A. Brink

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–21909 Filed 9–9–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before October 10, 2013.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2013–035–C.

Petitioner: Five Star Mining, Inc., 6594 West State Road 56, Petersburg, Indiana 47567.

Mine: Prosperity Mine, MSHA I.D. No. 12–02249, located in Pike County, Indiana.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance), 30 CFR 18.35(a)(5)(i)(ii) (Portable (trailing) cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the maximum length of trailing cables to be increased for supplying power to permissible pumps in the Prosperity Mine. The petitioner states that:

(1) This petition will apply only to trailing cables supplying three-phase, 480-volt, 3-phase power for permissible pumps.

(2) The maximum length of the trailing cables supplying 480-volts to permissible pumps will be 4,000 feet.

(3) Trailing cables or cords over 500 feet supplying power to 480-volt permissible pumps will not be smaller than No. 6 American Wire Gauge (AWG).

(4) All circuit breakers used to protect the No. 6 AWG trailing cables exceeding 550 feet in length will have an instantaneous trip unit calibrated to trip at 60 amperes. The trip setting of these circuit breakers will be sealed or locked so that the setting cannot be changed, and will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting No. 6 AWG cables. This label will be maintained legible.

(5) Replacement instantaneous trip units used to protect No. 6 AWG trailing cables will be calibrated to trip at 60 amperes and this setting will be sealed or locked.

(6) All circuit breakers used to protect the No. 2 AWG trailing cables exceeding 700 feet in length will have an instantaneous trip unit calibrated to trip at 150 amperes. The trip setting of these circuit breakers will be sealed or locked so that the setting cannot be changed, and these circuit breakers will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting No. 2 AWG trailing cables. This label will be maintained legible.

(7) Replacement instantaneous trip units used to protect No. 2 AWG trailing cables will be calibrated to trip at 150 amperes and this setting will be sealed or locked.

(8) All components that provide short-circuit protection will have a sufficient interruption rating in accordance with the maximum calculated fault currents available.

(9) The short-circuit setting will not exceed the setting specified in the approval documentation or 70 percent of the minimum available current, whichever is less.

(10) Permanent warning labels will be installed and maintained on the cover(s) of the power center or distribution box to identify the location of each sealed short-circuit protection device. These labels will warn miners not to change or alter the sealed short-circuit settings.

(11) Within 60 days after this proposed decision and order becomes final, the proposed revisions for the petitioner's approved 30 CFR part 48 training plan will be submitted to the District Manager. The training plan will include the following:

(a) Mining methods and operating procedures for protecting the trailing cables against damage.

(b) Proper procedures for examining the trailing cables to ensure safe operating condition.

(c) The hazards of setting the short-circuit interrupting device(s) too high to adequately protect the trailing cables.

(d) How to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained.

The petitioner further states that procedures specified in 30 CFR 48.3 for proposed revisions to approved training plans will apply.

The petitioner asserts that the alternative method will guarantee no less than the same measure of protection for all miners than that of the existing standard.

Docket Number: M–2013–036–C.

Petitioner: Pinnacle Mining Company, LLC, P.O. Box 338, Pineville, West Virginia 24874,

Mine: Pinnacle Mine, MSHA I.D. No. 46–01816, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment may be used. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2013–037–C.

Petitioner: Pinnacle Mining Company, LLC, P.O. Box 338, Pineville, West Virginia 24874,

Mine: Pinnacle Mine, MSHA I.D. No. 46–01816, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining, by its nature and size and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment may be used. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service

until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2013–038–C.

Petitioner: Pinnacle Mining Company, LLC, P.O. Box 338, Pineville, West Virginia 24874.

Mine: Pinnacle Mine, MSHA I.D. No. 46–01816, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372, 75.1002(a), and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment may be used. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Dated: September 4, 2013.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2013–21915 Filed 9–9–13; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 78 FR 38410, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission (including comments) may be found at: *http://www.reginfo.gov/public/do/PRAMain.* 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: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

DATES: 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 703–292–7556.

NSF 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.

SUPPLEMENTARY INFORMATION:

Title: Experimentation with Factual Knowledge of Science Survey Items.

OMB Approval Number: 3145–NEW.

Overview of this information collection: The National Science Foundation Act of 1950 as amended (42 U.S.C. 1862) authorizes the National Science foundation to ''initiate and support basic scientific research and programs to strengthen scientific research potential and science education programs in the mathematical, physical, medical, biological, social, and other sciences.'' The America COMPETES Reauthorization Act of 2010 § 505, codified in the National Science Foundation Act of 1950, as amended, established the National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation. NCSES supports surveys that measure the level of basic factual knowledge of science among the American public and prepares information on this topic for dissemination in *Science and Engineering Indicators,* a biennial publication of the National Science Board (NSB), NSF's governing body. Survey questions cover topics in biology, chemistry, physics, astronomy, and other sciences. NCSES is proposing to conduct a series of survey-based experiments in which question wording and content are systematically varied in order to test the sensitivity of survey measures of factual knowledge of biological evolution and the origins of the universe to variations in question design. These experiments will be conducted via an Internet survey. Data from these experiments may be used in *Science and Engineering Indicators* to address the effects of question design on survey estimates of public science knowledge and the relationship between understanding and acceptance of scientific conclusions. Results from this research may also be reported in scholarly research publications.

Expected Respondents: Approximately 3,500 U.S. adults (persons aged 18+) will be responding to the survey.

Estimate of Burden: The Foundation estimates that, on average, 15 minutes per respondent will be required to complete the survey. The annual respondent burden for completing the survey is therefore estimated at 875 hours, based on 3,500 respondents.

Dated: September 4, 2013.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–21916 Filed 9–9–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0071]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on May 7, 2013 (78 FR 26661).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 25, ''Access Authorization.''

3. *Current OMB approval number:* 3150–0046.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* On occasion.

6. *Who will be required or asked to report:* NRC-regulated facilities and other organizations requiring access to NRC-classified information.

7. *An estimate of the number of annual responses:* 918.

8. *The estimated number of annual respondents:* 78.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 365.

10. *Abstract:* NRC-regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided to NRC-classified information and material.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 10, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0046), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, telephone: 301–415–6258.

Dated at Rockville, Maryland, this 4th day of September, 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–21963 Filed 9–9–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0088]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby

informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on June 6, 2013 (78 FR 34134).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 95—Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.

3. *Current OMB approval number:* 3150–0047.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required:* On occasion.

6. *Who will be required or asked to report:* NRC-regulated facilities and their contractors who require access to and possession of NRC classified information.

7. *An estimate of the number of annual responses:* 223.

8. *The estimated number of annual respondents:* 10.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 968.

10. *Abstract:* NRC-regulated facilities and their contractors who are authorized to possess classified matter are required to provide information and maintain records to ensure that an adequate level of protection is provided to NRC classified information and material.

The public may examine and have copied for fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 10, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0047), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, telephone: 301–415–6258.

Dated at Rockville, Maryland, this 4th day of September, 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–21965 Filed 9–9–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0087]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on June 3, 2013 (78 FR 33116).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Forms 366, 366A, and 366B, ''Licensee Event Report.''

3. *Current OMB approval number:* 3150–0104.

4. *The form number if applicable:* NRC Forms 366, 366A, and 366B.

5. *How often the collection is required:* As needed per § 50.73 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Licensee event report system.'' The total number of reports is estimated to be 350 per year.

6. *Who will be required or asked to report:* The holder of an operating license under 10 CFR Part 50 or a combined license under 10 CFR Part 52 (after the Commission has made the finding under § 52.103(g)).

7. *An estimate of the number of annual responses:* 350.

8. *The estimated number of annual respondents:* 104.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 28,000 hours.

10. *Abstract:* Part of the NRC's function is to license and regulate the operation of commercial nuclear power plants to ensure protection of public health and safety and the environment in accordance with the Atomic Energy Act of 1954 (the Act) as amended. In order for the NRC to carry out these responsibilities, licensees must report significant events in accordance with 10 CFR 50.73, so that the NRC can evaluate the events to determine what actions, if any, are warranted to ensure protection of public health and safety or the environment. Section 50.73 requires reporting on NRC Forms 366, 366A, and 366B.

The public may examine and have copied for a fee publicly-available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice. Comments and questions should be directed to the OMB reviewer listed below by October 10, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0104), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, telephone: 301–415–6258.

Dated at Rockville, Maryland, this 4th day of September, 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–21964 Filed 9–9–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of September 9, 16, 23, 30, October 7, 14, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 9, 2013

There are no meetings scheduled for the week of September 9, 2013.

Week of September 16, 2013—Tentative

There are no meetings scheduled for the week of September 16, 2013.

Week of September 23, 2013—Tentative

There are no meetings scheduled for the week of September 23, 2013.

Week of September 30, 2013—Tentative

There are no meetings scheduled for the week of September 30, 2013.

Week of October 7, 2013—Tentative

There are no meetings scheduled for the week of October 7, 2013.

Week of October 14, 2013—Tentative

Wednesday, October 16, 2013

1:00 p.m. Briefing on Flooding and Other Extreme Weather Events (Public Meeting) (Contact: George Wilson, 301–415–1711)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Friday, October 18, 2013

9:00 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting); (Contact: Sophie Holiday, 301–415–7865)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

1:00 p.m. Briefing on the Proposed Rule for Title 10 of the Code of Federal Regulations Part 35 (Public Meeting); (Contact: Ashley Cockerham, 240–888–7129)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: September 5, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–22097 Filed 9–6–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70316; File No. SR–NASDAQ–2013–108]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1120 and To Adopt a Corresponding Fee

September 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NASDAQ has designated the proposed rule change as constituting a non-controversial rule change under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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

NASDAQ is proposing to amend Rule 1120 as described below, and to adopt a corresponding fee.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

1120. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with Nasdaq. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(a) Regulatory Element

(1) Requirements

No member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person unless such person has complied with the requirements of paragraph (a) hereof.

Each registered person shall complete the Regulatory Element on the occurrence of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by Nasdaq. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the ''base date,'' shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element shall be determined by Nasdaq and shall be appropriate to either the registered representative or principal status of the person subject to the Rule. The following Regulatory Elements administered by FINRA shall be required:

Persons registered solely as Proprietary Traders pursuant to Rule 1032(c) must complete the S501.

Persons registered as General Securities Representatives pursuant to Rule 1032(a) must complete the S101.

Persons registered in a supervisory capacity pursuant to Rules 1021 and 1022 must complete the S201.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

7003. Registration and Processing Fees

(a) The following fees will be collected and retained by FINRA via the Web CRD registration system for the registration of associated persons of Nasdaq members that are not also FINRA members:

(1)–(6) No change

(7) a $[75]*100* session fee for each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Nasdaq Rule 1120 *(S101 and S201) and a $60 session fee for each individual who is required to complete the Proprietary Trader Regulatory Element (S501).*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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 purpose of the proposed rule change is to codify in Rule 1120 the specific continuing education requirements that currently apply and to adopt a continuing education requirement for persons registered as Proprietary Traders. NASDAQ also proposes to adopt a fee in Rule 7003 for the new continuing education program applicable to Proprietary Traders.

NASDAQ adopted the Proprietary Trader [5] registration in 2011,[6] working with various other exchanges and Financial Industry Regulatory Authority (''FINRA''). At that time, NASDAQ stated that persons registered in the new category would be subject to its continuing education requirements in Rule 1120.

At this time, the new continuing education program for Proprietary Traders will soon become available and will be administered by FINRA. The new program, the S501, is intended to address the specific continuing education of Proprietary Traders, based on the content outline for the Series 56 exam, which covers the main categories of rules and regulations generally applicable to such persons.[7] The Continuing Education Regulatory Element is a computer-based education program administered by FINRA to help ensure that registered persons are kept current on regulatory, compliance and trading practice matters in the industry.

NASDAQ proposes to amend Rule 1120(a)(1) to specify the required Regulatory Element for each category of registered persons. Currently, Rule 1120(a)(1) provides that no member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of paragraph (a). Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date(s), and every three years thereafter or as otherwise prescribed by NASDAQ. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the ''base date,'' shall establish the cycle of anniversary dates for purposes of this Rule. This applies to persons registered as Proprietary Traders as well.

The Rule further provides that the content of the Regulatory Element of the program shall be determined by NASDAQ for each registration category of persons subject to the Rule. NASDAQ now proposes to make clear which specific programs are required, including both existing programs (S101 and S201) as well as the new Proprietary Trader continuing education program (S501). NASDAQ has determined that the following Regulatory Elements administered by FINRA shall be required:

- Persons registered solely as Proprietary Traders pursuant to Rule 1032(b) [sic] must complete the S501.
- Persons registered as General Securities Representatives pursuant to Rule 1032(a) must complete the S101.
- Persons registered in a supervisory capacity pursuant to Rules 1021 and 1022 must complete the S201.

NASDAQ believes that specifying the applicable Regulatory Element in the Rule should be helpful to members in complying with the Rule. Only one Regulatory Element is required. For example, members registered as supervisors are subject to the S201 only; they do not also have to complete the Regulatory Element applicable to their prerequisite registration, such as the S501 or the S101.[8] This proposal does not change the registration requirements.

NASDAQ also proposes to adopt a fee applicable to Proprietary Trader Regulatory Element. Currently, the applicable fee for the Regulatory Element (S101 and S201) is $100.[9] NASDAQ proposes to adopt a $60 fee for the S501. FINRA administers these programs on behalf of the exchanges and therefore the fees are payable directly to FINRA.[10] The $60 fee will only be used for the administration of the S501 versus the S101 which utilizes the $100 fee for both development and administration. The costs associated with the development of the S501 are included in the examination fee.

2. Statutory Basis

NASDAQ believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of: (1) Section 6(c)(3)(B) of the Act,[12] pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,[13] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and

[5] A Proprietary Trader is a person whose activities in the investment banking and securities business are limited solely to proprietary trading. NASDAQ Rule 1032(c).

[6] *See* Securities Exchange Act Release No. 64958 (July 25, 2011), 76 FR 45629 (July 29, 2011) (SR–NASDAQ–2011–095).

[7] These generally include recordkeeping and recording requirements, types and characteristics of securities and investments, trading practices and display execution and trading systems. *See* Securities Exchange Act Release No. 65040 (August 5, 2011), 76 FR 49809 (August 11, 2011) (SR–NASDAQ–2011–108).

[8] In the event that a person is registered both as a Proprietary Trader and a General Securities Representative, only one Regulatory Element is required—the ''higher'' of the two, which is the S101.

[9] The Commission notes that the Exchange is correcting its fee schedule to reflect the $100 fee for the S101 and the S201 continuing education.

[10] The S501 was established for those registrants who have passed the Series 56 Qualification Exam as reflected in WebCRD. WebCRD is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78(c)(3)(B).

[13] 15 U.S.C. 78f(b)(5).

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, by requiring registered persons to complete the applicable continuing education program. NASDAQ believes that a strong continuing education program should bolster the integrity of NASDAQ by helping to ensure that all associated persons engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions. The Exchange does not believe that the proposal is unfairly discriminatory with respect to persons registered as a General Securities Representative who function in their current job as a Proprietary Trader, even though these persons are subject to the more stringent S101 rather than the S501; such persons are registered and qualified (Series 7) in a ''higher'' capacity and are therefore qualified to function in a capacity other than a Proprietary Trader, whether they choose to or not. Accordingly, requiring the S101 for such persons is appropriate and facilitates them being able to maintain their ''higher'' registration. The Exchange also believes that permitting General Securities Representatives functioning as Proprietary Traders to complete the S501 would be confusing and difficult to monitor.

NASDAQ also believes that the proposal furthers the objectives of Section 6(b)(4) of the Act,[14] in that it provides for an equitable allocation of reasonable fees and other charges among exchange members and other persons using its facilities. Specifically, the new $60 fee is applicable to persons registered as a Proprietary Trader, which is a limited registration under NASDAQ rules. Accordingly, the proposed S501 Regulatory Element specifically correlates to the rules and obligations applicable to Proprietary Traders, which are fewer than those applicable to persons registered in other categories. Thus, the S501 is a more limited form of continuing education. Therefore, NASDAQ believes that the lower fee ($60 rather than $100) is reasonable.[15] The proposed fee is equitable, because it applies equally to all persons registered solely as Proprietary Traders.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. All of the exchanges that recognize the Proprietary Trader registration category are expected to adopt the same continuing education fee and all Proprietary Traders, regardless of where they are registered, will be subject to same continuing education requirements and the same continuing education fees. Thus, the proposal treats similarly situated persons in the same way.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b-4(f)(6) thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay. The proposed rule change: specifies the continuing education requirements that currently apply to registered persons; adopts a continuing education requirement, the S501, and a related fee for persons registered as Proprietary Traders; and corrects the Exchange's fee schedule to reflect the proper fee, $100 rather than $75, for the S101 and S201. Waiver of the operative delay would allow the Exchange to clarify and correct its rules and implement the proposed rule change at once, enabling its members to comply with their continuing education requirements in a timely manner, and thus is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–108 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–NASDAQ–2013–108*. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for

[14] 15 U.S.C. 78f(b)(4).

[15] The Commission notes that in the Purpose section of this filing, NASDAQ correctly represents that the $100 fee for the S101 covers costs associated with both development and administration of the program, but the $60 fee for the S501 covers only the cost to administer the continuing education.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NASDAQ–2013–108 and should be submitted on or before October 1, 2013

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–21934 Filed 9–9–13; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70315; File No. SR–CBOE–2013–083]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

September 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 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 amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. First, the Exchange proposes to waive the CMI and FIX Login ID fees for CMI and FIX Login IDs used to access the Exchange's FLEX Hybrid Trading System (the ''CFLEX System'') for FLEX Options[3] trading (the ''Waiver''). CMI Client Application Servers and FIX Ports are used by Exchange Trading Permit Holders (''TPHs'') to access CBOE Command, which is the platform provided by the Exchange to connect to Exchange systems. The Exchange assesses a fee of $500 per month for each CMI or FIX Login ID that a TPH uses to access CBOE Command. The Exchange has enhanced the CFLEX System in order to further integrate it with the Exchange's existing CBOE Command technology platform.[4] As part of these enhancements, TPHs connect to the CFLEX System through CBOE Command, and need to get either a CMI or FIX Login ID to do so.[5] As such, the Exchange proposes the Waiver in order to encourage TPHs to trade on the CFLEX System. The Exchange has, in the past, waived the CMI and FIX Login ID fees.[6]

Next, the Exchange proposes to amend its Hybrid Agency Liaison (''HAL'') Step-Up Rebate (the ''Rebate''). Currently, the Exchange rebates to a Market-Maker $0.10 per contract against transaction fees generated from a transaction on the HAL system in a penny pilot class, provided that at least 60% of the Market-Maker's quotes in that class (excluding mini-options and quotes in LEAPS series) in the prior calendar month were on one side of the NBBO. The Exchange proposes to amend the Rebate to raise the threshold to 70%, effective September 1 (the Exchange initially submitted this proposed change one month prior to the effective date in order to notify Market-Makers about the change; since the Rebate is provided based on the prior calendar month's trading, this action will have given Market-Makers notification that they must hit the 70% threshold in August in order to qualify for the Rebate in September). The Exchange proposes increasing this threshold for economic reasons; providing the Rebate is less economically viable, and the Exchange is willing to continue to provide it, but only if it will encourage even greater quoting on one side of the NBBO by Market-Makers. Indeed, the Exchange believes that the increased threshold will incentivize Market-Makers to provide more competitive quoting.

The Exchange proposes to amend its Fees Schedule to increase the Surcharge Fee for the Russell 2000 Index (''RUT'') from $0.15 per contract to $0.30 per contract. Surcharge Fees charged by the Exchange reflect the pass-through charges associated with the licensing of certain products, including RUT. The proposed increase in the Surcharge Fee for RUT from $0.15 to $0.30 per contract is a reflection of the increased cost the Exchange has incurred in securing a license agreement from the index provider. Absent the license agreement, the Exchange and its participants would be unable to trade RUT options and would lose the ability to hedge small cap securities with a large notional value, European-style cash-settled index option. Other exchanges have recently

[3] Flexible Exchange Options (''FLEX Options'') provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. *See* CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17. The rules governing the trading of FLEX Options on the FLEX Request for Quote (''RFQ'') System platform (which is limited to open outcry trading only) are contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform (which combines both open outcry and electronic trading) are contained in Chapter XXIVB. The Exchange notes that, currently, all FLEX Options are traded on the FLEX Hybrid Trading System platform.

[4] *See* Securities Exchange Act Release No. 66769 (April 6, 2012), 77 FR 22012 (April 12, 2012) (SR–CBOE–2012–033).

[5] TPHs may also access the CFLEX System using an internet-based application. There is currently no login fee associated with the internet-based application.

[6] *See* Securities Exchange Act Release No. 66812 (April 16, 2012), 77 FR 23767 (April 20, 2012) (SR–CBOE–2012–037).

increased their RUT surcharge fees to an even greater extent than the Exchange.[7]

The Exchange proposes to amend its Fees Schedule with regards to strategy executions.[8] First, the Exchange proposes to include Clearing Trading Permit Holder and joint back-office (''JBO'') participant transaction fees towards qualifying for the cap (described in Footnote 13 to the Fees Schedule) on transaction fees for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class, excluding any option class on which the Exchange charges the Index License surcharge fee. The purpose of this proposed change is to encourage Clearing Trading Permit Holders and JBO participants to execute such strategy transactions (the execution of which will add volume and provide trading opportunities for all market participants, especially those on the other side of such transactions). Further, other exchanges apply a similar cap to similar market participants.[9] The Exchange also proposes to lower from $1000 to $700 this cap. The Exchange proposes this change for similar reasons; in order to encourage qualifying market participants to execute such strategy transactions (the execution of which will add volume and provide trading opportunities for all market participants, especially those on the other side of such transactions). Further, other exchanges apply similar caps in these amounts.[10]

The Exchange also proposes to exclude JBO participants from the $25,000 per month cap on transaction fees for strategies. JBO participants trade only their own proprietary orders via a Clearing Trading Permit Holder; they do not do any agency trading (trading for customers or other market participants). They do not have some of the obligations, such as being a Trading Permit Holder, that other beneficiaries of the $25,000 per month cap on transaction fees for strategies have.

The Exchange also proposes to exclude from the $1,000 cap on all merger strategies and short-stock interest strategies executed in the same trading day in the same option class transactions in any option class on which the Exchange charges the Index License surcharge fee under Footnote 14 of the Fees Schedule because there is no such thing as an index merger or a short stock index situation. No such trades could be executed.

The Exchange also proposes to amend Footnote 11 of the Fees Schedule to state that transaction fees resulting from any of the strategies defined in Footnote 13 will apply towards reaching the Clearing Trading Permit Holder Proprietary Fee Cap (the ''Fee Cap'') (contract volume resulting from such strategies will still not apply towards the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders). This will put the strategy executions on the same footing as other transactions that count towards the Fee Cap. Further, the Exchange believes this change will encourage the transaction of strategy executions, and the resulting increased volume should benefit all market participants.

The Exchange also proposes to exclude Clearing Trading Permit Holders from the $25,000 per month cap on transaction fees for strategies because the Exchange has determined to include strategy transaction fees in the Fee Cap, which includes many other types of Clearing Trading Permit Holder transaction fees and is more advantageous for Clearing Trading Permit Holders. Further, it would not make economic sense to include strategy transaction fees towards two different monthly fee caps (the Fee Cap and the $25,000 per month strategy transaction fee cap). The Exchange also proposes to explicitly state this $25,000 cap applies to TPH organizations as well as Trading Permit Holders (while TPH organizations are Trading Permit Holders and therefore already qualify for this cap, the Exchange proposes this clarification in order to clear up any possible confusion).[11]

Finally, the Exchange proposes to amend its Customer Large Trade Discount (the ''Discount'') with regards to complex orders. The Discount is a cap on customer (''C'' origin code) transaction fees for certain options classes. Footnote 27 to the Fees Schedule, which describes the Discount, states that ''For complex orders, the total contracts of an order (all legs) are counted for purposes of calculating the fee cap. To qualify for the discount, the entire order quantity must be tied to a single order ID either within the CBOE Command system or in FBW or PULSe or in the front end system used to enter and/or transmit the order . . .'' However, Exchange system limitations prevent the entry of a complex order with more than four legs (for orders entered via PULSe, FBW, or for electronic processing) or twelve legs (for orders entered via a TPH's front-end system that has capability for such orders (PULSe and FBW will soon be capable of the entry of 12-leg complex orders)) into the Exchange system. As such, complex orders with more than the applicable leg limitations must be split up and entered in multiple orders (each order with a different order ID) that each have four legs (for orders entered via PULSe, FBW, or for electronic processing) or twelve legs (for orders entered via a TPH's front-end system that has capability for such orders) or less. Because such complex orders then cannot be tied to a single order ID, under the current language of Footnote 27, they would not qualify for the Discount. The Exchange does not intend to exclude such complex orders from qualification for the discount; they are only excluded due to the system limitations. As such, The Exchange proposes to amend Footnote 27 to state that to ''qualify for the discount, the entire order quantity must be tied to a single order ID (unless the order is a complex order with a number of legs that exceeds system limitations)…'' In order to verify that a complex order with a number of legs that exceeds system limitations that has been broken up into multiple orders (with multiple order IDs) is indeed a single complex order, the Exchange also proposes to amend the last sentence of Footnote 27 to state that for an order entered via FBW, PULSe or another front end system, or a complex order with multiple order IDs, a customer large trade discount request must be submitted to the Exchange within 3 business days of the transactions and must identify all necessary information, including the order ID and related trade details.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange

[7] *See* SR–NYSEMKT–2013–65, which increased the NYSE MKT LLC (''AMEX'') Royalty Fee for RUT from $0.15 per contract to $0.40 per contract.

[8] For details about strategy executions, *see* CBOE Fees Schedule, Footnote 13.

[9] *See* NASDAQ OMX PHLX (''PHLX'') Pricing Schedule, ''Strategy Caps'' chart, which includes ''firms'' in their cap on such transactions (''firms'' and ''Clearing Trading Permit Holders'' being similar market participants).

[10] *See* PHLX Pricing Schedule, ''Strategy Caps'' chart.

[11] Following adoption of the proposed changes to strategies fees, the first three sentences of Footnote 13 of the Fees Schedule will read: Market-maker, Clearing Trading Permit Holder, broker-dealer and non-Trading Permit Holder market-maker transaction fees are capped at $1,000 for all (i) merger strategies and (ii) short stock interest strategies and at $700 for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class, excluding any option class on which the Exchange charges the Index License surcharge fee under footnote 14 of this Fees Schedule. Such transaction fees for these strategies are further capped at $25,000 per month per initiating Trading Permit Holder or TPH Organization (excluding Clearing Trading Permit Holders).

and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[13] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. The Exchange believes that the Waiver is reasonable because it will allow all TPHs trading FLEX Options on the CFLEX System to avoid having to pay a fee that they would otherwise have to pay. The Exchange believes that the Waiver is equitable and not unfairly discriminatory because the Waiver applies to all types of market participants. Further, the Exchange believes that the Waiver will encourage TPHs to transact business in FLEX Options using the CFLEX System and encourage trading of customized options in an exchange environment.[14] The Exchange believes such increased business will provide greater FLEX Options trading opportunities for all market participants. Also, the transaction fees collected from this increased business will allow the Exchange to recoup costs expended in building and developing the CFLEX System.

The Exchange believes that raising the threshold for the Rebate is reasonable because Market-Makers will still be able to receive a rebate for trading activity that they would not otherwise receive (as opposed to levying a fee), and those that cannot reach the new higher threshold will merely be required to pay regular transaction fees. The Exchange believes that raising the threshold for the Rebate is equitable and not unfairly discriminatory because it will encourage more competitive quoting from Market-Makers, which will benefit all market participants. Further, Market-Makers have certain obligations, such as quoting obligations, that other market participants do not have.

The Exchange believes that the proposed increase in the Surcharge Fee from $0.15 to $0.30 per contract for options on RUT is reasonable because Surcharge Fees charged by the Exchange reflect the pass-through charges associated with the licensing of certain products, including RUT. The proposed increase is therefore a direct result of an increase in the licensing fee charged to the Exchange by the index provider and the owner of the intellectual property associated with the index. This increase is equitable and not unfairly discriminatory because the increased amount will be assessed to all market participants to whom the RUT Surcharge Fee applies. Also, other exchanges have recently increased their RUT surcharge fees to an even greater extent than the Exchange.[15]

The Exchange believes that the proposal to include Clearing Trading Permit Holder and JBO participant transaction fees towards qualifying for the cap (described in Footnote 13 to the Fees Schedule) on transaction fees for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class, excluding any option class on which the Exchange charges the Index License surcharge fee is reasonable because it will allow Clearing Trading Permit Holders and JBO participants executing such trades to have a cap on fees for such executions. The Exchange believes that this is equitable and not unfairly discriminatory because Clearing Trading Permit Holders take on a number of obligations, (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations, that some other market participants do not take on. While this cap does not apply to Customer transactions, Customers pay significantly lower transaction fees (including for trades that may include such transactions) (and in many circumstances, no fee). Further, the Exchange believes that this will encourage Clearing Trading Permit Holders and JBO participants to execute such strategy transactions (the execution of which will add volume and provide trading opportunities for all market participants, especially those on the other side of such transactions). Further, other exchanges apply a similar cap to similar market participants.[16]

The Exchange believes that lowering the cap from $1,000 to $700 on transaction fees for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class, excluding any option class on which the Exchange charges the Index License surcharge fee, is reasonable because it will allow qualifying market participants executing such trades to have a lower cap on fees for such executions (thereby saving money). The Exchange believes that this is equitable and not unfairly discriminatory because the proposed lowering of the cap does not affect which market participants qualify for the cap; this lowered cap applies to the same market participants as the $1,000 cap (with the exception of Clearing Trading Permit Holders and JBO participants, who now qualify as described above). Further, the Exchange proposes this change in order to encourage qualifying market participants to execute such strategy transactions (the execution of which will add volume and provide trading opportunities for all market participants, especially those on the other side of such transactions). Also, other exchanges apply similar caps in these amounts.[17]

The Exchange believes that excluding JBO participants from the $25,000 per month cap on transaction fees for strategies (as described above) is reasonable because this change will merely require JBO participants to pay regular transaction fees on all such transactions. The Exchange believes that this change is equitable and not unfairly discriminatory because JBO participants do not have the obligations (such as becoming Trading Permit Holders, clearing trades, financial or regulatory burdens, quoting obligations, and books and records obligations) that other market participants who benefit from the $25,000 per month cap on transaction fees for strategies have, and they only trade for own accounts.

The Exchange believes that excluding from the fee cap on merger strategies and short stock interest strategies transactions in any option class on which the Exchange charges the Index License surcharge fee under Footnote 14 of the Fees Schedule is reasonable, equitable and not unfairly discriminatory because there is no such thing as an index merger or a short stock index situation (because these strategies are only applicable to single stock options transactions). Therefore, since it would not be possible to do these strategies for index options, there could not be a discriminatory impact. Further, even if this were not the case, market participants trading merger strategies and short stock interest strategies in any

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] The Exchange believes that FLEX Options provide TPHs and investors with an improved but comparable alternative to the over-the-counter (''OTC'') market in customized options, which can take on contract characteristics similar to FLEX Options. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including, but not limited to the following: (i) Enhanced efficiency in initiating and closing out positions; (ii) increased market transparency; and (iii) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation as issuer and guarantor of FLEX Options.

[15] *See* SR–NYSEMKT–2013–65, which increased the AMEX Royalty Fee for RUT from $0.15 per contract to $0.40 per contract.

[16] *See* PHLX Pricing Schedule, ''Strategy Caps'' chart, which includes ''firms'' in their cap on such transactions (''firms'' and ''Clearing Trading Permit Holders'' being similar market participants).

[17] *See* PHLX Pricing Schedule, ''Strategy Caps'' chart.

of those classes would merely be required to pay the regular transaction fees for such trades.

The Exchange believes that excluding Clearing Trading Permit Holders from the $25,000 per month strategies fees cap is reasonable, equitable and not unfairly discriminatory because the Exchange is proposing to apply strategy transaction fees towards the Fee Cap, which includes many other types of Clearing Trading Permit Holder transaction fees and is more advantageous for Clearing Trading Permit Holders. Further, it would not make economic sense to include strategy transaction fees towards two different monthly fee caps (the Fee Cap and the $25,000 per month strategy transaction fee cap). Moreover, the Exchange believes that including strategy transaction fees in the Fee Cap will encourage Clearing Trading Permit Holders to execute more strategy trades (more than would applying Clearing Trading Permit Holder strategy transaction fees towards a strategies cap), with the resulting increased volume benefitting all market participants. Finally, without having transaction fees from strategy trades count towards a strategies cap, Clearing Trading Permit Holders will merely be required to pay regular transaction fees for such transactions.

The Exchange believes that explicitly stating that the $25,000 per month strategies fees cap applies to TPH organizations as well as Trading Permit Holders is consistent with the Section 6(b)(5) [18] requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitation 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. By clearing up any possible confusion, this proposed change removes impediments to and perfects the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed change to include transaction fees resulting from such strategies to count towards the Fee Cap is reasonable because it will allow qualifying market participants who execute strategy transactions to benefit from the Fee Cap for doing so. The Exchange believes that this is equitable and not unfairly discriminatory because it will apply to all market participants who qualify for the Fee Cap. While the Fee Cap only applies to Clearing Trading Permit Holders, those market participants take on obligations, such as membership with the Options Clearing Corporation, significant regulatory burdens, and financial obligations, that some other market participants do not take on. Further, the Exchange believes that this will incentivize qualifying market participants to engage in such strategy executions, and the resulting increase in volume will benefit all market participants. Finally, this will put the strategy executions on the same footing as other transactions that count towards the Fee Cap.

The Exchange believes that specifying that a complex order with a number of legs that exceeds system limitations to be tied to a single order ID qualifies for the Discount is reasonable because the Exchange does not intend to exclude such orders from qualification for the Discount; Exchange systems merely prevent such orders from being tied to a single order ID. Complex orders qualify for the Discount, this proposed change is merely intended to make up for an Exchange system limitation. This change is equitable and not unfairly discriminatory because it provides complex orders with more than the number of legs permitted for entry with a single order ID with the ability to qualify for the Discount, just as complex orders with a small enough number of legs as to permit such orders to be tied to a single order ID may qualify for the Discount.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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. CBOE does not believe that the proposed Waiver will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Waiver will apply to all market participants accessing the CFLEX System via CMI or FIX Login IDs. Further, the Exchange believes that the Waiver will encourage TPHs to transact business in FLEX Options using the CFLEX System and encourage trading of customized options in an exchange environment. The Exchange believes such increased business will provide greater FLEX Options trading opportunities for all market participants, and the Exchange believes that the transaction fees collected from this increased business will allow the Exchange to recoup costs expended in building and developing the CFLEX System. CBOE does not believe that the proposed Waiver will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change only applies to accessing the CFLEX System, which is only available on CBOE. To the extent that waived fees for CMI or FIX Login IDs for accessing the CFLEX System makes CBOE a more attractive trading venue for market participants at other exchanges, such market participants may elect to become CBOE market participants.

CBOE does not believe that the proposed increase in the Rebate threshold will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increase does not change which market participants to whom the Rebate applies; it merely changes the threshold for qualification for the Rebate. Further, while the Rebate applies to Market-Makers, Market-Makers have certain obligations, such as quoting obligations, that other market participants do not have. CBOE does not believe that the proposed increase in the Rebate threshold will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change only applies to trading on CBOE, and only CBOE has a HAL Step-Up Rebate.

CBOE does not believe that the proposed increase in the RUT Surcharge Fee will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increase does not change which market participants to whom the RUT Surcharge Fee applies; it merely changes the fee's amount. CBOE does not believe that the proposed increase in the RUT Surcharge Fee will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change only applies to trading of RUT on CBOE. The Exchange further notes that the licensing agreement it has secured is not an exclusive agreement as at least two other options exchanges continue to trade RUT options and charge a fee related to such license (and indeed, the Exchange's proposed increased fee is still lower than that offered on other exchanges). As such, the Exchange believes that there is no unnecessary or

[18] 15 U.S.C. 78f(b)(5).

inappropriate burden on competition among exchanges for the trading of RUT options.

The Exchange does not believe that the proposal to include Clearing Trading Permit Holder and JBO participant transaction fees towards qualifying for the cap (described in Footnote 13 to the Fees Schedule) on transaction fees for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class, excluding any option class on which the Exchange charges the Index License surcharge fee, will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because Clearing Trading Permit Holders take on a number of obligations, (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations, that some other market participants do not take on. While this cap does not apply to Customer transactions, Customers pay significantly lower transaction fees (including for trades that may include such transactions) (and in many circumstances, no fee). Further, the Exchange believes that this will encourage Clearing Trading Permit Holders and JBO participants to execute such strategy transactions (the execution of which will add volume and provide trading opportunities for all market participants, especially those on the other side of such transactions). The Exchange does not believe that this will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change only applies to trading on CBOE. Further, other exchanges apply a similar cap to similar market participants,[19] so this change should make CBOE more competitive with other exchanges. To this extent, if this change makes CBOE more attractive to market participants on other exchanges, such market participants may elect to become CBOE market participants.

The Exchange does not believe that the proposed change to lower from $1,000 to $700 the cap (described in Footnote 13 to the Fees Schedule) on transaction fees for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class, excluding any option class on which the Exchange charges the Index License surcharge fee, will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed lowering of the cap does not affect which market participants qualify for the cap; this lowered cap applies to the same market participants as the $1,000 cap (with the exception of Clearing Trading Permit Holders and JBO participants, who now qualify as described above). Further, the Exchange proposes this change in order to encourage qualifying market participants to execute such strategy transactions (the execution of which will add volume and provide trading opportunities for all market participants, especially those on the other side of such transactions). The Exchange does not believe that this will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change only applies to trading on CBOE. Further, other exchanges apply similar caps in these amounts,[20] so this change should make CBOE more competitive with other exchanges. To this extent, if this change makes CBOE more attractive to market participants on other exchanges, such market participants may elect to become CBOE market participants.

The Exchange does not believe that the proposed change to exclude JBO participants from the $25,000 per month cap on transaction fees for strategies (as described above) will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because JBO participants do not have the obligations (such as becoming Trading Permit Holders, clearing trades, financial or regulatory burdens, quoting obligations, and books and records obligations) that other market participants have, and they only trade for own accounts. The Exchange does not believe that this will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change only applies to trading on CBOE.

The Exchange does not believe that the proposed change to exclude from the fee cap on merger strategies and short stock interest strategies transactions in any option class on which the Exchange charges the Index License surcharge fee under Footnote 14 of the Fees Schedule will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because there is no such thing as an index merger or a short stock index situation.

The Exchange does not believe that the proposed changes to include transaction fees resulting from such strategies to count towards the Fee Cap will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because they will apply to all market participants who qualify for the Fee Cap. While the Fee Cap only applies to Clearing Trading Permit Holders, those market participants take on obligations, such as membership with the Options Clearing Corporation, significant regulatory burdens, and financial obligations, that some other market participants do not take on. Further, the Exchange believes that this will incentivize qualifying market participants to engage in such strategy executions, and the resulting increase in volume will benefit all market participants. The Exchange does not believe that this will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only affects trading on CBOE. Further, to the extent that these changes may make CBOE a more attractive trading venue for market participants on other exchanges, such market participants may elect to become CBOE market participants.

The Exchange does not believe that the proposed change to exclude Clearing Trading Permit Holders from the $25,000 per month strategies fees cap will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange is proposing to apply transaction fees from strategies trades towards the Fee Cap, which includes many other types of Clearing Trading Permit Holder transaction fees and is more advantageous for Clearing Trading Permit Holders. Further, it would not make economic sense to include strategy transaction fees towards two different monthly fee caps (the Fee Cap and the $25,000 per month strategy transaction fee cap). Further, the Exchange believes that including strategy transaction fees in the Fee Cap will encourage Clearing Trading Permit Holders to execute more strategy trades (more than would applying Clearing Trading Permit Holder strategy transaction fees towards a strategies cap), with the resulting increased volume benefitting all market participants. The Exchange does not believe that this will impose any burden on intermarket competition that is not

[19] *See* PHLX Pricing Schedule, ''Strategy Caps'' chart, which includes ''firms'' in their cap on such transactions (''firms'' and ''Clearing Trading Permit Holders'' being similar market participants).

[20] *See* PHLX Pricing Schedule, ''Strategy Caps'' chart.

necessary or appropriate in furtherance of the purposes of the Act because the change only applies to trading on CBOE.

The Exchange does not believe that the proposal to explicitly state that the $25,000 per month strategies fees cap applies to TPH organizations as well as Trading Permit Holders will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because this is not a substantive change, but merely intended to clear up any potential confusion.

CBOE does not believe that the proposed amendment to Footnote 27 permitting complex orders that cannot be tied to a single order ID to qualify for the Discount will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because this proposed change does not affect which types of market participants qualify for the Discount; it is merely intended to make up for an Exchange system limitation. This change provides complex orders that cannot be tied to a single order ID with the ability to qualify for the Discount, just as complex orders that can be tied to a single order ID may qualify for the Discount. CBOE does not believe that this proposed change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act for much of the same reasons. The change is not made for competitive reasons, but instead to correct for an Exchange system limitation. Further, this proposed change applies only to trading on CBOE. To the extent that the proposed change may make CBOE a more attractive trading venue for market participants at other exchanges, such market participants may elect to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and paragraph (f) of Rule 19b–4 [22] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–083 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–CBOE–2013–083*. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–CBOE–2013–083, and should be submitted on or before October 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

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[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70313; File No. SR–CBOE–2013–085]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

September 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 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 amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to exclude the Russell 2000 Index (''RUT'') from the Exchange's Volume Incentive Program (''VIP''). This would mean that RUT volume would not be included in the calculations used for determining VIP, nor would the Exchange pay out a credit for RUT trades. The reason for this proposed change is due to changing economic circumstances regarding RUT (including changed license fees (which are lower than those offered by other exchanges) [3] and other effects of the new RUT licensing structure). The changed licensing structure for RUT makes it less economically feasible to include RUT in the VIP. Further, CBOE's competitive offering for RUT, including the trading of RUT over CBOE's Complex Order Book and the assessment of the Marketing Fee for RUT transactions [4] as well as other economic circumstances regarding the trading of RUT, has caused CBOE to gain such market share that CBOE has deemed it unnecessary to offer the VIP's incentives in order to attract RUT volume (the purpose of the VIP is to attract volume via offering volume-based incentives). Unlike for other multiply-listed indexes traded at CBOE that are still included in the VIP, CBOE's competitive offering regarding RUT offers enough incentives to market participants wishing to trade RUT that including RUT in the VIP is unnecessary.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

The Exchange believes that excluding RUT from the VIP is reasonable because the VIP is a credit program, and excluding RUT from the VIP does not impose any extra fee for RUT trades, it just prevents them from incurring a credit (or counting towards incurring credits). As such, qualifying market participants trading RUT will merely be required to pay regular transaction fees. The Exchange believes that excluding RUT from the VIP is equitable and not unfairly discriminatory because the different licensing schemes for RUT (and all licensed products) make such products incomparable, and the changed licensing structure for RUT makes it less economically feasible to include RUT in the VIP. Further, CBOE's competitive offering for RUT, including the trading of RUT over CBOE's Complex Order Book and the assessment of the Marketing Fee for RUT transactions [7] as well as other economic circumstances regarding the trading of RUT, has caused CBOE to gain such market share that CBOE has deemed it unnecessary to offer the VIP's incentives in order to attract RUT volume (the purpose of the VIP is to attract volume via offering volume-based incentives). Unlike for other multiply-listed indexes traded at CBOE that are still included in the VIP, CBOE's competitive offering regarding RUT offers enough incentives to market participants wishing to trade RUT that including RUT in the VIP is unnecessary.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that excluding RUT from the VIP will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change does not affect to whom the VIP applies. Further, the different licensing schemes for RUT (and all licensed products) make such products incomparable, and the changed licensing structure for RUT makes it less economically feasible to include RUT in the VIP. The Exchange does not believe that excluding RUT from the VIP is will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because this exclusion only applies to trading on CBOE, and the VIP only applies to CBOE.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and paragraph (f) of Rule 19b–4 [9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–085 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–CBOE–2013–085. This file number should be included on the subject line if email is used. To help the

[3] *See* SR–CBOE–2013–83, which increases the Exchange's RUT Surcharge Fee to $0.30 per contract, compared to SR–NYSEMKT–2013–65, which increased the NYSE MKT LLC (''AMEX'') Royalty Fee for RUT from $0.15 per contract to $0.40 per contract.

[4] *See* CBOE Fees Schedule, Marketing Fee table.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] *See* CBOE Fees Schedule, Marketing Fee table.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–CBOE–2013–085, and should be submitted on or before October 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–21931 Filed 9–9–13; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70317; File No. SR–NYSEArca–2013–42]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Amending Rule 6.72 To Make Permanent the Penny Trading Program for Options

September 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 20, 2013, 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 Exchange. 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] 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 Rule 6.72 to make permanent the penny trading program for options. 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 these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 purpose of this filing is to amend Rule 6.72 to make permanent the penny trading program in options (the ''Program''), which was approved on a limited pilot basis on January 23, 2007 (the ''Penny Pilot'' or, the ''Pilot''), and has been expanded and extended numerous times since.[3]

NYSE Arca, having demonstrated the benefits of options trading in pennies for customers through numerous studies, proposes to make the Program permanent, but on a reduced level. NYSE Arca proposes that the Program be limited to the 150 most active multiply listed options classes.

Analysis of the Current Program

Under the Penny Pilot, the Program is currently available for 363 listed options classes. NYSE Arca conducted an analysis of penny trading in options to determine the effectiveness of the Penny Pilot within the full range of the Pilot issues. Since the Pilot was expanded over the time period of November 2009 to August 2010, the Exchange reviewed data from the last two full calendar years.

The Exchange determined that, while the overall Pilot was of great benefit to Customers and provide [sic] greater opportunities to all market participants, the benefits have been concentrated in the 150 most active Penny Pilot issues (the ''Top 150''), and that the Pilot issues outside of the Top 150 (the ''Bottom 203'')[4] not only failed to reap a benefit from penny trading, but resulted in more technology overhead costs to provide for capacity and speed for quote activity, and lagged the overall market in volume and in various performance statistics. As part of its analysis, the Exchange reviewed quote-to-volume ratios for the Top 150, the Bottom 203, and the Top 200 non-Penny Pilot issues.[5]

The Exchange found the following:

QUOTE TO VOLUME RATIO

[January to October 2012]

Segment	Quote/ Contract
Top 50 Penny Pilot Issues	176 to 1.
Top 150 Penny Pilot Issues	216 to 1.
Top 200 Non Penny Issues	514 to 1.
Bottom 203	589 to 1.

The Exchange believes that the quote-to-volume ratios demonstrate that the

[3] Exchange Act Release No. 55156 (January 23, 2007) 72 FR 4759 (February 1, 2007) (NYSEArca–2006–73); Release No. 56150 (July 26, 2007) 72 FR 42460 (August 2, 2007) (NYSEArca–2007–56); Release No. 56568 (September 27, 2007) 72 FR 56422 (October 3, 2007) (NYSEArca–2007–88); Release No. 59628 (March 26, 2009) 74 FR 15025 (NYSEArca–2009–26); Release No. 60224 (July 1, 2009) 74 FR 32991 (July 9, 2009) (NYSEArca–2009–61); Release No. 60711 (September 23, 2009) 74 FR 49419 (September 28, 2009) (NYSEArca–2009–44); Release No. 61061 (November 24, 2009) 74 FR 62857 (December 1, 2009) (NYSEArca–2009–44); Release No. 63376 (November 24, 2010) 75 FR 75527 (December 3, 2010) (NYSEArca–2010–104); Release No. 65977 (December 15, 2011) 76 FR 79234 (NYSEArca–2011–93); Release No. 67307 (June 28, 2012) 77 FR 40110 (July 6, 2012) (NYSEArca–2012–65); Release No. 68426 (December 13, 2012) 77 FR 75224 (December 19, 2012) (NYSEArca–2012–135); Release No. 69106 (March 11, 2013) 78 FR 16552 (March 15, 2013) (NYSEArca–2013–22); Release No. 69790 (June 18, 2013) 78 FR 37853 (June 24, 2013) (NYSE Arca–2013–59).

[4] For purposes of consistency, the study was conducted on issues that were in the Penny Pilot as of the end of 2012 and added to the Pilot no later than January 2011, thus excluding 9 issues. One other issue was excluded due to extenuating circumstances of the underlying. The total number of issues studied was 353. For a more detailed discussion on methodology, *see* NYSE U.S. Options Report on Penny Trading in Options 2012, attached as Exhibit 3 to the proposing Rule change.

[5] Study period was January through October, 2012. The time frame was chosen to allow for a year over year comparison period in which the Penny Pilot was completely rolled out to 363 issues.

reduced minimum price variation (''MPV'') applicable to issues in the Penny Pilot provides significant efficiencies in the most active names, but provides a great deal of unnecessary quote traffic in the less active issues. Indeed, the non-Penny Pilot issues studied were 12.7% more efficient than the Bottom 203.

The Exchange also found that trading volume in Penny Pilot issues is almost all concentrated in the Top 150. In 2011, 89.1% of Penny Pilot volume was in the Top 150, and continued at a rate of 90.8% for 2012.

From 2011 to 2012, trading volumes in the Top 150 declined 11.6%, whereas the Bottom 203 declined 26.9%. Given a year-over-year decline in options industry volume of 12.2%, the Bottom 203 underperformed the industry by 14.7%.

The Exchange anticipates that there may be some investor concern regarding a widening of the minimum price variation in some issues. But the Exchange believes that such concerns are offset by the significant widths and lack of liquidity of market spreads in lower tier Penny Pilot issues as well as the availability of mechanisms for price improvement in today's modern options industry. First, notwithstanding the smaller MPV for Penny Pilot issues, it has not contributed to market spreads less than $0.05 in most Penny Pilot issues. For example, in April 2012, the average NBBO spread in the Top 10 most active Penny Pilot issues was $0.25, while the spread in the 20 least active Penny Pilot issues was $0.60. And, despite the wider spread, the average size at the NBBO in the less active names is often less than 25 contracts. The Exchange believes that an MPV of $0.05 or higher for an issue with a $0.60 spread is not an unreasonable ratio.

Second, if a market participant is interested in an execution in a penny increment, such opportunities are available with certain price improvement mechanisms. For example, the Price Improvement Period (''PIP'')[6] of the BOX Options Exchange LLC (''BOX'') auction process provides an opportunity for penny incremented price improvement for series with a $0.05 MPV. From December 2012 to February 2013, 69.2% of the contracts submitted to the PIP in series with a $0.05 MPV received price improvement, while only 17.4% of the contracts submitted to the PIP in $0.01 series were price improved.[7] With a number of exchanges now offering auction price improvement mechanisms, Customers wishing to trade an order within the NBBO in an increment finer than $0.05 and for size greater than the average NBBO may do so through competitive mechanisms.

The Exchange considers that given the existing quote width in most Penny Pilot series, a change in MPV resulting from reducing the number of issues available for penny trading will be unlikely to have any material impact on spread widths.

Proposal for a Permanent Program

NYSE Arca proposes the Penny Pilot for Options be approved as a permanent program, but on a smaller scale. The Exchange proposes reducing the number of issues in the Program to the 150 most active issues currently in the Program effective the monthly expiration three months following approval of this filing. The Exchange does not propose to change any aspects of the structure of the Program other than the number of underlying issues in the Program and certain details regarding the processes for adding and removing options on certain issues that are subject to the Program. All options contracts in QQQ (PowerShares QQQ TrustSM, Series 1), SPY (SPDR S&P 500 ETF) and IWM (iShares Russell 2000 Index Fund) will continue to quote in $0.01 increments; all other options contracts in the Program trading under $3 will continue to quote in $0.01 increments, and all other option contracts in the Program trading at or above $3 will trade in $0.05 increments. NYSE Arca makes this proposal for a reduced Program based on the numerous previously published studies of the Pilot. Through these studies, the options industry has extensive understanding of the benefits to Customers of the Pilot and the burdens on quote traffic and capacity caused by the Pilot. Over the life of the Pilot, the Exchange has studied quote traffic with an expectation that quote traffic would increase because of more quoting price points, but also with the expectation that the increased quote traffic would provide increased trading activity. The Exchange believes that the Pilot, as a whole, has largely met these expectations. However, our study has shown that the anticipated benefits have been concentrated in the Top 150 issues. Further, our study shows that quote traffic in the lower tier issues has increased significantly without a corresponding increase in volume. Previous Pilot reports did not identify the disparity as they did not examine the Quote to Trade ratio at various volume levels and tiers. While the Exchange proposes permanent approval on terms different from the Pilot, it does so after analysis of the Pilot (as outlined in the Report) following the increase in issues in the Pilot starting in the fall of 2009.

NYSE Arca notes that a reduced program does not need to be continued as a Pilot, as the various markets and market participants have already studied the Program at roughly that level on a Pilot basis in 2009 and 2010 during expansion of the Pilot. The Exchange and other markets all studied the Pilot at various levels throughout the Pilot, and consistently found that as an overall program, the Pilot was of benefit to Customers and had a minimal impact on the industry. Further study of the program on a Pilot basis would not reveal anything not already available. While the Quote to Trade ratio was not studied under the original Pilot Reports, the recent NYSE U.S. Options Report looked closely at the Quote to Trade ratio by volume group; a Pilot study of the Top 150 would retrace what was already studied in the Report. The previous Reports looked at quote traffic from an overall perspective, with the expectation that quote traffic would increase but be offset by a benefit to the investing public because of narrowed spreads and more price points. Overall, that is still true. The attached Report, however, is the first to look at the benefit of the added quote traffic by comparing the number of quotes per trade. The study found a robust volume of trades for a given quote level in the most active issues, but an exorbitant number of quotes per trade in the lower volume Pilot issues, indeed at a rate far higher than in non-Pilot issues.

In adopting a reduction to the Program, the Exchange does not believe further statistical analysis is needed and, accordingly, does not feel that a reduced Program should continue on a pilot basis. An additional pilot with a reduced number of issues would not reveal additional information or nuance. The attached Report looked at quote traffic over a significant time period, and found consistent behavior over time. Upon approval of this filing, an issue would remain in the Program if it qualified based on volume even if the price was over $200 per share, but, consistent with current practice under the Pilot, an issue must be trading under $200 per share to be added to the Program. An issue would not be removed from the Program based on price, but only on failure to stay in the

[6] *See* BOX Rule 7150 Price Improvement Period (''PIP).

[7] *See http://boxexchange.com/regulatory-circulars/pilot-reports/.*

150 most actively traded issues. Issues to be removed following approval will convert back to trading in standard increments of $0.05 and $0.10, but effective on the Monday following the third monthly expiration following approval, to give investors and traders time to prepare for the larger quoting increment.

Starting in January 2014, the Exchange also proposes an annual review of issues that are in the Program, so that the Program generally includes the 150 most active options issues. After each annual review, issues that are no longer in the 150 most active issues but are still among the 200 most active will continue in the Program, while issues that are removed will be replaced by issues that have become among the 150 most active and also priced below $200 per share. The replacement issues will be ranked based on trading activity in the preceding six full calendar months,[8] and added, based on ranking and available space in the Program, on the first business day following January expiration. The reason for the limited removal from the Program is to reduce confusion if an issue is still active but is no longer in the 150 most active issues. The Program will thus have no more than 150 issues except for the period when issues to be removed are still trading in a penny increment. By remaining in the program, investors and traders will experience a continuity in trading practices. Issues that fall below the 200 most actives will be converted back to trading in standard increments of $0.05 and $0.10, but not until the first business day after April expiration, to give investors and traders time to prepare for the larger quoting increment. The Exchange finds it necessary to have these steps to insure an orderly transition of an issue out of the program. Announcements of issues to be added and to be phased out will be made at the end of the first full week of each year via Trader Update bulletin.[9]

An Exchange review of the most actively traded options issues over the last three years shows that approximately 30 issues each year fall out of the 150 most actives, with approximately 10 of those 30 falling out of the 200 most active. Of the issues that fall in the range of 151st to 200th most active, there is a meaningful chance that they will again be in the 150 most active.[10] By reducing the movement out of the Program for issues which are still relatively active, investor confusion will be reduced.

Under the Pilot, issues that were no longer trading or where the options class had been delisted were only replaced once all existing series had expired or been delisted. This often had the effect of a defunct issue taking a slot in the program for an extended period of time because of LEAP series. For instance, an issue that went bankrupt in the Fall of 2008, just shortly after the listing of January 2011 LEAPs, remained in the program for over two years (until the January 2011 LEAP expired). With the proposed changes to the administration of a permanent program, and with the ability to remove issues from the Program, the Exchange proposes that issues that will not be adding any more series be removed from the active list of Program issues, so that they may be replaced with options issues that have become among the most active, and thus are available for trading in the finer increment.

NYSE Arca proposes that issues that are no longer available for listing new series because of delisting of the options class, or because they have been identified by OCC as no longer eligible for opening customer transactions will be removed from the list of active issues under the Program, and will be replaced in the Program at the beginning of the next quarter. Under certain circumstances, OCC notifies the exchanges that it will no longer permit new positions to be opened. NYSE Arca proposes this standard because when these events occur, the issues are set to prohibit Customer transactions that open a position. As a result, the activity level decreases such that it would be incapable of remaining in the Top 150 due to volume. However, any remaining series will continue to trade under the Program until they expire.

When adding new issues to replace an options class participating in the Program being removed because of being delisted or because they have been identified by OCC as ineligible for opening Customer transactions, the Exchange will use trading activity for the previous six full calendar months to determine the Top 150 issues based on trading volume.[11] Replacement issues for issues that have been disqualified will be placed in the Program on the first business day following the first monthly expiration of each calendar quarter. Because the new issues are added at least ten business days into the month, rather than the second day of the month as is done under the Pilot, the Exchange will use the most recent six full calendar months. The new issues will be announced in a Trader Update bulletin that is disseminated no later than the Friday before Expiration week. Any series in the issues that are being replaced (because of delisting or because they are ineligible for opening Customer transactions) will continue to trade under the Program until they expire. When an issue is being delisted or identified as ineligible for opening Customer transactions, the Exchange does not add any new series, and the existing series are generally set to ''closing only'', that is, set to not permit a Customer to open or extend a position.

For issues that are no longer active enough to remain in the Program (i.e., no longer in the 200 most active following annual review), they will trade in nickel and dime increments effective after three monthly expirations, and the Exchange will announce via Trader Update bulletin at least one month in advance if orders for such issues in the Consolidated Book will be cancelled or if they will be converted to Price Improving Orders as described in Rule 6.62(s). Thus the Program may have more than 150 issues, and for those being removed from the Program, there will be sufficient notice to market participants that series in an issue will convert to nickel and dime quoting.

Lastly, the Program will also apply to any option classes that are selected by other securities exchanges that employ a similar program that provides for quoting and trading in penny increments under their respective rules.

The Rule will be effective the first business day after monthly expiration three months following approval.

2. Statutory Basis

The Exchange believes that its proposal 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) of the Act,[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 remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

[8] The preceding six full calendar months for the annual review will be July 1 through December 31.

[9] As under the current Rule, the Exchange will continue to publish such bulletins on its Web site.

[10] In 2011, 10 issues previously in the top 150 in 2010 fell into the 151–200th segment. Of these 10 issues, 6 were ranked in the top 150 symbols in 2012, 3 fell past the 200th rank and would be removed from the Program, and 1 remained in the 151–200th segment. In 2012, 12 issues previously in the top 150 in 2011 fell into the 151–200th segment. Of these 12 issues, 6 were ranked in the top 150 in 2013, 5 fell below the 200th rank, and 1 remained in the 151–200th segment.

[11] For instance, a quarterly review in October would use the preceding six full calendar months from April 1 through September 30.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest. In particular, the proposed rule change would provide OTP Holders and market participants with a permanent program for penny trading in options that will provide the greatest benefit to investors while minimizing the burden that a finer trading increment places on quote traffic.

Further, NYSE Arca notes that trading in penny increments has been demonstrated to remove impediments to trading in the national market system by providing a smaller pricing increment, but only in the Top 150 issues. The various reports, especially the NYSE U.S. Options Report on Penny Trading in Options 2012, show that the benefits to investors are overwhelmingly in the Top 150 issues, and that little additional benefit accrues in the Bottom 200. Because of this differential in benefit because of activity level, the Exchange believes that initially limiting the Program to 150 issues, and in subsequent years by not removing an issue that is still among the 200 most active multiply listed, the Program will be the appropriate size.

By providing sufficient notice of the changes to the Program, investor confusion will be greatly reduced. Those issues that will be delisted or because of the underlying security no longer being a covered security, will continue to trade under the Program until all the series have expired. Those issues that no longer qualify as being in the 150 most active issues (or the 200 most active issues after the annual review) will not convert to nickel and dime increment quoting until three monthly expirations have passed, to give investors sufficient time to prepare. These transition times and the provision to not oust issues that are no longer in the 150 most active but still actively traded will reduce investor confusion.

NYSE Arca believes the Commission now has an opportunity to perfect the mechanism of a free and open market by making the Program permanent.

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. Since the proposal will reduce industry quote traffic, it promotes price and quote size competition while easing the burden of repeated quote updates that provide little economic benefit.

There would be an extreme burden placed on the competitiveness of NYSE Arca if the proposed rule change is approved while other exchanges do not reduce the number of issues trading in penny increments. The Program, therefore, will also apply to any option classes that are selected by other securities exchanges that employ a similar penny trading program under their respective rules.

The Exchange would, however, recommend to the Commission, at the time of other exchange's filings to extend their Pilot or to make the program permanent, to have other markets demonstrate the benefit of not reducing the Program to 150 issues, given the burden on quote traffic by a broader program and the lack of market quality demonstrated by the widened spreads and lack of liquidity in the current Pilot. While the Exchange found the level of quote traffic acceptable in previous studies, it was only under the new study that the Exchange looked at the Quote to Trade ratio of differing volume tranches. It was only on doing so that it was revealed that the anticipated benefits of the Pilot were not being realized consistently in lower volume issues.

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 up to 90 days (i) as the Commission may designate 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 will:

(A) By order approve or disapprove the 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. The Commission requests comments, in particular, on the following aspects of the proposed rule change:

1. The Commission has previously noted that allowing market participants to quote in smaller increments has been shown to reduce spreads in options classes included in the Penny Pilot Program, thereby lowering costs to investors.[14] The Commission has also recognized that the options exchanges have previously shown in their pilot reports that there has been a reduction in the displayed size available in the Pilot classes.[15] The current Penny Pilot Program allows penny quoting and trading in 363 options classes. What are the benefits or harms to investors that might result from reducing the number of options classes to a number less than the current 363 options classes in a permanent penny program? Specifically, what are the benefits or harms to investors that might result from reducing the number of options classes in a permanent penny program to the 150 most actively traded multiply listed options classes, as proposed?

2. What are commenters' views on NYSE Arca's proposal to limit the proposed permanent penny program to the 150 most actively traded multiply listed options classes based on trading activity in the previous six months? Please explain.

a. If you agree with basing inclusion on the most actively traded multiply listed options classes, what are your views on NYSE Arca's proposal to include the 150 most actively traded multiply listed options classes? Please explain.

b. If you believe that inclusion of options classes in the proposed permanent penny program should be based on different criteria, what criteria, and why?

3. What are commenters' views on NYSE Arca's proposal to use the previous six months of trading activity to determine the 150 most actively traded multiply listed options classes? Please explain. Should this timeframe be extended or shortened? Why or why not? If so, by how many days or months, and why?

4. NYSE Arca proposes that once an issue is in the proposed permanent penny program, the issue will remain in the proposed permanent penny program until it is no longer among the 200 most actively traded issues based on an annual review. Upon falling below the 200 most actively traded issues, an issue will be removed from the proposed permanent penny program. What are commenters' views on the proposal's process to remove an options class from the proposed permanent penny program that falls below the 200 most actively traded issues? Please explain.

[14] *See* Securities Exchange Act Release No. 60711 (September 23, 2009) 74 FR 49419, 49421 (September 28, 2009) (NYSEArca–2009–44).

[15] *Id.* at 49422.

5. Do commenters have any concerns about how an option class might trade between the time notice has been given that the option class will be removed from the proposed permanent penny program and the time options in that class begin trading in standard increments? Please explain.

6. What are commenters' views on NYSE Arca's proposal to conduct a review on an annual basis? Please explain. Should such a review interval be more or less frequent? Please explain.

7. Do commenters believe that the use of the two proposed market activity levels (150 most actively traded listed options classes and 200 most actively traded issues) would cause confusion among market participants? Why or why not? Do you believe the use of the two proposed market activity levels would provide an appropriate mechanism to transition options classes in and out of the proposed permanent penny program? Why or why not?

8. NYSE Arca proposes to replace any options classes participating in the Program that have been delisted, or are identified by OCC as ineligible for opening Customer transactions, with the next most actively traded multiply listed options classes that are not yet included in the Program, based on trading activity in the previous six full calendar months. NYSE Arca proposes that any series in a class overlying the issues that are being replaced would continue to trade under the proposed permanent penny program until they expire. The replacement issue would be added to the proposed permanent penny program at the beginning of the next quarter. What are commenters' views on NYSE Arca's process to replace options classes that have been delisted or are identified by OCC as ineligible for opening Customer transactions? Please explain.

9. What are commenters' views on whether the minimum quoting increment should be the same or different across all exchanges trading the same option? What are the advantages and disadvantages to adopting a uniform permanent penny program as compared to exchange specific permanent penny programs? Please be specific.

10. Commenters are requested to provide empirical data and other factual support for their views, if possible.

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–2013–42 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–2013–42*. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–2013–42 and should be submitted on or before October 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–21928 Filed 9–9–13; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70314; File No. SR–CBOE–2013–084]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

September 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 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 amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Footnote 10 of the Fees Schedule to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

state that contract volume resulting from any of the strategies defined in Footnote 13 will apply towards reaching the Liquidity Provider Sliding Scale (the ''LP Sliding Scale'') volume thresholds.[3] This will put the strategy executions on the same footing as other transactions that count towards the LP Sliding Scale. Further, the Exchange believes this change will encourage the transaction of strategy executions. This would result in increased volume and provide greater liquidity, which would benefit all market participants (who could trade on the other side of these orders). While CBOE's previous practice had been to not apply contract volume resulting from any of the strategies defined in Footnote 13 towards the LP Sliding Scale (as such transactions apply towards fee caps on strategy executions as described in Footnote 13), the Exchange now believes that the incentive that such application would provide to Market-Makers to transact strategy executions outweighs any countervailing reasoning, as the Exchange recognizes that such transactions would provide greater liquidity for all market participants.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. The Exchange believes that the proposed change to include contract volume resulting from strategy executions in the calculation of the LP Sliding Scale is reasonable because it will allow qualifying market participants who execute strategy transactions to benefit from the LP Sliding Scale for doing so. The Exchange believes that this is equitable and not unfairly discriminatory because it will apply to all market participants who qualify for the LP Sliding Scale. While the LP Sliding Scale only applies to Market-Makers, those market participants take on obligations, such as quoting obligations, that some other market participants do not take on. Further, the Exchange believes that this will incentivize qualifying market participants to engage in such strategy executions, and the resulting increase in volume will benefit all market participants. Finally, this will put the strategy executions on the same footing as other transactions that count towards the LP Sliding Scale.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes to include contract volume resulting from strategy executions in the calculation of the LP Sliding Scale will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because they will apply to all market participants who qualify for the LP Sliding Scale. While the LP Sliding Scale only applies to Market-Makers, those market participants take on obligations, such as quoting obligations, that some other market participants do not take on. Further, the Exchange believes that this will incentivize qualifying market participants to engage in such strategy executions, and the resulting increase in volume will benefit all market participants. The Exchange does not believe that this will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only affects trading on CBOE. Further, to the extent that these changes may make CBOE a more attractive trading venue for market participants on other exchanges, such market participants may elect to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and paragraph (f) of Rule 19–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–084 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–CBOE–2013–084. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change;

[3] The strategies defined in Footnote 13 of the Fees Schedule are merger strategies, short stock interest strategies, reversals, conversions and jelly roll strategies. See Footnote 13 for definitions of each strategy.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

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–CBOE–2013–084, and should be submitted on or before October 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–21932 Filed 9–9–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70311; File No. SR–BX–2013–049]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 1120 and Adopt a Corresponding Fee

September 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on August 22, 2013, NASDAQ OMX BX, Inc. (''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. BX has designated the proposed rule change as constituting a non-controversial rule change under Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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

BX is filing with the Commission a proposed rule change to amend Rule 1120 as described below, and to adopt a corresponding fee.

The text of the proposed rule change is below; proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

1120. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with the Exchange. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(a) Regulatory Element

(1) Requirements

No member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person unless such person has complied with the requirements of paragraph (a) hereof.

Each registered person shall complete the Regulatory Element on the occurrence of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the ''base date,'' shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element shall be determined by the Exchange and shall be appropriate to either the registered representative or principal status of the person subject to the Rule. *The following Regulatory Elements administered by FINRA shall be required:*

Persons registered solely as Proprietary Traders pursuant to Rule 1032(b) must complete the S501.

Persons registered as General Securities Representatives pursuant to Rule 1032(a) must complete the S101.

Persons registered in a supervisory capacity pursuant to Rules 1021 and 1022 must complete the S201.

* * * * *

7003. Regulatory, Registration and Processing Fees

(a) The following fees will be collected and retained by FINRA via the Web CRD registration system for the registration of associated persons of Exchange members that are not also FINRA members:

(1)–(6) No change.

(7) a $[75]*100* session fee for each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Exchange Rule 1120 *(S101 and S201) and a $60 session fee for each individual who is required to complete the Proprietary Trader Regulatory Element (S501);* and

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to codify in Rule 1120 the specific continuing education requirements that currently apply and to adopt a continuing education requirement for persons registered as Proprietary Traders. BX also proposes to adopt a fee in Rule 7003 for the new continuing education program applicable to Proprietary Traders.

BX adopted the Proprietary Trader [5] registration in 2011,[6] working with various other exchanges and Financial Industry Regulatory Authority (''FINRA''). At that time, BX stated that persons registered in the new category would be subject to its continuing education requirements in Rule 1120.

At this time, the new continuing education program for Proprietary Traders will soon become available and will be administered by FINRA. The new program, the S501, is intended to address the specific continuing education of Proprietary Traders, based on the content outline for the Series 56 exam, which covers the main categories of rules and regulations generally applicable to such persons.[7] The Continuing Education Regulatory

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] A Proprietary Trader is a person whose activities in the investment banking and securities business are limited solely to proprietary trading. BX Rule 1032(b).

[6] *See* Securities Exchange Act Release No. 65042 (August 5, 2011), 76 FR 49807 (August 11, 2011) (SR–BX–2011–051).

[7] These generally include recordkeeping and recording requirements, types and characteristics of securities and investments, trading practices and display execution and trading systems. *See* Securities Exchange Act Release No. 65039 (August 5, 2011), 76 FR 49805 (August 11, 2011) (SR–BX–2011–052).

Element is a computer-based education program administered by FINRA to help ensure that registered persons are kept current on regulatory, compliance and trading practice matters in the industry.

BX proposes to amend Rule 1120(a)(1) to specify the required Regulatory Element for each category of registered persons. Currently, Rule 1120(a)(1) provides that no member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of paragraph (a). Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date(s), and every three years thereafter or as otherwise prescribed by BX. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the ''base date,'' shall establish the cycle of anniversary dates for purposes of this Rule. This applies to persons registered as Proprietary Traders as well.

The Rule further provides that the content of the Regulatory Element of the program shall be determined by BX for each registration category of persons subject to the Rule. BX now proposes to make clear which specific programs are required, including both existing programs (S101 and S201) as well as the new Proprietary Trader continuing education program (S501). BX has determined that the following Regulatory Elements administered by FINRA shall be required:

- Persons registered solely as Proprietary Traders pursuant to Rule 1032(b) shall be required to complete the S501.
- Persons registered as General Securities Representatives pursuant to Rule 1032(a) shall be required to complete the S101.
- Persons registered in a supervisory capacity pursuant to Rules 1021 and 1022 shall be required to complete the S201.

BX believes that specifying the applicable Regulatory Element in the Rule should be helpful to members in complying with the Rule. Only one Regulatory Element is required. For example, members registered as supervisors are subject to the S201 only; they do not also have to complete the Regulatory Element applicable to their prerequisite registration, such as the S501 or the S101.[8] This proposal does not change the registration requirements.

BX also proposes to adopt a fee applicable to Proprietary Trader Regulatory Element. Currently, the applicable fee for the Regulatory Element (S101 and S201) is $100.[9] BX proposes to adopt a $60.00 fee for the S501. FINRA administers these programs on behalf of the exchanges and therefore the fees are payable directly to FINRA.[10] The $60 fee will only be used for the administration of the S501 versus the S101 which utilizes the $100 fee for both development and administration. The costs associated with the development of the S501 are included in the examination fee.

2. Statutory Basis

BX believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of: (1) Section 6(c)(3)(B) of the Act,[12] pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,[13] in that it is designed, among other things, 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 a national market system, and, in general, to protect investors and the public interest, by requiring registered persons to complete the applicable continuing education program. BX believes that a strong continuing education program should bolster the integrity of BX by helping to ensure that all associated persons engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions. The Exchange does not believe that the proposal is unfairly discriminatory with respect to persons registered as a General Securities Representative who function in their current job as a Proprietary Trader, even though these persons are subject to the more stringent S101 rather than the S501; such persons are registered and qualified (Series 7) in a ''higher'' capacity and are therefore qualified to function in a capacity other than a Proprietary Trader, whether they choose to or not. Accordingly, requiring the S101 for such persons is appropriate and facilitates them being able to maintain their ''higher'' registration. The Exchange also believes that permitting General Securities Representatives functioning as Proprietary Traders to be complete the S501 would be confusing and difficult to monitor.

BX also believes that the proposal furthers the objectives of Section 6(b)(4) of the Act,[14] in that it provides for an equitable allocation of reasonable fees and other charges among exchange members and other persons using its facilities. Specifically, the new $60 fee is applicable to persons registered as a Proprietary Trader, which is a limited registration under BX rules. Accordingly, the proposed S501 Regulatory Element specifically correlates to the rules and obligations applicable to Proprietary Traders, which are fewer than those applicable to persons registered in other categories. Thus, the S501 is a more limited form of continuing education. Therefore, BX believes that the lower fee ($60 rather than $100) is reasonable.[15] The proposed fee is equitable, because it applies equally to all persons registered solely as Proprietary Traders.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Because the Regulatory Element is administered by FINRA, the fees are paid to FINRA, which does not raise competition issues. All of the exchanges that recognize the Proprietary Trader registration category are expected to adopt the same continuing education fee. All Proprietary Traders, regardless of where they are registered, will be subject to same continuing education

[8] In the event that a person is registered both as a Proprietary Trader and a General Securities Representative, only one Regulatory Element is required—the ''higher'' of the two, which is the S101.

[9] The Commission notes that the Exchange is correcting its fee schedule to reflect the $100 fee for the S101 and the S201 continuing education.

[10] The S501 was established for those registrants who have passed the Series 56 Qualification Exam as reflected in WebCRD. WebCRD is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78(c)(3)(B).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(4).

[15] The Commission notes that in the Purpose section of this filing, BX correctly represents that the $100 fee for the S101 covers costs associated with both development and administration of the program, but the $60 fee for the S501 covers only the cost to administer the continuing education.

requirements and the same continuing education fees. Thus, the proposal treats similarly situated persons in the same way.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) [16] of the Act and Rule 19b–4(f)(6)(iii) thereunder [17] because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

The Exchange has requested that the Commission waive the 30-day operative delay. The proposed rule change: specifies the continuing education requirements that currently apply to registered persons; adopts a continuing education requirement, the S501, and a related fee for persons registered as Proprietary Traders; and corrects the Exchange's fee schedule to reflect the proper fee, $100 rather than $75, for the S101 and S201. Waiver of the operative delay would allow the Exchange to clarify and correct its rules and implement the proposed rule change at once, enabling its Members to comply with their continuing education requirements in a timely manner, and thus is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2013–049 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–BX–2013–049.* 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–BX–2013–049* and should be submitted on or before October 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–21929 Filed 9–9–13; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70320; File No. SR–NASDAQ–2013–111)

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Time-Limited Waiver of the Monthly Subscription Fee for New and Existing Subscribers to the Equity Trade Journal for Clearing Firms Service under Rule 7060

September 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2013 The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to amend the fees assessed under Rule 7060. NASDAQ will offer the fee waiver to new subscriptions for the month of September 2013.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

7060. Equity Trade Journal for Clearing Firms

The Equity Trade Journal for Clearing Firms service is accessed via NasdaqTrader.com and provides member clearing firms with daily and ad hoc reports of correspondent trading activity associated with the subscribing member firm's clearing number. Equity

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Trade Journal for Clearing Firms is offered [at no cost beginning November 15, 2012, and] according to the following fee schedule[beginning January 2, 2013]:

Tier	Number of correspondent MPIDs	Monthly fee
Tier 1	daily reports for 1–10 correspondent MPIDs	$750
Tier 2	daily reports for 11–20 correspondent MPIDs	1,000
Tier 3	daily reports for 21–30 correspondent MPIDs	1,250
Tier 4	daily reports for 31–40 correspondent MPIDs	1,500
Tier 5	daily reports for 41 or more correspondent MPIDs	1,750

The above fees are waived for the month of September 2013 for new and existing subscribers. Normal fees will apply to all subscribers beginning October 2013.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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 is proposing to waive subscription fees for the Equity Trade Journal for Clearing Firms (''ETJ Clearing'') service for all subscribers to the service during the month of September 2013. ETJ Clearing provides clearing member firms with daily and ad hoc reports of correspondent trading activity associated with the subscribing member firm's clearing number [3] and which is accessed via *NasdaqTrader.com*. NASDAQ offered the service at no cost between November 15, 2012 to January 2, 2013, and for a fee according to the tiered fee schedule thereafter. In an effort to promote the service among member firms that are not subscribers to the service, NASDAQ is proposing an additional free period available to both new and existing subscribers for the month of September 2013. NASDAQ is offering the service at no cost for the month of September 2013 to encourage member firms that have not yet subscribed to subscribe; however, both new and existing subscribers will benefit from the free period. Normal fees will apply to all subscribers, new and existing, thereafter. In amending the rule text, NASDAQ is deleting references to the expired free period and timing of the service's launch.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and Section 6(b)(4) of the Act,[5] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASDAQ operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. The proposed fee waiver is reasonable because it will result in a reduction of fees during the month of September 2013 for all subscribers, thereby reducing the fees that they will ultimately pay for the service this year. The proposed fee waiver is equitable and not unfairly discriminatory because the Exchange is applying the waiver to all subscribers to the service and, as a consequence, the fee waiver does not discriminate in any way among member firms. NASDAQ notes that it is attempting to increase the subscriber base of the service, which, as discussed below, may benefit all subscribers. With a larger base of subscribers, the Exchange is able to allocate the fixed costs of the service among more subscribers, which in turn allows the Exchange to either delay or limit the frequency of any increases to the fees assessed for the service in response to increases in fixed costs. As such, any promotional free period offered to encourage new subscription to the service also may benefit existing subscribers. Accordingly, the proposed time-limited fee waiver is equitable [sic] not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Waiver of the subscription fee for all subscribers will result in lower fees, which are generally seen as indicative of the presence of competition. Moreover, the proposed fee waiver may promote broader subscription to the service, thus allowing NASDAQ to allocate the fixed costs of the subscription among a larger pool of subscribers and thereby delay or reduce the frequency of future fee increases resulting from increases in fixed costs experienced by NASDAQ. Finally, by providing a service that allows members to run and store reports on its [sic] correspondents' trading activity, NASDAQ hopes to promote competition among other trading centers by providing useful analytical tools to its member firms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,[6] and paragraph (f)(2) [7] of Rule 19b–4, thereunder as it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of

[3] Clearing member firms have unique clearing numbers that their correspondents use to identify the clearing firm associated with each trade.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–111 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–NASDAQ–2013–111. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NASDAQ. 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–NASDAQ–2013–111, and should be submitted on or before October 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–21936 Filed 9–9–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70312; File No. SR–FINRA–2013–037]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 5131 (New Issue Allocations and Distributions)

September 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 23, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rule 5131 (New Issue Allocations and Distributions) to provide a limited exception to allow members to rely on written representations from certain accounts to comply with Rule 5131(b).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA Rule 5131 (New Issue Allocations and Distributions) (the ''Rule'') addresses abuses in the allocation and distribution of ''new issues.''[3] Rule 5131(b) prohibits the practice of spinning, which refers to an underwriter's allocation of new issue shares to executive officers and directors of a company as an inducement to award the underwriter with investment banking business, or as consideration for investment banking business previously awarded (the ''spinning'' provision).

Specifically, the spinning provision provides that no member or person associated with a member may allocate shares of a new issue to any account in which an executive officer or director of a public company[4] or a covered non-public company,[5] or a person materially supported[6] by such executive officer or director, has a beneficial interest:[7]

- If the company is currently an investment banking services[8] client of the member or the member has received compensation from the company for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 5131 provides that ''new issue'' shall have the same meaning as in Rule 5130(i)(9).

[4] A ''public company'' is any company that is registered under Section 12 of the Exchange Act or files periodic reports pursuant to Section 15(d) thereof. *See* Rule 5131(e)(1).

[5] The Rule defines a ''covered non-public company'' as any non-public company satisfying the following criteria: (i) Income of at least $1 million in the last fiscal year or in two of the last three fiscal years and shareholders' equity of at least $15 million; (ii) shareholders' equity of at least $30 million and a two-year operating history; or (iii) total assets and total revenue of at least $75 million in the latest fiscal year or in two of the last three fiscal years. *See* Rule 5131(e)(3).

[6] ''Material support'' means directly or indirectly providing more than 25% of a person's income in the prior calendar year. Persons living in the same household are deemed to be providing each other with material support. *See* Rule 5131(e)(6).

[7] The Rule provides that the term ''beneficial interest'' shall have the same meaning as in Rule 5130(i)(1).

[8] ''Investment banking services'' include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger, acquisition or other corporate reorganization; providing venture capital, equity lines of credit, private investment, public equity transactions (PIPEs) or similar investments or otherwise acting in furtherance of a private offering of the issuer; or serving as placement agent for the issuer. *See* Rule 5131(e)(5).

investment banking services in the past 12 months;

• If the person responsible for making the allocation decision knows or has reason to know that the member intends to provide, or expects to be retained by the company for, investment banking services within the next three months; or

• On the express or implied condition that such executive officer or director, on behalf of the company, will retain the member for the performance of future investment banking services.

Rule 5131.02 (Annual Representation) provides that, for the purposes of the spinning provision, a member may rely on a written representation obtained within the prior 12 months from the beneficial owner(s) of an account, or a person authorized to represent the beneficial owner(s), as to whether such beneficial owner(s) is an executive officer or director or person materially supported by an executive officer or director and if so, the company on whose behalf such executive officer or director serves. Therefore, to comply with the spinning provision, firms typically issue questionnaires to their customers to ascertain whether any of the persons covered by the spinning provision have a beneficial interest in the account.[9]

Rule 5131(b)(2) provides a *de minimis* exception for new issue allocations to any account in which the beneficial interests of executive officers and directors of a company subject to the rule, and persons materially supported by such executive officers and directors, do not exceed in the aggregate 25% of such account. FINRA understands that members (and their customers) have had difficulty obtaining, tracking and aggregating information from funds regarding indirect beneficial owners, such as participants in a fund of funds, for use in determining an account's eligibility for the *de minimis* exception and that this has resulted in compliance difficulties and restrictions, including in situations where the ability of an underwriter to confer any meaningful financial benefit to a particular investor by allocating new issue shares to the account is impracticable.[10]

FINRA believes that certain funds, owing to several mitigating factors including their size, lack of affiliation with the account directly receiving the allocation and layered (and often opaque) ownership structure, generally do not raise the concerns that the Rule is designed to address. Moreover, where the potential profits from a new issue allocation are spread across a large and diverse investor base, it is unlikely that the proportional benefit to any particular indirect investor would be of an amount that would further spinning (*i.e.,* indirect fund ownership can be an impractical and ineffective means to receive any benefit from spinning). Therefore, FINRA is proposing a limited exception to the spinning provision in the fund of funds context that includes a set of conditions designed to ensure that the important protections of the Rule continue to be preserved, while offering meaningful relief for members and investors in situations where spinning abuse is not likely.

Specifically, FINRA is proposing to provide that members may rely upon a written representation obtained within the prior 12 months from a person authorized to represent an account that does not look through to the indirect beneficial owners of a fund invested in the account, that such fund:

• Is a ''private fund'' as defined in the Investment Advisers Act of 1940;[11]

• Is managed by an investment adviser;

• Has assets greater than $50 million;

• Owns less than 25% of the account and is not a fund in which a single investor has a beneficial interest of 25% or more;

• Does not have a beneficial owner that also is a control person of such fund's investment adviser;

• Is ''unaffiliated'' with the account in that the private fund's investment adviser does not have a control person in common with the account's investment adviser;[12] and

• Was not formed for the specific purpose of investing in the account.

FINRA believes that these conditions are reasonable to assure that a member's new issue allocation will not be in furtherance of spinning, while reducing the compliance burdens associated with the Rule. In addition, a member may rely upon a written representation by an account as to the availability of this proposed exception unless it believes, or has reason to believe, that such representation is inaccurate. Members availing themselves of the new supplementary material must maintain a copy of all records and information relating to whether an account is eligible to receive an allocation of the new issue under the spinning provision in its files for at least three years following the member's allocation to that account.

FINRA discussed with FINRA committees, industry groups and member firms the logistical impracticalities, costs and other hurdles involved in attempting to track beneficial ownership. The comments are described in detail in Item 5 (sic) below. The proposal takes those discussions into account.

FINRA has considered various alternatives to the current approach, including proposing an exception for all private funds meeting certain asset thresholds, providing an interpretation to the existing *de minimis* exception, or requiring alternative percentage caps for direct and indirect beneficial ownership in the account. In considering these and other alternatives, FINRA sought to balance preserving the protections the Rule was designed to provide with limiting the scope of the rule to situations that might reasonably result in the harms sought to be addressed. FINRA also sought to avoid increasing complexity in the Rule, with added compliance costs, where the concerns to be avoided were remote.

As a result, FINRA determined that a wholesale exception for private funds was not appropriate.[13] In addition, because a fund indirectly invested in the account could consist of a single investor—potentially including covered persons—FINRA believes that a limit to both direct and indirect beneficial ownership is important in preserving the efficacy of the spinning provision. The proposed rule change is intended to balance the compliance concerns and burdens noted by the industry with FINRA's goal of assuring that the Rule continues to be designed to promote investor confidence and prevent fraudulent and manipulative behaviors.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 120 days following Commission approval.

[9] The spinning provision currently addresses operational burdens associated with some accounts with a large and diverse ownership base where the potential for spinning is minimal through a series of exemptions for purchasers such as mutual funds, insurance company general accounts and various employee benefit plans. *See generally* Rule 5130(c). Private funds, however, are not a category of purchasers for which a general exemption exists.

[10] For example, members have noted that broker-dealers normally do not know the identity of the beneficial owners of the fund of funds invested in the account.

[11] Section 202(a)(29) of the Investment Advisers Act of 1940 defines the term ''private fund'' as an issuer that would be an investment company, as defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) (''Investment Company Act''), but for Section 3(c)(1) or 3(c)(7) of the Investment Company Act.

[12] A control person of an investment adviser is a person with direct or indirect ''control'' over the investment adviser; as that term is defined in Form ADV.

[13] *See supra* note 9.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed exception and required conditions will further these purposes by promoting capital formation and aiding member compliance efforts, while maintaining investor confidence in the capital markets.

Specifically, the proposed condition that the fund be managed by an investment adviser that is unaffiliated with the account's investment adviser seeks to ensure the structural independence of the funds' respective advisers. This requirement, in addition to the proviso that the unaffiliated private fund must not have been formed for the specific purpose of investing in the account, seeks to mitigate the possibility of collusive conduct aimed at furthering spinning.

In addition, the condition providing that the unaffiliated private fund may not have any beneficial owners who also are control persons of such fund's investment adviser seeks to eliminate the conflict that may exist where an adviser also is an investor in the fund and, therefore, may directly benefit from allocation decisions. The requirements regarding the minimum size of the private fund (over $50 million) and the percentage ownership thresholds (private fund must own less than 25% of the account and not be a fund in which a single investor has a beneficial interest of 25% or more) seek to ensure that the proportional benefit of any new issue allocation to a single indirect beneficial owner would be insufficient to further spinning.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act in that the proposed rule provides an exception to Rule 5131(b) for funds of funds that face special difficulties under the existing exemptions from the Rule, and thus the proposed exemption tries to reduce differential impacts of the Rule. FINRA also believes that it is reasonable to permit members to rely on written representations from the account regarding compliance with the conditions of the exception as a means of achieving compliance with the purposes of the Rule without imposing layered tracking and other requirements on members that could be costly and unduly hamper the accounts' access to new issue shares.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FINRA received four letters regarding the issues addressed by the proposed rule change from three commenters,[15] and engaged in additional discussions with industry groups and market participants regarding the operation of the spinning provision, the operation of the existing *de minimis* exception and members' difficulty in identifying indirect beneficial owners of an account. A list of the commenters is attached as Exhibit 2a. Copies of the comment letters received are attached as Exhibit 2b.

Commenters sought either interpretive guidance regarding the existing *de minimis* exception to increase its scope or a new amendment to address difficulties in allocating to investment funds, particularly in the fund of funds context. Commenters argued that investment funds are not an effective tool for a broker-dealer to convey a meaningful benefit to a particular covered person.[16] One commenter stated that the funds of funds it offers have investments in anywhere from 25 to 70 unaffiliated portfolio funds.[17] The commenter further noted that investors in a fund of funds, including any potential covered persons, cannot direct which broker a portfolio fund uses or will use, and may not know in which portfolio funds the fund of funds is invested.[18]

Commenters also discussed the logistical impracticalities and other hurdles involved in attempting to track beneficial ownership.[19] A commenter stated that, as currently structured, the spinning provisions potentially would require significant amounts of time and money to implement.[20] In addition, another commenter generally stated that funds of funds may (and often do) have several hundred investors, each of which themselves may have hundreds of beneficial owners; thus, the operational hurdles and cost of obtaining the relevant representations from all of the ultimate beneficial owners would be substantial.[21] The commenter further stated that obtaining beneficial ownership information is not always possible due to confidentiality and investor privacy concerns.[22]

FINRA has carefully considered the comments received and has considered the various alternatives suggested in crafting the current proposal and believes that the proposed rule change strikes the appropriate balance by simplifying the operation of the Rule while maintaining the protections the spinning provision is designed to provide, as discussed above.[23]

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 will:

(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.

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] *See* Letters from Gregory J. Robbins, Senior Managing Director and General Counsel, Mesirow Advanced Strategies, Inc., to Gary L. Goldsholle, Vice President and Associate General Counsel, Office of the General Counsel, FINRA, dated June 10, 2011 (''Mesirow''); Andrew Baker, Chief Executive Officer, Alternative Investment Management Association, to Richard G. Ketchum, Chairman and Chief Executive Officer, FINRA, dated August 3, 2011 (''AIMA''); Stuart J. Kaswell, Executive Vice President and Managing Director and General Counsel, Managed Funds Association, to Marc Menchel, Executive Vice President and General Counsel, FINRA, dated August 19, 2011 (''MFA #1''); and Stuart J. Kaswell, Executive Vice President and Managing Director and General Counsel, Managed Funds Association, to Marc Menchel, Executive Vice President and General Counsel, FINRA, dated October 4, 2011 (''MFA #2'').

[16] *See* AIMA, Mesirow, MFA #1 and MFA #2.

[17] *See* Mesirow.

[18] *See* Mesirow.

[19] *See e.g.,* AIMA, MFA #1 and MFA #2.

[20] *See* AIMA.

[21] *See* MFA #2.

[22] *See* MFA #1.

[23] One commenter suggested, among other things, that the existing 25% *de minimis* exception be interpreted to apply separately to each public company or covered non-public company. However, the rule clearly states that the calculation is to be applied in the aggregate for all covered companies and the proposal would not change that requirement. *See* AIMA.

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–FINRA–2013–037 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–FINRA–2013–037. 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 FINRA. 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–FINRA–2013–037 and should be submitted on or before October 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–21930 Filed 9–9–13; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8458]

30-Day Notice of Proposed Information Collection: U.S. Passport Renewal Application for Eligible Individuals

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to October 10, 2013.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* (202) 395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to U.S. Department of State, Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, 2201 C Street NW., Washington, DC 20520, who may be reached on (202) 485–6510 or at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* U.S. Passport Renewal Application For Eligible Individuals
- *OMB Control Number:* 1405–0020
- *Type of Request:* Revision of a Currently Approved Collection
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, Program Coordination Division (CA/PPT/S/PMO/PC)
- *Form Number:* DS–82
- *Respondents:* Individuals or Households
- *Estimated Number of Respondents:* 4,215,761
- *Estimated Number of Responses:* 4,215,761
- *Average Time Per Response:* 40 minutes per response
- *Total Estimated Burden Time:* 2,810,507 hours per year
- *Frequency:* On occasion
- *Obligation to Respond:* Required to Obtain or Retain a Benefit

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The information collected on the DS–82 is used to facilitate the issuance of passports to U.S. citizens and nationals. The primary purpose of soliciting the information is to establish citizenship, identity, and entitlement to the issuance of the U.S. passport or related service, and to properly administer and enforce the laws pertaining to the issuance thereof.

The DS–82 solicits data necessary for Passport Services to issue a United States passport (book and/or card format) in the exercise of authorities granted to the Secretary of State in 22 United States Code (U.S.C.) Section 211a et seq. and Executive Order (EO) 11295 (August 5, 1966) for the issuance of passports to U.S. nationals.

The issuance of U.S. passports requires the determination of identity, nationality, and entitlement, with reference to the provisions of Title III of the Immigration and Nationality Act (INA) (8 U.S.C. sections 1401–1504), the 14th Amendment to the Constitution of the United States, other applicable treaties and laws and implementing regulations at 22 CFR Part 50 and 51. The specific regulations pertaining to the Application for a U.S. Passport by Mail are at 22 CFR 51.20 and 51.21.

Methodology: Passport Services collects information from U.S. citizens

and non-citizen nationals who complete and submit the Application for a U.S. Passport by Mail. Passport applicants can either download the DS–82 from the Internet or obtain one from an Acceptance Facility/Passport Agency. The form must be completed, signed, and submitted along with the applicant's previous U.S. passport.

U.S. citizens overseas may download the DS–82 from the Internet or obtain one from the nearest U.S. Embassy or Consulate. As noted on the form, U.S. citizens overseas (except Canada) must apply for their passport at the nearest U.S. Embassy or Consulate in accordance with instructions on the Embassy/Consulate Web site.

The Department estimates that these changes will not result in an increase in the current burden time of 40 minutes.

Dated: August 29, 2013.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2013–22019 Filed 9–9–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 8459]

Notice of Public Meeting of the President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), the PEPFAR Scientific Advisory Board (hereinafter referred to as ''the Board'') will meet from October 2–3, 2013 at the Sheraton Crystal City at 1800 Jefferson Davis Hwy, Arlington, Virginia 22202. The meeting will last from 9 a.m. until approximately 5 p.m. on October 2nd and from 9 a.m. until approximately 3 p.m. on October 3rd and is open to the public.

The meeting will be hosted by the Office of the U.S. Global AIDS Coordinator, and led by Ambassador Eric Goosby, who leads implementation of the President's Emergency Plan for AIDS Relief (PEPFAR).

The Board serves the Global AIDS Coordinator in a solely advisory capacity concerning scientific, implementation, and policy issues related to the global response to HIV/AIDS. These issues will be of concern as they influence the priorities and direction of PEPFAR evaluation and research, the content of national and international strategies and implementation, and the role of PEPFAR in international discourse regarding an appropriate and resourced response. Topics for the meeting will include an update on current PEPFAR-funded implementation science activities; recommendations to Ambassador Goosby on the care and treatment cascade, adherence/retention issues; and research priorities for the PEPFAR portfolio.

The public may attend this meeting as seating capacity allows. Admittance to the meeting will be by means of a pre-arranged clearance list. In order to be placed on the list and, if applicable, to request reasonable accommodation, please register at *www.regonline.com/pepfarsab.* While the meeting is open to public attendance, the Board will determine procedures for public participation. Requests for reasonable accommodation that are made after September 25, might not be possible to fulfill.

For further information about the meeting, please contact Dr. Amy DuBois, Acting Director of the Office of Research and Science, Office of the U.S. Global AIDS Coordinator at *PEPFAR_SAB@state.gov.*

Dated: August 29, 2013.

Amy DuBois,

Acting Director, Office of Research and Science, Office of the U.S. Global AIDS Coordinator, Department of State.

[FR Doc. 2013–22017 Filed 9–9–13; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8460]

Determinations Regarding Use of Chemical Weapons in Syria Under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991

AGENCY: Bureau of International Security and Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined on August 2, pursuant to Section 306(a) of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, 22 U.S.C. 5604(a), that the Government of Syria has used chemical weapons in violation of international law or lethal chemical weapons against its own nationals. In addition, the United States Government has determined and certified to Congress pursuant to section 307(d) of the Act (22 U.S.C. 5605(d)) that it is essential to the national security interests of the United States to partially waive the application of the sanctions required under Section 307(a) of the Act (22 U.S.C. 5605(a)) with respect to activities in furtherance of United States policies regarding the Syrian conflict. The following is notice of sanctions to be imposed pursuant to Section 307(a) of the Act (22 U.S.C. 5605(a)), subject to the waiver described above.

DATES: *Effective Date:* Upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Pamela K. Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State, Telephone (202) 647–4930.

SUPPLEMENTARY INFORMATION: Pursuant to Sections 306(a), 307(a), and 307(d) of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, as amended (22 U.S.C. 5604(a) and 5605(a)), on August 2, 2013 the Under Secretary of State for Political Affairs: (1) Determined that the Government of Syria has used chemical weapons in violation of international law or lethal chemical weapons against its own nationals; and (2) determined and certified to Congress that it is essential to the national security interests of the United States to partially waive the application of the sanctions required under Section 307(a) with respect to certain activities determined by the United States Government to be in furtherance of United States policies regarding the Syrian conflict. As a result, the following sanctions are hereby imposed, subject to waivers as described above:

1. Foreign Assistance: Termination of assistance to Syria under the Foreign Assistance Act of 1961, except for urgent humanitarian assistance and food or other agricultural commodities or products.

2. Arms Sales: Termination of (a) sales to Syria under the Arms Export Control Act of any defense articles, defense services, or design and construction services, and (b) licenses for the export to Syria of any item on the United States Munitions List.

3. Arms Sales Financing: Termination of all foreign military financing for Syria under the Arms Export Control Act.

4. Denial of United States Government Credit or Other Financial Assistance: Denial to Syria of any credit, credit guarantees, or other financial assistance by any department, agency, or instrumentality of the United States Government, including the Export-Import Bank of the United States.

5. Exports of National Security-Sensitive Goods and Technology:

Prohibition on the export to Syria of any goods or technology on that part of the control list established under section 2404(c)(1) of the Appendix to Title 50.

Determinations that activities are in furtherance of United States policies regarding the Syrian conflict, and thus the application of the above sanctions is excepted, will be made on a case-by-case basis with the involvement of the Department of State, using existing interagency procedures to the maximum extent possible. These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for at least one year or until further notice.

Dated: September 4, 2013.

Thomas M. Countryman,

Assistant Secretary of State for International Security and Nonproliferation.

[FR Doc. 2013–22032 Filed 9–9–13; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2012–0087]

Advisory Committee for Aviation Consumer Protection

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of fifth meeting of advisory committee.

SUMMARY: This notice announces the fifth meeting of the Advisory Committee for Aviation Consumer Protection.

DATES: The fifth meeting of the advisory committee is scheduled for October 8, 2013, from 9:00 a.m. to 4:00 p.m., Eastern Time.

ADDRESSES: The meeting will be held in the Elwood Pete Quesada Auditorium located on the third floor of the Federal Aviation Administration (FAA) headquarters at 800 Independence Avenue SW., Washington, DC. Attendance is open to the public up to the room's capacity of 125 attendees. However, since access to the FAA headquarters building is controlled for security purposes, any member of the general public who plans to attend this meeting must notify the Department contact identified below at least five (5) calendar days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: To register to attend the meeting, please contact Max Slaiman, Research Analyst, Centra Technology, Inc., *slaimanm@centratechnology.com;* 703–894–6910. For other information please contact Kathleen Blank Riether, Senior Attorney, Office of Aviation Enforcement and Proceedings, *kathleen.blankriether@dot.gov;* U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590; 202–366–9342 (phone), 202–366–5944 (fax).

SUPPLEMENTARY INFORMATION:

On May 24, 2012, the Secretary, as mandated by Section 411 of the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95, 126 Stat. 11 (2012)), established the Advisory Committee on Aviation Consumer Protection and announced those persons appointed as members. The committee's charter, drafted in accordance with the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2, sets forth policies for the operation of the advisory committee and is available on the Department's Web site at *http://facasms.fido.gov/committee/charters.aspx?cid=2448&aid=47.*

The fifth meeting of the committee is scheduled for Tuesday, October 8, 2013, from 9:00 a.m. to 4:00 p.m. Eastern Time in the Elwood Pete Quesada Auditorium located on the third floor of the FAA headquarters at 800 Independence Avenue SW., Washington, DC 20591. At the meeting the DOT's Office of Aviation Enforcement and Proceedings (Enforcement Office) will provide an update on the implementation status of the committee's initial set of recommendations to the Secretary submitted to Congress on March 22, 2013. Other issues to be discussed include making consumer rights information available to the public on airport posters, delays in the clearance of passengers arriving on international flights through the U.S. Customs and Border Protection facilities at U.S. airports, customized airfare pricing and potential consumer protection issues, and the committee's recommendations for calendar year 2013 to the Secretary of Transportation on additional needed consumer protection measures.

As announced in the notices of previous meetings of the committee, the meeting will be open to the public, and, time permitting, comments by members of the public are invited. Since access to the Federal Aviation Administration headquarters building is controlled for security purposes, we ask that any member of the general public who plans to attend the fifth meeting notify the Department contact noted above no later than five (5) calendar days prior to the meeting. Attendance will be necessarily limited by the size of the meeting room.

Members of the public may present written comments at any time. The docket number referenced above (OST–2012–0087, available at *https://www.regulations.gov,*) has been established for committee documents including any written comments that may be filed. At the discretion of the Chairperson and time permitting, after completion of the planned agenda, individual members of the public may provide oral comments. Any oral comments presented must be limited to the objectives of the committee and will be limited to five (5) minutes per person. Individual members of the public who wish to present oral comments must notify the Department contact noted above via email that they wish to attend and present oral comments at least five (5) calendar days prior to the meeting.

Persons with a disability who plan to attend the meeting and require special accommodations, such as an interpreter for the hearing impaired, should notify the Department contact noted above at least seven (7) calendar days prior to the meeting. Persons attending with a service animal should also advise us of that fact so that it can be taken into account in connection with space and possible allergy issues.

Notice of this meeting is being provided in accordance with the FACA and the General Services Administration regulations covering management of Federal advisory committees. (41 CFR Part 102–3.)

Issued in Washington, DC, on September 3, 2013.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement & Proceedings, U.S. Department of Transportation.

[FR Doc. 2013–21896 Filed 9–9–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aging Aircraft Program (Widespread Fatigue Damage)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice

with a 60-day comment period soliciting comments on the following collection of information was published on July 3, 2013, vol. 78, no. 128, pages 40263–40264. The ''Aging Aircraft Program (Widespread Fatigue Damage)'' final rule (75 FR 69745) amended FAA regulations pertaining to certification and operation of transport category airplanes to preclude widespread fatigue damage in those airplanes.

DATES: Written comments should be submitted by October 10, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0743.

Title: Aging Aircraft Program (Widespread Fatigue Damage).

Form Numbers: There are no FAA forms associated with this collection of information.

Type of Review: Renewal of an information collection.

Background: The rule requires that type certificate and supplemental type certificate holders use documentation to demonstrate to their FAA Oversight Office that they have complied with the rule by establishing limits of validity of the engineering data that supports the maintenance program (LOVs). Operators would submit the LOV to their Principal Maintenance Inspectors to demonstrate that they are compliant with the rule.

Respondents: Approximately 30 type certificate holders, supplemental type certificate holders, and operators.

Frequency: Information is collected annually.

Estimated Average Burden per Response: 20 hours.

Estimated Total Annual Burden: 187 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on September 4, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–22036 Filed 9–9–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Competition Plans, Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 27, 2013, vol. 78, no. 124, page 38794–38795. Title 49, United States Code, Sections 40117(k) and 47106(f) require that a covered airport submit a written competition plan to the Secretary/Administrator in order to receive approval to impose a Passenger Facility Charge (PFC) or to receive a grant under the Airport Improvement Program (AIP).

DATES: Written comments should be submitted by October 10, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0661.

Title: Competition Plans, Passenger Facility Charges.

Form Numbers: There are no FAA forms associated with this collection of information.

Type of Review: Renewal of an information collection.

Background: The DOT/FAA will use any information submitted in response to this requirement to carry out the intent of Title 49, Sections 40117(k) and 47106(f), which is to assure that a covered airport has, and implements, a plan that affects its business practices to provide opportunities for competitive access by new entrant carriers or carriers seeking to expand. The affected public includes public agencies controlling medium or large hub airports.

Respondents: 7 affected airports annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 136 hours.

Estimated Total Annual Burden: 1,050 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on September 4, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–22034 Filed 9–9–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aviation Research Grants Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 27, 2013, vol. 78, no. 124, pages 38795–38796. The FAA Aviation Research and Development Grants Program establishes uniform policies and procedures for the award and administration of research grants to colleges, universities, not for profit organizations, and profit organizations for security research. The collection of data is required from prospective grantees in order to adhere to applicable statutes and OMB circulars.

DATES: Written comments should be submitted by October 10, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0559.

Title: Aviation Research Grants Program.

Form Numbers: SF–269, SF–270, SF–272, SF–424, SF–3881, FAA Form 9550–5.

Type of Review: Renewal of an information collection.

Background: This program implements OMB Circular A–110, Public Law 101–508, Section 9205 and 9208 and Public Law 101–604, Section 107(d). Information is required from grantees for the purpose of grant administration and review in accordance with applicable OMB circulars. The information is collected through a solicitation that has been published by the FAA. Prospective grantees respond to the solicitation using a proposal format outlined in the solicitation in adherence to applicable FAA directives, statutes, and OMB circulars.

Respondents: Approximately 100 grantees.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 6.5 hours.

Estimated Total Annual Burden: 650 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 4, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–22033 Filed 9–9–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Safe Disposition of Life-Limited Aircraft Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 26, 2013, vol. 78, no. 123, page 38431. This collection involves response to the Wendall H. Ford Investment and Reform Act for the 21st Century which requires that all persons who remove any life-limited aircraft part have a method to prevent the installation of that part after it has reached its life limit.

DATES: Written comments should be submitted by October 10, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0665.

Title: Safe Disposition of Life-Limited Aircraft Parts.

Form Numbers: There are no FAA forms associated with this collection of information.

Type of Review: Renewal of an information collection.

Background: 14 CFR Part 43 requires a record keeping system to be maintained that will aid aircraft operators in determining the status of the life-limited parts from inadvertently being installed that have reached their life limit. This action reduces the risk of life-limited parts being used beyond their life limits. This action also requires that manufacturers of life-limited parts provide marking instructions, when requested.

Respondents: Approximately 8,000 air carriers, repair stations, and mechanics.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 104,000 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 4, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–22035 Filed 9–9–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Approval of Finding of No Significant Impact (FONSI) for Murdo Municipal Airport, Murdo, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is announcing approval of Finding of No Significant Impact for proposed development at the Murdo Municipal Airport, Murdo, South Dakota. The FAA approved the FONSI on August 22, 2013.

SUPPLEMENTARY INFORMATION: The FONSI approved the Sponsor's proposed action to extend primary Runway 14–32 (approximately 600′ x 60′) and construct turnaround (approximately 200′ x 75′) on Runway 14 end. Extend graded safety area (approximately 200′ x 120′) on Runway 14 end. Acquire approximately 63.0 acres of land in fee and acquire approximately 2.0 acres of restrictive easements.

The approved action is to enhance the safety and utility of the airport in order to meet the needs of current and projected aviation activity by the design family. The need for the action is to bring the Murdo Municipal Airport in compliance with FAA design standards for 95% of A/B–I Small Aircraft (design aircraft family), specifically runway length.

The FONSI indicates the project is consistent with existing environmental policies and objectives as set forth in the National Environmental Policy Act (NEPA) of 1969, as amended and will not significantly affect the quality of the environment.

In reaching this decision, the FAA has given careful consideration to: (a) The role of Murdo plays in the national air transportation system, (b) aviation safety, and (c) preferences of the airport owner/operator, and (d) anticipated environmental impact.

DATES: This notice is effective September 10, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Lindsay Butler, Federal Aviation Administration, Great Lakes Regional Office, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone number: 847–294–7723.

Issued in Des Plaines, IL: August 26, 2013.

Jesse Carriger,

Manager, Planning/Programming Branch, FAA Great Lakes Region.

[FR Doc. 2013–21887 Filed 9–9–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RIN 2120–AF90

Policy Regarding Airport Rates and Charges

AGENCY: Department of Transportation, Federal Aviation Administration.

ACTION: Notice; publication of entire policy statement as amended.

SUMMARY: This action publishes the entire Department of Transportation (''Department''), Federal Aviation Administration (''FAA''), ''Policy Regarding Airport Rates and Charges'' (''Policy'') to reflect all deletions from and amendments to the policy to date. The Policy was originally published in the **Federal Register** on June 21, 1996 (''1996 Rates and Charges Policy''). In response to a subsequent petition for review, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision in 1997 that vacated the challenged provisions of the 1996 Rates and Charges Policy and the Secretary's supporting discussion in the preamble. In 2008, the Department and FAA adopted three amendments to the Policy, to allow operators of congested airports to use landing fees to provide incentives to air carriers to use the airport at less congested times or to use alternate airports to meet regional air service needs. The **Federal Register** notice publishing those amendments set out the amendments, but did not publish an entire version of the policy as amended. As a convenience for the public and for regulated entities, this notice publishes the entire Policy Regarding Airport Rates and Charges currently in effect in a single document. The FAA is not adopting or proposing any new amendments to the Policy in this notice.

DATES: This Policy statement reflects the most recent amendments to the Policy Regarding Airport Rates and Charges, which took effect on July 14, 2008.

ADDRESSES: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Randall S. Fiertz, Director, Office of Airport Compliance and Management Analysis, ACO–1, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3085; facsimile (202) 267–5769; email *Randall.Fiertz@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy of this notice and all other documents in this docket using the Internet by:

(1) Searching the Federal eRulemaking portal (*http://www.regulations.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

Authority for This Proceeding

This notice is published under the authority described in Subtitle VII, Part B, Chapter 471, § 47129 of Title 49 United States Code. Under subsection (b) of § 47129, the Secretary of Transportation is required to publish policy statements establishing standards or guidelines the Secretary will use in determining the reasonableness of airport fees charged to airlines under § 47129.

Background

The Department of Transportation (Department) and the Federal Aviation Administration (FAA) published a Policy Regarding Airport Rates and Charges in the **Federal Register** on June 21, 1996 (61 FR 31994). (''1996 Rates and Charges Policy''). The statement of policy was required by § 113 of the FAA Authorization Act of 1994, Public Law 103–305 (August 23, 1994), now codified at 49 U.S.C., 47129, Specific sections of the 1996 Rates and Charges Policy (namely, paragraphs 2.4, 2.4.1, 2.4.1(a), 2.5.1, 2.5.1(a)–(e), 2.5.3(a), 2.6 and other portions of the Policy necessarily implicated by the Court's holding) were subsequently vacated by the United States Court of Appeals for the District of Columbia Circuit in *Air Transport Ass'n of America* v. *DOT,* 119 F.3d 38, amended by 129 F.3d 625 (D.C. Cir. 1997). In July 2008, following notice and opportunity for public comment, the Department and FAA adopted three

amendments to the Policy (73 FR 40430, July 14, 2008). The amendments are intended to provide greater flexibility to operators of congested airports to use landing fees to provide incentives to air carriers to use the airport at less congested times or to use alternate airports to meet regional air service needs. The amendments to the Policy were affirmed by the United States Court of Appeals for the District of Columbia Circuit, *Air Transport Ass'n* v. *DOT,* 613 F.3d 206 (D.C. Cir. 2010). In 2012, Congress included foreign air carriers (in addition to air carriers) under § 47129. *See,* § 148 of the FAA Authorization Act of 2012, Public Law 112–95, 126 Stat. 11 (Feb. 14, 2012)

The FAA has received requests for a complete official version of the Policy, as amended since 1996, and FAA understands the convenience of a complete statement of the policy for anyone needing to refer to the contents of this Policy. Accordingly, by this notice, FAA is publishing an official version of the entire Policy Regarding Airport Rates and Charges that reflects all of the changes to the language of the Policy since 1996, and is republished solely for the convenience of stating a complete version of the Policy in a single document.

Rates and Charges Policy

The FAA is publishing the full text of the current Policy Regarding Airport Rates and Charges, which has been in effect since the most recent amendment of the policy on July 14, 2008, as follows:

Policy Regarding Airport Rates and Charges

Introduction

It is the fundamental position of the Department that the issue of rates and charges is best addressed at the local level by agreement between users and airports. The Department is adopting this Policy Statement on the standards applicable to airport fees imposed for aeronautical use of the airport to provide guidance to airport proprietors and aeronautical users, to encourage direct negotiation between these parties, to minimize the need for direct Federal intervention to resolve differences over airport fees and to establish the standards which the Department will apply in addressing airport fee disputes under 49 U.S.C., 47129 and in addressing questions of airport proprietors' compliance with Federal requirements governing airport fees.

Applicability of the Policy

A. Scope of Policy

Under the terms of grant agreements administered by FAA for airport improvement, all aeronautical users are entitled to airport access on fair and reasonable terms without unjust discrimination. Therefore, the Department considers that the principles and guidance set forth in this policy statement apply to all aeronautical uses of the airport. The Department recognizes, however, that airport proprietors may use different mechanisms and methodologies to establish fees for different facilities, e.g., for the airfield and terminal area, and for different aeronautical users, e.g., air carriers and fixed-base operators. Various elements of the policy reflect these differences. In addition, the Department will take these differences into account if we are called upon to resolve a dispute over aeronautical fees or otherwise consider whether an airport sponsor is in compliance with its obligation to provide access on fair and reasonable terms without unjust discrimination.

B. Aeronautical Use and Users

The Department considers the aeronautical use of an airport to be any activity that involves, makes possible, is required for the safety of, or is otherwise directly related to, the operation of aircraft. Aeronautical use includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail and cargo on the airport. Persons, whether individuals or businesses, engaged in aeronautical uses involving the operation of aircraft, or providing flight support directly related to the operation of aircraft, are considered to be aeronautical users.

Conversely, the Department considers that the operation by U.S. or foreign air carriers of facilities such as a reservations center, headquarters office, or flight kitchen on an airport does not constitute an aeronautical use subject to the principles and guidance contained in this policy statement with respect to reasonableness and unjust discrimination. Such facilities need not be located on an airport. A carrier's decision to locate such facilities is based on the negotiation of a lease or sale of property. Accordingly, the Department relies on the normal forces of competition for nonaeronautical commercial or industrial property to assure that fees for such property are not excessive.

C. Applicability of § 113 of the FAA Authorization Act of 1994

Section 113 of the Federal Aviation Authorization Act of 1994 (''Authorization Act''), 49 U.S.C. 47129, directs the Secretary of Transportation to issue a determination on the reasonableness of certain fees imposed on air carriers and foreign air carriers in response to carrier complaints or a request for determination by an airport proprietor. Section 47129 further directs the Secretary to publish final regulations, policy statements, or guidelines establishing procedures for deciding cases under § 47129 and the standards to be used by the Secretary in determining whether a fee is reasonable. Section 47129 also provides for the issuance of credits or refunds in the event that the Secretary determines a fee is unreasonable after a complaint is filed. Section 47129(e) excludes from the applicability of § 47129 a fee imposed pursuant to a written agreement with air carriers or foreign air carriers, a fee imposed pursuant to a financing agreement or covenant entered into before the date of enactment of the statute (August 23, 1994), and an existing fee not in dispute on August 23, 1994. Section 47129(f) further provides that § 47129 shall not adversely affect the rights of any party under an existing airport agreement with an air carrier or foreign air carrier or the ability of an airport to meet its obligations under a financing agreement or covenant that is in effect on August 23, 1994.

The Department does not interpret § 47129 to repeal or narrow the scope of the basic requirement that fees imposed on all aeronautical users be reasonable and not unjustly discriminatory or to narrow the obligation on the Secretary to receive satisfactory assurances that, inter alia, airport sponsors will provide access on reasonable terms before approving Airport Improvement Program (''AIP'') grants. Moreover, the Department does not interpret Sections 47129(e) and (f) to preclude the Department from adopting policy guidance to carry out the Department's statutory obligation to assure that aeronautical fees are being imposed at AIP-funded airports in a manner that is consistent with the obligation to provide airport access on reasonable terms.

Therefore, the Department will apply the policy guidance in all cases in which we are called upon to determine if an airport sponsor is carrying out its obligation to make the airport available on reasonable terms. However, a dispute that is not subject to processing under the expedited procedures mandated by

§ 47129, including a dispute over matters described by § 47129 (e) and (f), will be processed by FAA under procedures applicable to airport compliance matters in general. In considering such a dispute, FAA's role is to determine whether the airport proprietor is in compliance with its grant obligations and statutory obligations relating to airport fees. The FAA proceeding is not intended to provide a mechanism for adjudicating the respective rights of the parties to a fee dispute.

In addition, the Department will not entertain a complaint about the reasonableness of a fee set by agreement filed by a party to the agreement setting the disputed fee. In the case of a complaint about the reasonableness of a fee set by agreement filed by an aeronautical user who is not a party to the agreement, the Department may take into account the existence of an agreement between air carriers or foreign air carriers, and the airport proprietor, in making a determination on the complaint.

Further, FAA will not ordinarily investigate the reasonableness of a general aviation airport's fees absent evidence of a progressive accumulation of surplus aeronautical revenues.

D. Components of Airfield

The Department considers the airfield assets to consist of ramps or aprons not subject to preferential or exclusive lease or use agreements, runways, taxiways, and land associated with these facilities. The Department also considers the airfield to include land acquired for the purpose of assuring land-use compatibility with the airfield, if the land is included in the rate base associated with the airfield under the provisions of this policy.

Principles Applicable to Airport Rates and Charges

1. In general, the Department relies upon airport proprietors, aeronautical users, and the market and institutional arrangements within which they operate, to ensure compliance with applicable legal requirements. Direct Federal intervention will be available, however, where needed.

2. Rates, fees, rentals, landing fees, and other service charges (''fees'') imposed on aeronautical users for aeronautical use of airport facilities (''aeronautical fees'') must be fair and reasonable.

3. Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.

4. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible.

5. In accordance with relevant Federal statutory provisions governing the use of airport revenue, airport proprietors may expend revenue generated by the airport only for statutorily allowable purposes.

6. Fees imposed on international operations must also comply with the international obligations of the United States, which include the requirements that the fees be just, reasonable, not unjustly discriminatory, equitably apportioned among categories of users, no less favorable to foreign airlines than to U.S. airlines, and not in excess of the full cost to the competent charging authorities of providing the facilities and services efficiently and economically at the airport or within the airport system.

Local Negotiation and Resolution

1. In general, the Department relies upon airport proprietors, aeronautical users, and the market and institutional arrangements within which they operate, to ensure compliance with applicable legal requirements. Direct Federal intervention will be available, however, where needed.

1.1 The Department encourages direct resolution of differences at the local level between aeronautical users and the airport proprietor. Such resolution is best achieved through adequate and timely consultation between the airport proprietor and the aeronautical users about airport fees.

1.1.1 Airport proprietors should consult with aeronautical users well in advance, if practical, of introducing significant changes in charging systems and procedures or in the level of charges. The proprietor should provide adequate information to permit aeronautical users to evaluate the airport proprietor's justification for the change and to assess the reasonableness of the proposal. For consultations to be effective, airport proprietors should give due regard to the views of aeronautical users and to the effect upon them of changes in fees. Likewise, aeronautical users should give due regard to the views of the airport proprietor and the financial needs of the airport.

1.1.2 To further the goal of effective consultation, Appendix 1 of this policy statement contains a description of information that the Department considers would be useful to the U.S. and foreign air carriers and other aeronautical users to permit meaningful consultation and evaluation of a proposal to modify fees.

1.1.3 Airport proprietors should consider the public interest in establishing airport fees, and aeronautical users should consider the public interest in consulting with airports on setting such fees.

1.1.4 Airport proprietors and aeronautical users should consult and make a good-faith effort to reach agreement. Absent agreement, airport proprietors are free to act in accordance with their proposals, subject to review by the Secretary or the Administrator on complaint by the user or, in the case of fees subject to 49 U.S.C. 47129, upon request by the airport operator, or, in unusual circumstances, on the Department's initiative.

1.1.5 To facilitate local resolution and reduce the need for direct Federal intervention to resolve differences over aeronautical fees, the Department encourages airport proprietors and aeronautical users to include alternative dispute resolution procedures in their lease and use agreements.

1.1.6 Any newly established fee or fee increase that is the subject of a complaint under 49 U.S.C. 47129 that is not dismissed by the Secretary must be paid to the airport proprietor under protest by the complainant. Unless the airport proprietor and complainant agree otherwise, the airport proprietor will obtain a letter of credit, or surety bond, or other suitable credit instrument in accordance with the provisions of 49 U.S.C. 47129(d). Pending issuance of a final order determining reasonableness, an airport proprietor may not deny a complainant currently providing air service at the airport reasonable access to airport facilities or services, or otherwise interfere with that complainant's prices, routes, or services, as a means of enforcing the fee, if the complainant has complied with the requirements for payment under protest.

1.2 Where airport proprietors and aeronautical users have been unable, despite all reasonable efforts, to resolve disputes between them, the Department will act to resolve the issues raised in the dispute.

1.2.1 In the case of a fee imposed on one or more U.S. air carriers or foreign air carriers, the Department will issue a determination on the reasonableness of the fee upon the filing of a written request for a determination by the airport proprietor or, if the Department determines that a significant dispute exists, upon the filing of a complaint by one or more U.S. air carriers or foreign air carriers, in accordance with 49 U.S.C. 47129 and implementing regulations. Pursuant to the provisions of 49 U.S.C. 47129, the Department may only determine whether a fee is

reasonable or unreasonable, and may not set the level of the fee.

1.2.2 The Department will first offer its good offices to help parties reach a mutually satisfactory outcome in a timely manner. Prompt resolution of these disputes is always desirable since extensive delay can lead to uncertainty for the public and a hardening of the parties' positions. U.S. air carriers and foreign air carriers may request the assistance of the Department in advance of or in lieu of the formal complaint procedure described in 1.2.1; however, the 60-day period for filing a complaint under § 47129 shall not be extended or tolled by such a request.

1.2.3 In the case of fees imposed on other aeronautical users, where negotiations between the parties are unsuccessful and a complaint is filed alleging that airport fees violate an airport proprietor's Federal grant obligations, the Department will, where warranted, exercise the agency's broad statutory authority to review the legality of those fees and to issue such determinations and take such actions as are appropriate based on that review. Other aeronautical users may also request the assistance of the Department in advance of, or in lieu of, the filing of a formal complaint with FAA.

1.3 Airport proprietors must retain the ability to respond to local conditions with flexibility and innovation. An airport proprietor is encouraged to achieve consensus and agreement with its aeronautical users before implementing a practice that would represent a major departure from this guidance. However, the requirements of any law, including the requirements for the use of airport revenue, may not be waived, even by agreement with the aeronautical users.

Fair and Reasonable Fees

2. Rates, fees, rentals, landing fees, and other service charges (''fees'') imposed on aeronautical users for the aeronautical use of the airport (''aeronautical fees'') must be fair and reasonable.

2.1 Federal law does not require a single approach to airport rate-setting. Fees may be set according to a ''residual'' or ''compensatory'' rate-setting methodology, or any combination of the two, or according to another rate-setting methodology, as long as the methodology used is applied consistently to similarly situated aeronautical users and conforms with the requirements of this policy. Airport proprietors may set fees for aeronautical use of airport facilities by ordinance, statute or resolution, regulation, or agreement.

2.1.1 Aeronautical users may receive a cross-credit of nonaeronautical revenues only if the airport proprietor agrees. Agreements providing for such cross-crediting are commonly referred to as ''residual agreements'' and generally provide a sharing of nonaeronautical revenues with aeronautical users. The aeronautical users may in turn agree to assume part or all of the liability for nonaeronautical costs. An airport proprietor may cross-credit nonaeronautical revenues to aeronautical users even in the absence of such an agreement, but an airport proprietor may not require aeronautical users to cover losses generated by nonaeronautical facilities except by agreement.

2.1.2 In other situations, an airport proprietor assumes all liability for airport costs and retains all airport revenues for its own use in accordance with Federal requirements. This approach to airport rate-setting is generally referred to as the compensatory approach.

2.1.3 Airports frequently adopt rate-setting systems that employ elements of both approaches.

2.1.4 An airport proprietor may impose a two-part landing fee consisting of a combination of a per-operation charge and a weight-based charge provided that (1) the two-part fee reasonably allocates costs to users on a rational and economically justified basis; and (2) the total revenues from the two-part landing fee do not exceed the allowable costs of the airfield.

(a) The proportionately higher costs per passenger for aircraft with fewer seats that will result from the per-operation component of a two-part fee may be justified by the effect of the fee on congestion and operating delays and the total number of passengers accommodated during congested hours.

(b) An airport proprietor may exempt flights subsidized under the Essential Air Service Program from the general application of a 2-part landing fee, and instead charge those flights a landing fee that would have been charged if a conventional weight-based fee was in effect. To the extent an exemption reduces total airfield fees recovered, the difference may not be recovered by increasing charges to other operators currently operating at the airport.

2.2 Revenues from fees imposed for use of the airfield (''airfield revenues'') may not exceed the costs to the airport proprietor of providing airfield services and airfield assets currently in aeronautical use unless:

(a) Otherwise agreed to by the affected aeronautical users; or

(b) The fee includes charges in accordance with paragraph 2.5.3 or paragraph 2.5.4(a), and there is a corresponding reduction in fees for users that would otherwise have paid those charges.

2.3 The ''rate base'' is the total of all costs of providing airfield facilities and services to aeronautical users (which may include a share of public-use roadway costs allocated to the airfield in accordance with this policy) that may be recovered from aeronautical users through fees charged for providing airfield aeronautical services and facilities (''airfield fees''). Airport proprietors must employ a reasonable, consistent, and ''transparent'' (i.e., clear and fully justified) method of establishing the rate base and adjusting the rate base on a timely and predictable schedule.

2.4 [Reserved]

2.4.1 [Reserved]

2.4.2 Airport proprietors may include reasonable environmental costs in the rate base to the extent that the airport proprietor incurs a corresponding actual expense. All revenues received based on the inclusion of these costs in the rate base are subject to Federal requirements on the use of airport revenue. Reasonable environmental costs include, but are not necessarily limited to, the following:

(a) The costs of investigating and remediating environmental contamination caused by airfield operations at the airport at least to the extent that such investigation or remediation is required by or consistent with local, state or Federal environmental law, and to the extent such requirements are applied to other similarly situated enterprises.

(b) the cost of mitigating the environmental impact of an airport development project (if the development project is one for which costs may be included in the rate base), at least to the extent that these costs are incurred in order to secure necessary approvals for such projects, including but not limited to approvals under the National Environmental Policy Act and similar state statutes;

(c) the costs of aircraft noise abatement and mitigation measures, both on and off the airport, including but not limited to land acquisition and acoustical insulation expenses, to the extent that such measures are undertaken as part of a comprehensive and publicly-disclosed airport noise compatibility program; and

(d) the costs of insuring against future liability for environmental contamination caused by current airfield activities. Under this provision,

the costs of self-insurance may be included in the rate base only to the extent that they are incurred pursuant to a self-insurance program that conforms to applicable standards for self-insurance practices.

2.4.3 Airport proprietors are encouraged to establish fees with due regard for economy and efficiency.

2.4.4 The airport proprietor may include in the rate base amounts needed to fund debt service and other reserves and to meet cash flow requirements as specified in financing agreements or covenants (for facilities in use or in accordance with paragraph 2.5.3), including, but not limited to, reasonable amounts to meet debt-service coverage requirements; to fund cash reserves to protect against the risks of cash-flow fluctuations associated with normal airfield operations; and to fund reasonable cash reserves to protect against other contingencies.

2.4.5 Unless otherwise agreed by aeronautical users, the airport proprietor must allocate capital and operating costs among cost centers in accordance with the following guidance, which is based on the principle of cost causation:

(a) Costs of airfield facilities and services directly used by the aeronautical users may be fully included in the rate base, in a manner consistent with this policy. For example, the capital cost of a runway may be included in the rate base used to establish landing fees.

(b) Costs of airport facilities and services used for both aeronautical and nonaeronautical uses (shared costs) may be included in the rate base if the facility or service in question supports the airfield activity reflected in that rate base. The portion of shared costs allocated to aeronautical users and among aeronautical uses should not exceed an amount that reflects the respective aeronautical purposes and proportionate aeronautical uses of the facility in relation to each other and in relation to the nonaeronautical use of the facility, and must be allocated by a reasonable, ''transparent'' and not unjustly discriminatory methodology. Aeronautical users may not be allocated all costs of facilities or services that are used by both aeronautical and nonaeronautical users unless they agree to that allocation. Likewise, the airfield may not be allocated all of the aeronautical share of commonly-used facilities or services, unless the airfield is the only aeronautical use the facility or service supports.

2.5 Airport proprietors must comply with the following practices in establishing the rate base, provided, however, that one or more aeronautical users may agree to a rate base that deviates from these practices in the establishment of those users' fees.

2.5.1 [Reserved]

2.5.2 When assets in the rate-base have different costs, the airport proprietor may combine the costs of comparable assets to develop a single cost basis for those assets.

2.5.3 The proprietor of a congested airport may include in the rate-base used to determine airfield charges during congested hours a portion of the costs of an airfield project under construction so long as (1) all planning and environmental approvals have been obtained for the project; (2) the proprietor has obtained financing for the project; (3) construction has commenced on the project; and (4) the added costs for current operators would have the effect of reducing or preventing congestion and operating delays at that airport.

(a) The airport proprietor must deduct from the total costs of the projects any principal and interest collected during the period of construction in determining the amount of project costs to be capitalized and amortized once the project is commissioned and put in service.

(b) The amount of project costs included in current charges may not exceed an amount corresponding to costs actually incurred during the construction period, calculated in accordance with a commercially reasonable amortization period based on the expected term for the permanent financing of the project.

2.5.4 The rate base of an airport may include costs associated with another airport currently in use only if: (1) The proprietor of the first airport is also the proprietor of the other airport; (2) the other airport is currently in use; and (3) the costs of the other airport to be included in the first airport's rate base are reasonably related to the aviation benefits that the other airport provides or is expected to provide to the aeronautical users of the first airport.

(a) Element no. 3 above will be presumed to be satisfied if:

(1) The other airport is designated as a reliever airport for the first airport in the FAA's National Plan of Integrated Airport Systems (''NPIAS''); or

(2) The first airport is a congested airport; the other airport has been designated by FAA as a secondary airport serving the community, metropolitan area or region served by the first airport; and adding airfield costs of the second airport to the rate base of the first airport during congested hours would have the effect of reducing or preventing congestion and operating delays at that airport in those hours.

(b) In the case of a methodology of charging for a system of airports that is in place on the effective date of this policy, the Department will consider an airport proprietor's claim that the methodology is reasonable, even if all three elements are not satisfied.

(c) If an airport proprietor closes an operating airport as part of an approved plan for the construction and opening of a new airport, reasonable costs of disposition of the closed airport facility may be included in the rate base of the new airport, to the extent that such costs exceed the proceeds from the disposition. The Department would not ordinarily consider redevelopment costs to be a reasonable cost of disposition.

(d) Pending reasonable disposition of the closed airport, the airport proprietor may charge airfield users at the new airport for reasonable maintenance costs of the old airport, provided that those costs are refunded or credited-back to those users upon the receipt of the proceeds from a whole or partial disposition.

(e) Costs of the second airport that may be included in the rate base of the first airport are limited to customary airfield cost center charges. The total airfield revenue recovered from the users of both airports cannot exceed the total allowable costs of the two airports combined.

2.6 [Reserved]

2.6.1 Reasonable methodologies may include, but are not limited to, historic cost valuation, direct negotiation with aeronautical users, or objective determinations of fair market value.

2.6.2 If an airport proprietor determines fees for such other facilities on the basis of HCA costs, the airport proprietor must follow the guidance set forth in paragraph 2.4.5 for the allocation of shared costs.

2.7 At all times, airport proprietors must comply with the following practices:

2.7.1 Indirect costs may not be included in the fees charged for aeronautical use of the airport unless they are based on a reasonable, ''transparent'' cost allocation formula calculated consistently for other units or cost centers within the control of the airport sponsor.

2.7.2 The costs of airport development or planning projects paid for with Federal Government grants and contributions or passenger facility charges (PFCs) may not be included in the fees charged for aeronautical use of the airport.

(a) In the case of a PFC-funded project for terminal development, for gates and related areas, or for a facility that is occupied by one or more carriers on an exclusive or preferential use basis, the fees paid to use those facilities shall be no less than the fees charged for similar facilities that were not financed with PFC revenue.

Prohibition on Unjust Discrimination

3. Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.

3.1 The airport proprietor must apply a consistent methodology in establishing fees for comparable aeronautical users of the airport. When the airport proprietor uses a cost-based methodology, aeronautical fees imposed on any aeronautical user or group of aeronautical users may not exceed the costs allocated to that user or user group under a cost allocation methodology adopted by the airport proprietor that is consistent with this guidance, unless aeronautical users otherwise agree.

3.1.1 The prohibition on unjust discrimination does not prevent an airport proprietor from making reasonable distinctions among aeronautical users (such as signatory and nonsignatory carriers) and assessing higher fees on certain categories of aeronautical users based on those distinctions (such as higher fees for nonsignatory carriers, as compared to signatory carriers).

3.2 A properly structured peak pricing system that allocates limited resources using price during periods of congestion will not be considered to be unjustly discriminatory. An airport proprietor may, consistent with the policies expressed in this policy statement, establish fees that enhance the efficient utilization of the airport.

3.3 Relevant provisions of the Convention on International Civil Aviation (Chicago Convention) and many bilateral aviation agreements specify, inter alia, that charges imposed on foreign airlines must not be unjustly discriminatory, must not be higher than those imposed on domestic airlines engaged in similar international air services and must be equitably apportioned among categories of users. Charges to foreign air carriers for aeronautical use that are inconsistent with these principles will be considered unjustly discriminatory or unfair and unreasonable.

3.4 Allowable costs—costs properly included in the rate base—must be allocated to aeronautical users by a transparent, reasonable, and not unjustly discriminatory rate-setting methodology. The methodology must be applied consistently and cost differences must be determined quantitatively, when practical.

3.4.1 Common costs (costs not directly attributable to a specific user group or cost center) must be allocated according to a reasonable, transparent and not unjustly discriminatory cost allocation methodology that is applied consistently, and does not require any aeronautical user or user group to pay costs properly allocable to other users or user groups.

Requirement To Be Financially Self-Sustaining

4. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible.

4.1 If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the airport proprietor should establish long-term goals and targets to make the airport as financially self-sustaining as possible.

4.1.1 Airport proprietors are encouraged, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, to undertake reasonable efforts to make their particular airports as self sustaining as possible in the circumstances existing at such airports.

(a) Absent agreement with aeronautical users, the obligation to make the airport as self-sustaining as possible does not permit the airport proprietor to establish fees for the use of the airfield that exceed the airport proprietor's airfield costs.

(b) For those facilities for which this policy permits the use of fair market value, the Department does not construe the obligation on self-sustainability to compel the use of fair market value to establish fees.

4.1.2 At some airports, market conditions may not permit an airport proprietor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to attract and retain commercial aeronautical services. In such circumstances, an airport proprietor's decision to charge rates that are below those needed to achieve self-sustainability in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as self-sustaining as possible in the circumstances.

4.2 In establishing new fees, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under 49 U.S.C. 47107(b)(1), including reasonable reserves and other funds to facilitate financing and to cover contingencies. While fees charged to nonaeronautical users may exceed the costs of service to those users, the surplus funds accumulated from those fees must be used in accordance with § 47107(b).

4.2.1 The Department assumes that the limitation on the use of airport revenue and effective market discipline for aeronautical services and facilities other than the airfield will be effective in holding aeronautical revenues, over time, to the airport proprietor's costs of providing aeronautical services and facilities, including reasonable capital costs. However, the progressive accumulation of substantial amounts of surplus aeronautical revenue may warrant an FAA inquiry into whether aeronautical fees are consistent with the airport proprietor's obligations to make the airport available on fair and reasonable terms.

Requirements Governing Revenue Application and Use

5. In accordance with relevant Federal statutory provisions governing the use of airport revenue, airport proprietors may expend revenue generated by the airport only for statutorily allowable purposes.

5.1 Additional information on the statutorily allowed uses of airport revenue is contained in separate guidance published by FAA pursuant to § 112 of the FAA Authorization Act of 1994, which is codified at 49 U.S.C. 47107(l).

5.2 The progressive accumulation of substantial amounts of airport revenues may warrant an FAA inquiry into the airport proprietor's application of revenues to the local airport system.

Congested Airports

6. Congested Airports

(a) The Department considers a currently congested airport to be—

(1) An airport at which the number of operating delays is one per cent or more of the total operating delays at the 55 airports with the highest number of operating delays; or

(2) An airport identified as congested by FAA listed in table 1 of FAA's Airport Capacity Benchmark Report 2004, or the most recent version of the Airport Capacity Benchmark Report.

(b) The Department considers an airport to be a future congested airport if an airport is forecasted to meet a defined threshold level of congestion reported in the Future Airport Capacity

Task 2 study entitled *Capacity Needs in the National Airspace System 2007–2025: An analysis of Airports and Metropolitan Area Demand and Operational Capacity in the Future* (FACT 2 Report), or any update to that report that FAA may publish from time-to-time.

(c) A congested hour is an hour during which demand exceeds average runway capacity resulting in volume-related delays, or is anticipated to do so.

6.1 Because charges provided in paragraphs 2.1.4, 2.5.3 and 2.5.4 to address congestion can result in higher fees for some or all operators, it is especially important for airport operators proposing such charges to provide carriers in advance the information listed in Appendix 1, with special emphasis on data, analysis and forecasts used to justify the charges.

6.2 The proprietor of a future congested airport may adopt measures to address congestion in accordance with paragraphs 2.1.4, 2.5.3 and 2.5.4 of this policy, if the measures will not take effect or have any effect on airfield charges until a time when the airport meets the definition of a congested airport in paragraph 6(a) or is anticipated to do so. This kind of measure would typically identify the specific condition, *e.g.,* operating delays that regularly exceed a certain level at the airport that would trigger the implementation of the special charges to address congestion.

6.3 An airport proprietor may exempt flights subsidized under the Essential Air Service Program from charges imposed under paragraphs 2.5.3 and 2.5.4 of this policy.

Issued in Washington, DC, on August 23, 2013.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

Christa Fornarotto,

Associate Administrator for Airports, Federal Aviation Administration,

Appendix 1—Information for Aeronautical User Charges Consultations

The Department of Transportation ordinarily expects the following information to be available to aeronautical users in connection with consultations over changes in airport rates and charges:

1. Historic Financial Information covering two fiscal years prior to the current year including, at minimum, a profit and loss statement, balance sheet and cash flow statement for the airport implementing the charges, and any financial reports prepared by the airport proprietor to satisfy the provisions of 49 U.S.C. 47107(a)(19) and 47107(k).

2. Justification. Economic, financial and/or legal justification for changes in the charging methodology or in the level of aeronautical rates and charges at the airport. Airports should provide information on the aeronautical costs they are including in the rate base.

3. Traffic Information. Annual numbers of terminal passengers and aircraft movements for each of the two preceding years.

4. Planning and Forecasting Information.

(a) To the extent applicable to current or proposed fees, the long-term airport strategy setting out long-term financial and traffic forecasts, major capital projects and capital expenditure, and particular areas requiring strategic action. This material should include any material provided for public or government reviews of major airport developments, including analyses of demand and capacity and expenditure estimates.

(b) Accurate, complete information specific to the airport for the current and the forecast year, including the current and proposed budgets, forecasts of airport charges revenue, the projected number of landings and passengers, expected operating and capital expenditures, debt service payments, contributions to restricted funds, or other required accounts or reserves.

(c) To the extent the airport uses a residual or hybrid charging methodology, a description of key factors expected to affect commercial or other nonaeronautical revenues and operating costs in the current and following years.

[FR Doc. 2013–21905 Filed 9–9–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group Aviation Rulemaking Committee

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Notice.

SUMMARY: By **Federal Register** notice (See 78 FR 42997, July 18, 2013) the National Park Service (NPS) and the Federal Aviation Administration (FAA) invited interested persons to apply to fill two upcoming openings on the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). The notice invited interested persons to apply to fill one vacancy representing commercial air tour operators and one vacancy representing environmental concerns. This notice informs the public of the person selected to fill the vacancy for the commercial air tour operator seat. No selection has been made for the vacancy representing environmental concerns.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3808, email: *Keith.Lusk@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

In accordance with the Act, the advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Membership

The current NPOAG ARC is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG ARC are as follows:

Heidi Williams representing general aviation; Alan Stephen and Mark Francis representing commercial air tour operators with one open seat; Greg Miller, Michael Sutton, and Dick Hingson representing environmental interests with one open seat; and Rory Majenty and Martin Begaye representing Native American tribes.

Selection

The member selected to fill the open seat representing commercial air tour operator interests is Matthew Zuccaro. Mr. Zuccaro's term begins on the day of this **Federal Register** notice publication. The term of service for NPOAG ARC members is 3 years.

Issued in Hawthorne, CA, on September 4, 2013.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2013–22037 Filed 9–9–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for re-use of historical bridge components for construction of Monon Trail Bridge over SR 25 in Indiana.

DATES: The effective date of the waiver is September 11, 2013.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via email at *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or via email at *michael.harkins@dot.gov.* Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate to reuse some historical bridge components for construction of Monon Trail Bridge over SR 25 in Indiana.

The Indiana Department of Transportation (INDOT) requested this waiver for an overpass to carry the Monon High Bridge Trail across the new Hoosier Heartland Highway (SR 25). Working with the local Context Sensitive Solution group, INDOT decided to span SR 25 with the historic Freedom Bridge, built in the 1890s in Freedom, Indiana, but replaced, disassembled, and preserved for relocation. This innovative solution brought together State and local officials, the Indiana State Historic Preservation Officer, and FHWA and is consistent with the reason why the Freedom Bridge was preserved under the National Historic Preservation Act. Although INDOT has traced 23 percent of the steel in the Freedom Bridge to Carnegie Steel, a United States manufacturer, State officials cannot verify that the remaining steel to be incorporated in the reassembled bridge is of domestic origin. Therefore, INDOT requested a Buy America waiver for the reuse of the incorporated steel.

In accordance with Division A, section 122 of the ''Consolidated and Further Continuing Appropriations Act, 2012'' (Pub. L. 112–55), the FHWA published a notice of intent to issue a public interest waiver on its Web site for re-use of original steel components to construct the trail bridge over SR 25 on May 21st (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=88*). The FHWA received no comments in response to the publication. This Public Interest waiver of the Buy America requirements of 23 CFR 635.410 is to permit INDOT to reuse original structural steel components from the disassembled historic bridge owned by Owen County for re-establishment of a bike/pedestrian trail over SR 25. The basis for the public interest waiver is:

- It fulfills the intent of a 1991 Section 106 of the National Historic Preservation Act's Memorandum of Understanding (NHPA MOA) that the historic Freedom Bridge be moved and preserved; and
- The proposed reassembly of the historic Freedom Bridge satisfies a critical need in providing the necessary connectivity for the Monon High Bridge Trail, but is also appropriate because the bridge was built in the 1890s, the peak period of the ''Bicycle Craze'' of the day.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to the Indiana waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410.

Issued on: August 28, 2013.

Victor M. Mendez,

FHWA Administrator.

[FR Doc. 2013–21983 Filed 9–9–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for the use of five non-domestic 14'' class 150 cast steel gate valves for rehabilitation of the Oxbow Bridge project in the State of Ohio.

DATES: The effective date of the waiver is September 11, 2013.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via email at *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or via email at *michael.harkins@dot.gov.* Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate to use five non-domestic 14″ class 150 cast steel gate valves for rehabilitation of the Oxbow Bridge project in the State of Ohio.

In accordance with Division A, section 122 of the ''Consolidated and Further Continuing Appropriations Act, 2012'' (Pub. L. 112–55), the FHWA published a notice of intent to issue a waiver on its Web site for five 14″ class 150 cast steel gate valves for rehabilitation of the Oxbow Bridge project in the State of Ohio (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=86*) on March 25th. The FHWA received no comments in response to the publication. The Manufacturing Extension Partnership (MEP)—a program of the U.S. Department of Commerce National Institute of Standards and Technology—conducted a Supplier Scouting analysis of domestic manufacturing capabilities and capacity for the production of the five 14″ class 150 cast steel gate valves for the bridge rehabilitation project in the State of Ohio. The MEP identified some domestic suppliers capable of casting part of the steel gate valve but not the complete 14″ class 150 cast steel gate valve. However, the Ohio Department of Transportation's coordination with these identified suppliers found that these entities could not supply the specified product. During the 15-day comment period, the FHWA conducted additional nationwide review to locate potential domestic manufacturers of the five 14″ class 150 cast steel gate valves. Based on all the information available to the agency, the FHWA concludes that there are no domestic manufacturers of the five 14″ class 150 cast steel gate valves.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to the Ohio waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410.

Issued on: August 30, 2013.

Victor M. Mendez,

FHWA Administrator.

[FR Doc. 2013–21984 Filed 9–9–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

ITS Joint Program Office; Notice of Meeting

AGENCY: Research and Innovative Technology Administration (RITA), U.S. Department of Transportation.

ACTION: Notice.

This notice announces the cancellation of the Connected Vehicle Planning and Policy Stakeholder Meeting. The meeting was scheduled for Thursday, September 12, 2013 from 9:00 a.m. to 12:30 p.m. E.D.T. in the DOT Conference Center at the U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC. The ITS Joint Program Office is considering rescheduling the meeting for a future date. In the meantime, stakeholders may be interested in attending the upcoming Connected Vehicle Program Public Meeting on September 24 to 26, 2013. For more information, visit *http://www.its.dot.gov/meetings/connected_vehicle_policy.htm*.

Questions about the cancellation may be emailed to (*Elizabeth.Machek@dot.gov*).

John Augustine,

Managing Director, ITS Joint Program Office.

[FR Doc. 2013–21990 Filed 9–9–13; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans, Notice of Meeting Amendment

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Advisory Committee on Homeless Veterans meeting on September 11–13, 2013, in the William Phillip King room at The Emily Morgan Hotel, 705 East Houston Street, San Antonio, TX, has been rescheduled as a teleconference call meeting on September 11, 2013, from 1 p.m. to 4 p.m., in Room 921 at 1722 Eye Street NW., Washington, DC. The toll free number for the meeting is 1–800–767–1750 and the access code is 40653#. The meeting is open to the public.

The purpose of the Committee is to provide the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless Veterans. The Committee shall assemble and review information relating to the needs of homeless Veterans and provide on-going advice on the most appropriate means of providing assistance to homeless Veterans. The Committee will make recommendations to the Secretary regarding such activities.

The Committee will receive briefings from VA and other officials regarding services for homeless Veterans. No time will be allocated for receiving oral presentations from the public. Interested parties should provide written comments on issues affecting homeless Veterans for review by the Committee to Mr. Vince Kane, Designated Federal Officer, Homeless Veterans Initiative Office (075D), Department of Veterans Affairs, 1722 Eye Street NW., Washington, DC 20006, or email to *vince.kane@va.gov*. Individuals who wish to attend the meeting or want additional information should contact Mr. Kane at (202) 461–1857.

Dated: September 5, 2013.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2013–21986 Filed 9–9–13; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 175 September 10, 2013

Part II

Federal Deposit Insurance Corporation

12 CFR Parts 303, 308, 324, *et al.*

Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule; Interim Final Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 308, 324, 327, 333, 337, 347, 349, 360, 362, 363, 364, 365, 390, and 391

RIN 3064–AD95

Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Interim final rule with request for comments.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adopting an interim final rule that revises its risk-based and leverage capital requirements for FDIC-supervised institutions. This interim final rule is substantially identical to a joint final rule issued by the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Federal Reserve) (together, with the FDIC, the agencies). The interim final rule consolidates three separate notices of proposed rulemaking that the agencies jointly published in the **Federal Register** on August 30, 2012, with selected changes. The interim final rule implements a revised definition of regulatory capital, a new common equity tier 1 minimum capital requirement, a higher minimum tier 1 capital requirement, and, for FDIC-supervised institutions subject to the advanced approaches risk-based capital rules, a supplementary leverage ratio that incorporates a broader set of exposures in the denominator. The interim final rule incorporates these new requirements into the FDIC's prompt corrective action (PCA) framework. In addition, the interim final rule establishes limits on FDIC-supervised institutions' capital distributions and certain discretionary bonus payments if the FDIC-supervised institution 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. The interim final rule amends the methodologies for determining risk-weighted assets for all FDIC-supervised institutions. The interim final rule also adopts changes to the FDIC's regulatory capital requirements that meet the requirements of section 171 and section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The interim final rule also codifies the FDIC's regulatory capital rules, which have previously resided in various appendices to their respective regulations, into a harmonized integrated regulatory framework. In addition, the FDIC is amending the market risk capital rule (market risk rule) to apply to state savings associations.

The FDIC is issuing these revisions to its capital regulations as an interim final rule. The FDIC invites comments on the interaction of this rule with other proposed leverage ratio requirements applicable to large, systemically important banking organizations. This interim final rule otherwise contains regulatory text that is identical to the common rule text adopted as a final rule by the Federal Reserve and the OCC. This interim final rule enables the FDIC to proceed on a unified, expedited basis with the other federal banking agencies pending consideration of other issues. Specifically, the FDIC intends to evaluate this interim final rule in the context of the proposed well-capitalized and buffer levels of the supplementary leverage ratio applicable to large, systemically important banking organizations, as described in a separate Notice of Proposed Rulemaking (NPR) published in the **Federal Register** August 20, 2013.

The FDIC is seeking commenters' views on the interaction of this interim final rule with the proposed rule regarding the supplementary leverage ratio for large, systemically important banking organizations.

DATES: *Effective date:* January 1, 2014. *Mandatory compliance date:* January 1, 2014 for advanced approaches FDIC-supervised institutions; January 1, 2015 for all other FDIC-supervised institutions. Comments on the interim final rule must be received no later than November 12, 2013.

ADDRESSES: You may submit comments, identified by RIN 3064–AD95, by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.
- *Email: Comments@fdic.gov.* Include the RIN 3064–AD95 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to 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.

Public Inspection: All comments received must include the agency name and RIN 3064–AD95 for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html*, including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Bobby R. Bean, Associate Director, *bbean@fdic.gov*; Ryan Billingsley, Chief, Capital Policy Section, *rbillingsley@fdic.gov*; Karl Reitz, Chief, Capital Markets Strategies Section, *kreitz@fdic.gov*; David Riley, Senior Policy Analyst, *dariley@fdic.gov*; Benedetto Bosco, Capital Markets Policy Analyst, *bbosco@fdic.gov, regulatorycapital@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*; Ryan Clougherty, Senior Attorney, *rclougherty@fdic.gov*; or Rachel Jones, Attorney, *racjones@fdic.gov*, Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

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I. Introduction

On August 30, 2012, the agencies published in the **Federal Register** three joint notices of proposed rulemaking seeking public comment on revisions to their risk-based and leverage capital requirements and on methodologies for calculating risk-weighted assets under the standardized and advanced approaches (each, a proposal, and together, the NPRs, the proposed rules, or the proposals).[1] The proposed rules, in part, reflected 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), including subsequent changes to the BCBS's capital standards and recent BCBS consultative papers.[2] Basel III is intended to improve both the quality and quantity of banking organizations' capital, as well as to strengthen various aspects of the international capital standards for calculating regulatory capital. The proposed rules also reflect aspects of the Basel II Standardized Approach and other Basel Committee standards.

The proposals also included changes consistent with the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act);[3] would apply the risk-based and leverage capital rules to top-tier savings and loan holding companies (SLHCs) domiciled in the United States; and would apply the market risk capital rule (the market risk rule)[4] to Federal and state savings associations (as appropriate based on trading activity).

The NPR titled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action''[5] (the Basel III NPR), provided for the implementation of the Basel III revisions to international capital standards related to minimum capital requirements, regulatory capital, and additional capital ''buffer'' standards to enhance the resilience of FDIC-supervised institutions to withstand periods of financial stress. FDIC-supervised institutions include state nonmember banks and state savings associations. The term banking organizations includes 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 Federal Reserve'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, except certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities. The proposal included transition periods for many of the requirements, consistent with Basel III and the Dodd-Frank Act. The NPR titled ''Regulatory Capital Rules: Standardized Approach for Risk-weighted Assets; Market Discipline and Disclosure Requirements''[6] (the Standardized Approach NPR), would revise the methodologies for calculating risk-weighted assets in the agencies' general risk-based capital rules[7] (the general risk-based capital rules), incorporating aspects of the Basel II standardized approach,[8] and establish alternative standards of creditworthiness in place of credit ratings, consistent with section 939A of the Dodd-Frank Act.[9] The proposed minimum capital requirements in section 10(a) of the Basel III NPR, as determined using the standardized capital ratio calculations in section 10(b), would establish minimum capital requirements that would be the ''generally applicable'' capital requirements for purpose of section 171 of the Dodd-Frank Act (Pub. L. 111–203, 124 Stat. 1376, 1435–38 (2010).[10]

The NPR titled ''Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rule; Market Risk Capital

[1] 77 FR 52792 (August 30, 2012); 77 FR 52888 (August 30, 2012); 77 FR 52978 (August 30, 2012).

[2] Basel III was published in December 2010 and revised in June 2011. The text is available at *http://www.bis.org/publ/bcbs189.htm*. The BCBS is a committee of banking supervisory authorities, which was established by the central bank governors of the G–10 countries in 1975. More information regarding the BCBS and its membership is available at *http://www.bis.org/bcbs/about.htm*. Documents issued by the BCBS are available through the Bank for International Settlements Web site at *http://www.bis.org*.

[3] Public Law 111–203, 124 Stat. 1376, 1435–38 (2010).

[4] The FDIC's market risk rule is at 12 CFR part 325, appendix C.

[5] 77 FR 52792 (August 30, 2012).

[6] 77 FR 52888 (August 30, 2012).

[7] The FDIC's general risk-based capital rules is at 12 CFR part 325, appendix A, and 12 CFR part 390, subpart Z . The general risk-based capital rule is supplemented by the FDIC's market risk rule in 12 CFR part 325, appendix C.

[8] *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).*

[9] *See* section 939A of the Dodd-Frank Act (15 U.S.C. 78o–7 note).

[10] See 77 FR 52856 (August 30, 2012).

Rule'' [11] (the Advanced Approaches NPR) included proposed changes to the agencies' current advanced approaches risk-based capital rules (the advanced approaches rule) [12] to incorporate applicable provisions of Basel III and the ''Enhancements to the Basel II framework'' (2009 Enhancements) published in July 2009 [13] and subsequent consultative papers, to remove references to credit ratings, to apply the market risk rule to savings associations and SLHCs, and to apply the advanced approaches rule to SLHCs meeting the scope of application of those rules. Taken together, the three proposals also would have restructured the agencies' regulatory capital rules (the general risk-based capital rules, leverage rules,[14] market risk rule, and advanced approaches rule) into a harmonized, codified regulatory capital framework.

The FDIC is finalizing the Basel III NPR, Standardized Approach NPR, and Advanced Approaches NPR in this interim final rule, with certain changes to the proposals, as described further below. The OCC and Federal Reserve are jointly finalizing the Basel III NPR, Standardized Approach NPR, and Advanced Approaches NPR as a final rule, with identical changes to the proposals as the FDIC. This interim final rule applies to FDIC-supervised institutions.

Certain aspects of this interim final rule apply only to FDIC-supervised institutions subject to the advanced approaches rule (advanced approaches FDIC-supervised institutions) or to FDIC-supervised institutions with significant trading activities, as further described below.

Likewise, the enhanced disclosure requirements in the interim final rule apply only to FDIC-supervised institutions with $50 billion or more in total consolidated assets.

As under the proposal, the minimum capital requirements in section 10(a) of the interim final rule, as determined using the standardized capital ratio calculations in section 10(b), which apply to all FDIC-supervised institutions, establish the ''generally applicable'' capital requirements under section 171 of the Dodd-Frank Act.[15]

Under the interim final rule, as under the proposal, in order to determine its minimum risk-based capital requirements, an advanced approaches FDIC-supervised institution that has completed the parallel run process and that has received notification from its primary Federal supervisor pursuant to section 324.121(d) of subpart E must determine its minimum risk-based capital requirements by calculating the three risk-based capital ratios using total risk-weighted assets under the standardized approach and, separately, total risk-weighted assets under the advanced approaches.[16] The lower ratio for each risk-based capital requirement is the ratio the FDIC-supervised institution must use to determine its compliance with the minimum capital requirement.[17] These enhanced prudential standards help ensure that advanced approaches FDIC-supervised institutions, which are among the largest and most complex FDIC-supervised institutions, have capital adequate to address their more complex operations and risks.

II. Summary of the Three Notices of Proposed Rulemaking

A. The Basel III Notice of Proposed Rulemaking

As discussed in the proposals, the recent financial crisis demonstrated that the amount of high-quality capital held by banking organizations was insufficient to absorb the losses generated over 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 characteristics of regulatory capital instruments, as well as inconsistencies in the definition of capital across jurisdictions, contributed to difficulties in evaluating a banking organization's capital strength. Accordingly, the BCBS assessed the international capital framework and, in 2010, published Basel III, a comprehensive reform package designed to improve the quality and quantity of regulatory capital and build additional capacity into the banking system to absorb losses in times of market and economic stress. On August 30, 2012, the agencies published the NPRs in the **Federal Register** to revise regulatory capital requirements, as discussed above. As proposed, the Basel III NPR generally would have applied to all U.S. banking organizations.

Consistent with Basel III, the Basel III NPR would have required banking organizations to comply with the following minimum capital ratios: (i) A new requirement for a ratio of common equity tier 1 capital to risk-weighted assets (common equity tier 1 capital ratio) of 4.5 percent; (ii) a ratio of tier 1 capital to risk-weighted assets (tier 1 capital ratio) of 6 percent, increased from 4 percent; (iii) a ratio of total capital to risk-weighted assets (total capital ratio) of 8 percent; (iv) a ratio of tier 1 capital to average total consolidated assets (leverage ratio) of 4 percent; and (v) for advanced approaches banking organizations only, an additional requirement that the ratio of tier 1 capital to total leverage exposure (supplementary leverage ratio) be at least 3 percent.

The Basel III NPR also proposed implementation of a capital conservation buffer equal to 2.5 percent of risk-weighted assets above the minimum risk-based capital ratio requirements, which could be expanded by a countercyclical capital buffer for advanced approaches banking organizations under certain circumstances. If a banking organization failed to hold capital above the minimum capital ratios and proposed capital conservation buffer (as potentially expanded by the countercyclical capital buffer), it would be subject to certain restrictions on capital distributions and discretionary bonus payments. The proposed countercyclical capital buffer was designed to take into account the macro-financial environment in which large, internationally active banking organizations function. The countercyclical capital buffer could be implemented if the agencies determined that credit growth in the economy became excessive. As proposed, the countercyclical capital buffer would initially be set at zero, and could expand to as much as 2.5 percent of risk-weighted assets.

The Basel III NPR proposed to apply a 4 percent minimum leverage ratio requirement to all banking organizations (computed using the new definition of capital), and to eliminate the exceptions for banking organizations with strong supervisory ratings or subject to the market risk rule. The Basel III NPR also

[11] 77 FR 52978 (August 30, 2012).

[12] The FDIC's advanced approaches rules is at 12 CFR part 325, appendix D, and 12 CFR part 390, subpart Z, appendix A. The advanced approaches rule is supplemented by the market risk rule.

[13] *See* ''Enhancements to the Basel II framework'' (July 2009), available at *http://www.bis.org/publ/bcbs157.htm.*

[14] The FDIC's tier 1 leverage rules are at 12 CFR 325.3 (state nonmember banks) and 390.467 (state savings associations).

[15] *See* note 14, *supra.* Risk-weighted assets calculated under the market risk framework in subpart F of the interim final rule are included in calculations of risk-weighted assets both under the standardized approach and the advanced approaches.

[16] An advanced approaches FDIC-supervised institution must also use its advanced-approaches-adjusted total to determine its total risk-based capital ratio.

[17] *See* section 10(c) of the interim final rule.

proposed to require advanced approaches banking organizations to satisfy a minimum supplementary leverage ratio requirement of 3 percent, measured in a manner consistent with the international leverage ratio set forth in Basel III. Unlike the FDIC's current leverage ratio requirement, the proposed supplementary leverage ratio incorporates certain off-balance sheet exposures in the denominator.

To strengthen the quality of capital, the Basel III NPR proposed more conservative eligibility criteria for regulatory capital instruments. For example, the Basel III NPR proposed that trust preferred securities (TruPS) and cumulative perpetual preferred securities, which were tier-1-eligible instruments (subject to limits) at the BHC level, would no longer be includable in tier 1 capital under the proposal and would be gradually phased out from tier 1 capital. The proposal also eliminated the existing limitations on the amount of tier 2 capital that could be recognized in total capital, as well as the limitations on the amount of certain capital instruments (for example, term subordinated debt) that could be included in tier 2 capital.

In addition, the proposal would have required banking organizations to include in common equity tier 1 capital accumulated other comprehensive income (AOCI) (with the exception of gains and losses on cash-flow hedges related to items that are not fair-valued on the balance sheet), and also would have established new limits on the amount of minority interest a banking organization could include in regulatory capital. The proposal also would have established more stringent requirements for several deductions from and adjustments to regulatory capital, including with respect to deferred tax assets (DTAs), investments in a banking organization's own capital instruments and the capital instruments of other financial institutions, and mortgage servicing assets (MSAs). The proposed revisions would have been incorporated into the regulatory capital ratios in the prompt corrective action (PCA) framework for depository institutions.

B. The Standardized Approach Notice of Proposed Rulemaking

The Standardized Approach NPR proposed changes to the agencies' general risk-based capital rules for determining risk-weighted assets (that is, the calculation of the denominator of a banking organization's risk-based capital ratios). The proposed changes were intended to revise and harmonize the agencies' rules for calculating risk-weighted assets, enhance risk sensitivity, and address weaknesses in the regulatory capital framework identified over recent years, including by strengthening the risk sensitivity of the regulatory capital treatment for, among other items, credit derivatives, central counterparties (CCPs), high-volatility commercial real estate, and collateral and guarantees.

In the Standardized Approach NPR, the agencies also proposed alternatives to credit ratings for calculating risk-weighted assets for certain assets, consistent with section 939A of the Dodd-Frank Act. These alternatives included methodologies for determining risk-weighted assets for exposures to sovereigns, foreign banks, and public sector entities, securitization exposures, and counterparty credit risk. The Standardized Approach NPR also proposed to include a framework for risk weighting residential mortgages based on underwriting and product features, as well as loan-to-value (LTV) ratios, and disclosure requirements for top-tier banking organizations domiciled in the United States with $50 billion or more in total assets, including disclosures related to regulatory capital instruments.

C. The Advanced Approaches Notice of Proposed Rulemaking

The Advanced Approaches NPR proposed revisions to the advanced approaches rule to incorporate certain aspects of Basel III, the 2009 Enhancements, and subsequent consultative papers. The proposal also would have implemented relevant provisions of the Dodd-Frank Act, including section 939A (regarding the use of credit ratings in agency regulations),[18] and incorporated certain technical amendments to the existing requirements. In addition, the Advanced Approaches NPR proposed to codify the market risk rule in a manner similar to the codification of the other regulatory capital rules under the proposals.

Consistent with Basel III and the 2009 Enhancements, under the Advanced Approaches NPR, the agencies proposed further steps to strengthen capital requirements for internationally active banking organizations. This NPR would have required advanced approaches banking organizations to hold more appropriate levels of capital for counterparty credit risk, credit valuation adjustments (CVA), and wrong-way risk; would have strengthened the risk-based capital requirements for certain securitization exposures by requiring advanced approaches banking organizations to conduct more rigorous credit analysis of securitization exposures; and would have enhanced the disclosure requirements related to those exposures.

The agencies proposed to apply the market risk rule to SLHCs and to state and Federal savings associations.

III. Summary of General Comments on the Basel III Notice of Proposed Rulemaking and on the Standardized Approach Notice of Proposed Rulemaking; Overview of the Interim Final Rule

A. General Comments on the Basel III Notice of Proposed Rulemaking and on the Standardized Approach Notice of Proposed Rulemaking

Each agency received over 2,500 public comments on the proposals from banking organizations, trade associations, supervisory authorities, consumer advocacy groups, public officials (including members of the U.S. Congress), private individuals, and other interested parties. Overall, while most commenters supported more robust capital standards and the agencies' efforts to improve the resilience of the banking system, many commenters expressed concerns about the potential costs and burdens of various aspects of the proposals, particularly for smaller banking organizations. A substantial number of commenters also requested withdrawal of, or significant revisions to, the proposals. A few commenters argued that new capital rules were not necessary at this time. Some commenters requested that the agencies perform additional studies of the economic impact of part or all of the proposed rules. Many commenters asked for additional time to transition to the new requirements. A more detailed discussion of the comments provided on particular aspects of the proposals is provided in the remainder of this preamble.

1. Applicability and Scope

The agencies received a significant number of comments regarding the proposed scope and applicability of the Basel III NPR and the Standardized Approach NPR. The majority of comments submitted by or on behalf of community banking organizations requested an exemption from the proposals. These commenters suggested basing such an exemption on a banking organization's asset size—for example, total assets of less than $500 million, $1 billion, $10 billion, $15 billion, or $50 billion—or on its risk profile or business model. Under the latter approach, the

[18] *See* section 939A of Dodd-Frank Act (15 U.S.C. 78o–7 note).

commenters suggested providing an exemption for banking organizations with balance sheets that rely less on leverage, short-term funding, or complex derivative transactions.

In support of an exemption from the proposed rule for community banking organizations, a number of commenters argued that the proposed revisions to the definition of capital would be overly conservative and would prohibit some of the instruments relied on by community banking organizations from satisfying regulatory capital requirements. Many of these commenters stated that, in general, community banking organizations have less access to the capital markets relative to larger banking organizations and could increase capital only by accumulating retained earnings. Owing to slow economic growth and relatively low earnings among community banking organizations, the commenters asserted that implementation of the proposal would be detrimental to their ability to serve local communities while providing reasonable returns to shareholders. Other commenters requested exemptions from particular sections of the proposed rules, such as maintaining capital against transactions with particular counterparties, or based on transaction types that they considered lower-risk, such as derivative transactions hedging interest rate risk.

The commenters also argued that application of the Basel III NPR and Standardized Approach NPR to community banking organizations would be unnecessary and inappropriate for the business model and risk profile of such organizations. These commenters asserted that Basel III was designed for large, internationally-active banking organizations in response to a financial crisis attributable primarily to those institutions. Accordingly, the commenters were of the view that community banking organizations require a different capital framework with less stringent capital requirements, or should be allowed to continue to use the general risk-based capital rules. In addition, many commenters, in particular minority depository institutions (MDIs), mutual banking organizations, and community development financial institutions (CDFIs), expressed concern regarding their ability to raise capital to meet the increased minimum requirements in the current environment and upon implementation of the proposed definition of capital. One commenter asked for an exemption from all or part of the proposed rules for CDFIs, indicating that the proposal would significantly reduce the availability of capital for low- and moderate-income communities. Another commenter stated that the U.S. Congress has a policy of encouraging the creation of MDIs and expressed concern that the proposed rules contradicted this purpose.

In contrast, however, a few commenters supported the proposed application of the Basel III NPR to all banking organizations. For example, one commenter stated that increasing the quality and quantity of capital at all banking organizations would create a more resilient financial system and discourage inappropriate risk-taking by forcing banking organizations to put more of their own ''skin in the game.'' This commenter also asserted that the proposed scope of the Basel III NPR would reduce the probability and impact of future financial crises and support the objectives of sustained growth and high employment. Another commenter favored application of the Basel III NPR to all banking organizations to ensure a level playing field among banking organizations within the same competitive market.

2. Aggregate Impact

A majority of the commenters expressed concern regarding the potential aggregate impact of the proposals, together with other provisions of the Dodd-Frank Act. Some of these commenters urged the agencies to withdraw the proposals and to conduct a quantitative impact study (QIS) to assess the potential aggregate impact of the proposals on banking organizations and the overall U.S. economy. Many commenters argued that the proposals would have significant negative consequences for the financial services industry. According to the commenters, by requiring banking organizations to hold more capital and increase risk weighting on some of their assets, as well as to meet higher risk-based and leverage capital measures for certain PCA categories, the proposals would negatively affect the banking sector. Commenters cited, among other potential consequences of the proposals: restricted job growth; reduced lending or higher-cost lending, including to small businesses and low-income or minority communities; limited availability of certain types of financial products; reduced investor demand for banking organizations' equity; higher compliance costs; increased mergers and consolidation activity, specifically in rural markets, because banking organizations would need to spread compliance costs among a larger customer base; and diminished access to the capital markets resulting from reduced profit and from dividend restrictions associated with the capital buffers. The commenters also asserted that the recovery of the U.S. economy would be impaired by the proposals as a result of reduced lending by banking organizations that the commenters believed would be attributable to the higher costs of regulatory compliance. In particular, the commenters expressed concern that a contraction in small-business lending would adversely affect job growth and employment.

3. Competitive Concerns

Many commenters raised concerns that implementation of the proposals would create an unlevel playing field between banking organizations and other financial services providers. For example, a number of commenters expressed concern that credit unions would be able to gain market share from banking organizations by offering similar products at substantially lower costs because of differences in taxation combined with potential costs from the proposals. The commenters also argued that other financial service providers, such as foreign banks with significant U.S. operations, members of the Federal Farm Credit System, and entities in the shadow banking industry, would not be subject to the proposed rule and, therefore, would have a competitive advantage over banking organizations. These commenters also asserted that the proposals could cause more consumers to choose lower-cost financial products from the unregulated, nonbank financial sector.

4. Costs

Commenters representing all types of banking organizations expressed concern that the complexity and implementation cost of the proposals would exceed their expected benefits. According to these commenters, implementation of the proposals would require software upgrades for new internal reporting systems, increased employee training, and the hiring of additional employees for compliance purposes. Some commenters urged the agencies to recognize that compliance costs have increased significantly over recent years due to other regulatory changes and to take these costs into consideration. As an alternative, some commenters encouraged the agencies to consider a simple increase in the minimum regulatory capital requirements, suggesting that such an approach would provide increased protection to the Deposit Insurance Fund and increase safety and soundness

without adding complexity to the regulatory capital framework.

B. Comments on Particular Aspects of the Basel III Notice of Proposed Rulemaking and on the Standardized Approach Notice of Proposed Rulemaking

In addition to the general comments described above, the agencies received a significant number of comments on four particular elements of the proposals: the requirement to include most elements of AOCI in regulatory capital; the new framework for risk weighting residential mortgages; and the requirement to phase out TruPS from tier 1 capital for all banking organizations.

1. Accumulated Other Comprehensive Income

AOCI generally includes accumulated unrealized gains and losses on certain assets and liabilities that have not been included in net income, yet are included in equity under U.S. generally accepted accounting principles (GAAP) (for example, unrealized gains and losses on securities designated as available-for-sale (AFS)). Under the agencies' general risk-based capital rules, most components of AOCI are not reflected in a banking organization's regulatory capital. In the proposed rule, consistent with Basel III, the agencies proposed to require banking organizations to include the majority of AOCI components in common equity tier 1 capital.

The agencies received a significant number of comments on the proposal to require banking organizations to recognize AOCI in common equity tier 1 capital. Generally, the commenters asserted that the proposal would introduce significant volatility in banking organizations' capital ratios due in large part to fluctuations in benchmark interest rates, and would result in many banking organizations moving AFS securities into a held-to-maturity (HTM) portfolio or holding additional regulatory capital solely to mitigate the volatility resulting from temporary unrealized gains and losses in the AFS securities portfolio. The commenters also asserted that the proposed rules would likely impair lending and negatively affect banking organizations' ability to manage liquidity and interest rate risk and to maintain compliance with legal lending limits. Commenters representing community banking organizations in particular asserted that they lack the sophistication of larger banking organizations to use certain risk-management techniques for hedging interest rate risk, such as the use of derivative instruments.

2. Residential Mortgages

The Standardized Approach NPR would have required banking organizations to place residential mortgage exposures into one of two categories to determine the applicable risk weight. Category 1 residential mortgage exposures were defined to include mortgage products with underwriting and product features that have demonstrated a lower risk of default, such as consideration and documentation of a borrower's ability to repay, and generally excluded mortgage products that included terms or other characteristics that the agencies have found to be indicative of higher credit risk, such as deferral of repayment of principal. Residential mortgage exposures with higher risk characteristics were defined as category 2 residential mortgage exposures. The agencies proposed to apply relatively lower risk weights to category 1 residential mortgage exposures, and higher risk weights to category 2 residential mortgage exposures. The proposal provided that the risk weight assigned to a residential mortgage exposure also depended on its LTV ratio.

The agencies received a significant number of comments objecting to the proposed treatment for one-to-four family residential mortgages and requesting retention of the mortgage treatment in the agencies' general risk-based capital rules. Commenters generally expressed concern that the proposed treatment would inhibit lending to creditworthy borrowers and could jeopardize the recovery of a still-fragile housing market. Commenters also criticized the distinction between category 1 and category 2 mortgages, asserting that the characteristics proposed for each category did not appropriately distinguish between lower- and higher-risk products and would adversely impact certain loan products that performed relatively well even during the recent crisis. Commenters also highlighted concerns regarding regulatory burden and the uncertainty of other regulatory initiatives involving residential mortgages. In particular, these commenters expressed considerable concern regarding the potential cumulative impact of the proposed new mortgage requirements combined with the Dodd-Frank Act's requirements relating to the definitions of qualified mortgage and qualified residential mortgage [19] and asserted that when considered together with the proposed mortgage treatment, the combined effect could have an adverse impact on the mortgage industry.

3. Trust Preferred Securities for Smaller FDIC-Supervised Institutions

The proposed rules would have required all banking organizations to phase-out TruPS from tier 1 capital under either a 3- or 10-year transition period based on the organization's total consolidated assets. The proposal would have required banking organizations with more than $15 billion in total consolidated assets (as of December 31, 2009) to phase-out of tier 1 capital any non-qualifying capital instruments (such as TruPS and cumulative preferred shares) issued before May 19, 2010. The exclusion of non-qualifying capital instruments would have taken place incrementally over a three-year period beginning on January 1, 2013. Section 171 provides an exception that permits banking organizations with total consolidated assets of less than $15 billion as of December 31, 2009, and banking organizations that were mutual holding companies as of May 19, 2010 (2010 MHCs), to include in tier 1 capital all TruPS (and other instruments that could no longer be included in tier 1 capital pursuant to the requirements of section 171) that were issued prior to May 19, 2010.[20] However, consistent with Basel III and the general policy purpose of the proposed revisions to regulatory capital, the agencies proposed to require banking organizations with total consolidated assets less than $15 billion as of December 31, 2009 and 2010 MHCs to phase out their non-qualifying capital instruments from regulatory capital over ten years.[21]

[19] *See, e.g.,* the definition of ''qualified mortgage'' in section 1412 of the Dodd-Frank Act (15 U.S.C. 129C) and ''qualified residential mortgage'' in section 941(e)(4) of the Dodd-Frank Act (15 U.S.C. 78o–11(e)(4)).

[20] Specifically, section 171 provides that deductions of instruments ''that would be required'' under the section are not required for depository institution holding companies with total consolidated assets of less than $15 billion as of December 31, 2009 and 2010 MHCs. *See* 12 U.S.C. 5371(b)(4)(C).

[21] *See* 12 U.S.C. 5371(b)(5)(A). While section 171 of the Dodd-Frank Act requires the agencies to establish minimum risk-based and leverage capital requirements subject to certain limitations, the agencies retain their general authority to establish capital requirements under other laws and regulations, including under the National Bank Act, 12 U.S.C. 1, *et seq.,* Federal Reserve Act, Federal Deposit Insurance Act, Bank Holding Company Act, International Lending Supervision Act, 12 U.S.C. 3901, *et seq.,* and Home Owners Loan Act, 12 U.S.C. 1461, *et seq.*

Many commenters representing community banking organizations criticized the proposal's phase-out schedule for TruPS and encouraged the agencies to grandfather TruPS in tier 1 capital to the extent permitted by section 171 of the Dodd-Frank Act. Commenters asserted that this was the intent of the U.S. Congress, including this provision in the statute. These commenters also asserted that this aspect of the proposal would unduly burden community banking organizations that have limited ability to raise capital, potentially impairing the lending capacity of these banking organizations.

C. Overview of the Interim Final Rule

The interim final rule will replace the FDIC's general risk-based capital rules, advanced approaches rule, market risk rule, and leverage rules in accordance with the transition provisions described below. After considering the comments received, the FDIC has made substantial modifications in the interim final rule to address specific concerns raised by commenters regarding the cost, complexity, and burden of the proposals.

During the recent financial crisis, lack of confidence in the banking sector increased banking organizations' cost of funding, impaired banking organizations' access to short-term funding, depressed values of banking organizations' equities, and required many banking organizations to seek government assistance. Concerns about banking organizations arose not only because market participants expected steep losses on banking organizations' assets, but also because of substantial uncertainty surrounding estimated loss rates, and thus future earnings. Further, heightened systemic risks, falling asset values, and reduced credit availability had an adverse impact on business and consumer confidence, significantly affecting the overall economy. The interim final rule addresses these weaknesses by helping to ensure a banking and financial system that will be better able to absorb losses and continue to lend in future periods of economic stress. This important benefit in the form of a safer, more resilient, and more stable banking system is expected to substantially outweigh any short-term costs that might result from the interim final rule.

In this context, the FDIC is adopting most aspects of the proposals, including the minimum risk-based capital requirements, the capital conservation and countercyclical capital buffers, and many of the proposed risk weights. The FDIC has also decided to apply most aspects of the Basel III NPR and Standardized Approach NPR to all banking organizations, with some significant changes. Implementing the interim final rule in a consistent fashion across the banking system will improve the quality and increase the level of regulatory capital, leading to a more stable and resilient system for banking organizations of all sizes and risk profiles. The improved resilience will enhance their ability to continue functioning as financial intermediaries, including during periods of financial stress and reduce risk to the deposit insurance fund and to the financial system. The FDIC believes that, together, the revisions to the proposals meaningfully address the commenters' concerns regarding the potential implementation burden of the proposals.

The FDIC has considered the concerns raised by commenters and believe that it is important to take into account and address regulatory costs (and their potential effect on FDIC-supervised institutions' role as financial intermediaries in the economy) when the FDIC establishes or revises regulatory requirements. In developing regulatory capital requirements, these concerns are considered in the context of the FDIC's broad goals—to enhance the safety and soundness of FDIC-supervised institutions and promote financial stability through robust capital standards for the entire banking system.

The agencies participated in the development of a number of studies to assess the potential impact of the revised capital requirements, including participating in the BCBS's Macroeconomic Assessment Group as well as its QIS, the results of which were made publicly available by the BCBS upon their completion.[22] The BCBS analysis suggested that stronger capital requirements help reduce the likelihood of banking crises while yielding positive net economic benefits.[23] To evaluate the potential reduction in economic output resulting from the new framework, the analysis assumed that banking organizations replaced debt with higher-cost equity to the extent needed to comply with the new requirements, that there was no reduction in the cost of equity despite the reduction in the riskiness of banking organizations' funding mix, and that the increase in funding cost was entirely passed on to borrowers. Given these assumptions, the analysis concluded there would be a slight increase in the cost of borrowing and a slight decrease in the growth of gross domestic product. The analysis concluded that this cost would be more than offset by the benefit to gross domestic product resulting from a reduced likelihood of prolonged economic downturns associated with a banking system whose lending capacity is highly vulnerable to economic shocks.

The agencies' analysis also indicates that the overwhelming majority of banking organizations already have sufficient capital to comply with the new capital rules. In particular, the agencies estimate that over 95 percent of all insured depository institutions would be in compliance with the minimums and buffers established under the interim final rule if it were fully effective immediately. The interim final rule will help to ensure that these FDIC-supervised institutions maintain their capacity to absorb losses in the future. Some FDIC-supervised institutions may need to take advantage of the transition period in the interim final rule to accumulate retained earnings, raise additional external regulatory capital, or both. As noted above, however, the overwhelming majority of banking organizations have sufficient capital to comply with the revised capital rules, and the FDIC believes that the resulting improvements to the stability and resilience of the banking system outweigh any costs associated with its implementation.

The interim final rule includes some significant revisions from the proposals in response to commenters' concerns, particularly with respect to the treatment of AOCI; residential mortgages; tier 1 non-qualifying capital instruments; and the implementation timeframes. The timeframes for compliance are described in the next section and more detailed discussions of modifications to the proposals are provided in the remainder of the preamble.

Consistent with the proposed rules, the interim final rule requires all FDIC-supervised institutions to recognize in regulatory capital all components of AOCI, excluding accumulated net 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. However, while the FDIC believes that the proposed AOCI treatment results in a regulatory capital

[22] *See* ''Assessing the macroeconomic impact of the transition to stronger capital and liquidity requirements'' (MAG Analysis), Attachment E, also available at: *http://www.bis.orpublIothp12.pdf. See also* ''Results of the comprehensive quantitative impact study,'' Attachment F, also available at: *http://www.bis.org/publ/bcbs186.pdf.*

[23] *See* ''An assessment of the long-term economic impact of stronger capital and liquidity requirements,'' Executive Summary, pg. 1, Attachment G.

measure that better reflects FDIC-supervised institutions' actual loss absorption capacity at a specific point in time, the FDIC recognizes that for many FDIC-supervised institutions, the volatility in regulatory capital that could result from the proposals could lead to significant difficulties in capital planning and asset-liability management. The FDIC also recognizes that the tools used by larger, more complex FDIC-supervised institutions for managing interest rate risk are not necessarily readily available for all FDIC-supervised institutions.

Accordingly, under the interim final rule, and as discussed in more detail in section V.B of this preamble, an FDIC-supervised institution that is not subject to the advanced approaches rule may make a one-time election not to include most elements of AOCI in regulatory capital under the interim final rule and instead effectively use the existing treatment under the general risk-based capital rules that excludes most AOCI elements from regulatory capital (AOCI opt-out election). Such an FDIC-supervised institution must make its AOCI opt-out election in its Consolidated Reports of Condition and Income (Call Report) filed for the first reporting period after it becomes subject to the interim final rule. Consistent with regulatory capital calculations under the FDIC's general risk-based capital rules, an FDIC-supervised institution that makes an AOCI opt-out election under the interim final rule must adjust common equity tier 1 capital by: (1) Subtracting any net unrealized gains and adding any net unrealized losses on AFS securities; (2) subtracting any unrealized losses on AFS preferred stock classified as an equity security under GAAP and AFS equity exposures; (3) subtracting any accumulated net gains and adding any accumulated net losses on cash-flow hedges; (4) subtracting amounts recorded in AOCI attributed to defined benefit postretirement plans resulting from the initial and subsequent application of the relevant GAAP standards that pertain to such plans (excluding, at the FDIC-supervised institution's option, the portion relating to pension assets deducted under section 22(a)(5) of the interim final rule); and (5) subtracting any net unrealized gains and adding any net unrealized losses on held-to-maturity securities that are included in AOCI. Consistent with the general risk-based capital rules, common equity tier 1 capital includes any net unrealized losses on AFS equity securities and any foreign currency translation adjustment. An FDIC-supervised institution that makes an AOCI opt-out election may incorporate up to 45 percent of any net unrealized gains on AFS preferred stock classified as an equity security under GAAP and AFS equity exposures into its tier 2 capital.

An FDIC-supervised institution that does not make an AOCI opt-out election on the Call Report filed for the first reporting period after the FDIC-supervised institution becomes subject to the interim final rule will be required to recognize AOCI (excluding accumulated net 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) in regulatory capital as of the first quarter in which it calculates its regulatory capital requirements under the interim final rule and continuing thereafter.

The FDIC has decided not to adopt the proposed treatment of residential mortgages. The FDIC has considered the commenters' observations about the burden of calculating the risk weights for FDIC-supervised institutions' existing mortgage portfolios, and has taken into account the commenters' concerns that the proposal did not properly assess the use of different mortgage products across different types of markets in establishing the proposed risk weights. The FDIC is also particularly mindful of comments regarding the potential effect of the proposal and other mortgage-related rulemakings on credit availability. In light of these considerations, as well as others raised by commenters, the FDIC has decided to retain in the interim final rule the current treatment for residential mortgage exposures under the general risk-based capital rules.

Consistent with the general risk-based capital rules, the interim final rule assigns a 50 or 100 percent risk weight to exposures secured by one-to-four family residential properties. Generally, residential mortgage exposures secured by a first lien on a one-to-four family residential property that are prudently underwritten and that are performing according to their original terms receive a 50 percent risk weight. All other one-to four-family residential mortgage loans, including exposures secured by a junior lien on residential property, are assigned a 100 percent risk weight. If an FDIC-supervised institution holds the first and junior lien(s) on a residential property and no other party holds an intervening lien, the FDIC-supervised institution must treat the combined exposure as a single loan secured by a first lien for purposes of assigning a risk weight.

The agencies also considered comments on the proposal to require certain depository institution holding companies to phase out their non-qualifying tier 1 capital instruments from regulatory capital over ten years. Although the agencies continue to believe that non-qualifying instruments do not absorb losses sufficiently to be included in tier 1 capital as a general matter, the agencies are also sensitive to the difficulties community banking organizations often face when issuing new capital instruments and are aware of the importance their capacity to lend can play in local economies. Therefore, the final rule adopted by the Federal Reserve allows certain depository institution holding companies to include in regulatory capital debt or equity instruments issued prior to September 12, 2010 that do not meet the criteria for additional tier 1 or tier 2 capital instruments but that were included in tier 1 or tier 2 capital respectively as of September 12, 2010 up to the percentage of the outstanding principal amount of such non-qualifying capital instruments.

D. Timeframe for Implementation and Compliance

In order to give non-internationally active FDIC-supervised institutions more time to comply with the interim final rule and simplify their transition to the new regime, the interim final rule will require compliance from different types of organizations at different times. Generally, and as described in further detail below, FDIC-supervised institutions that are not subject to the advanced approaches rule must begin complying with the interim final rule on January 1, 2015, whereas advanced approaches FDIC-supervised institutions must begin complying with the interim final rule on January 1, 2014. The FDIC believes that advanced approaches FDIC-supervised institutions have the sophistication, infrastructure, and capital markets access to implement the interim final rule earlier than either FDIC-supervised institutions that do not meet the asset size or foreign exposure threshold for application of those rules.

A number of commenters requested that the agencies clarify the point at which a banking organization that meets the asset size or foreign exposure threshold for application of the advanced approaches rule becomes subject to subpart E of the proposed rule, and thus all of the provisions that apply to an advanced approaches banking organization. In particular, commenters requested that the agencies clarify whether subpart E of the proposed rule only applies to those banking organizations that have

completed the parallel run process and that have received notification from their primary Federal supervisor pursuant to section 324.121(d) of subpart E, or whether subpart E would apply to all banking organizations that meet the relevant thresholds without reference to completion of the parallel run process.

The interim final rule provides that an advanced approaches FDIC-supervised institution is one that meets the asset size or foreign exposure thresholds for or has opted to apply the advanced approaches rule, without reference to whether that FDIC-supervised institution has completed the parallel run process and has received notification from its primary Federal supervisor pursuant to section 324.121(d) of subpart E of the interim final rule. The FDIC has also clarified in the interim final rule when completion of the parallel run process and receipt of notification from the primary Federal supervisor pursuant to section 324.121(d) of subpart E is necessary for an advanced approaches FDIC-supervised institution to comply with a particular aspect of the rules. For example, only an advanced approaches FDIC-supervised institution that has completed parallel run and received notification from its primary Federal supervisor under Section 324.121(d) of subpart E must make the disclosures set forth under subpart E of the interim final rule. However, an advanced approaches FDIC-supervised institution must recognize most components of AOCI in common equity tier 1 capital and must meet the supplementary leverage ratio when applicable without reference to whether the FDIC-supervised institution has completed its parallel run process.

Beginning on January 1, 2015, FDIC-supervised institutions that are not subject to the advanced approaches rule become subject to the revised definitions of regulatory capital, the new minimum regulatory capital ratios, and the regulatory capital adjustments and deductions according to the transition provisions.[24] All FDIC-supervised institutions must begin calculating standardized total risk-weighted assets in accordance with subpart D of the interim final rule, and if applicable, the revised market risk rule under subpart F, on January 1, 2015.[25]

Beginning on January 1, 2014, advanced approaches FDIC-supervised institutions must begin the transition period for the revised minimum regulatory capital ratios, definitions of regulatory capital, and regulatory capital adjustments and deductions established under the interim final rule. The revisions to the advanced approaches risk-weighted asset calculations will become effective on January 1, 2014.

From January 1, 2014 to December 31, 2014, an advanced approaches FDIC-supervised institution that is on parallel run must calculate risk-weighted assets using the general risk-based capital rules and substitute such risk-weighted assets for its standardized total risk-weighted assets for purposes of determining its risk-based capital ratios. An advanced approaches FDIC-supervised institution on parallel run must also calculate advanced approaches total risk-weighted assets using the advanced approaches rule in subpart E of the interim final rule for purposes of confidential reporting to its primary Federal supervisor on the Federal Financial Institutions Examination Council's (FFIEC) 101 report. An advanced approaches FDIC-supervised institution that has completed the parallel run process and that has received notification from its primary Federal supervisor pursuant to section 121(d) of subpart E will calculate its risk-weighted assets using the general risk-based capital rules and substitute such risk-weighted assets for its standardized total risk-weighted assets and also calculate advanced approaches total risk-weighted assets using the advanced approaches rule in subpart E of the interim final rule for purposes of determining its risk-based capital ratios from January 1, 2014 to December 31, 2014. Regardless of an advanced approaches FDIC-supervised institution's parallel run status, on January 1, 2015, the FDIC-supervised institution must begin to apply subpart D, and if applicable, subpart F, of the interim final rule to determine its standardized total risk-weighted assets.

The transition period for the capital conservation and countercyclical capital buffers for all FDIC-supervised institutions will begin on January 1, 2016.

An FDIC-supervised institution that is required to comply with the market risk rule must comply with the revised market risk rule (subpart F) as of the same date that it must comply with other aspects of the rule for determining its total risk-weighted assets.

Date	FDIC-Supervised institutions not subject to the advanced approaches rule*
January 1, 2015	Begin compliance with the revised minimum regulatory capital ratios and begin the transition period for the revised definitions of regulatory capital and the revised regulatory capital adjustments and deductions. Begin compliance with the standardized approach for determining risk-weighted assets.
January 1, 2016	Begin the transition period for the capital conservation and countercyclical capital buffers.

Date	Advanced approaches FDIC-supervised institutions*
January 1, 2014	Begin the transition period for the revised minimum regulatory capital ratios, definitions of regulatory capital, and regulatory capital adjustments and deductions. Begin compliance with the revised advanced approaches rule for determining risk-weighted assets.
January 1, 2015	Begin compliance with the standardized approach for determining risk-weighted assets.
January 1, 2016	Begin the transition period for the capital conservation and countercyclical capital buffers.

*If applicable, FDIC-supervised institutions must use the calculations in subpart F of the interim final rule (market risk) concurrently with the calculation of risk-weighted assets according either to subpart D (standardized approach) or subpart E (advanced approaches) of the interim final rule.

[24] Prior to January 1, 2015, such FDIC-supervised institutions must continue to use the FDIC's general risk-based capital rules and tier 1 leverage rules.

[25] The revised PCA thresholds, discussed further in section IV.E. of this preamble, become effective for all insured depository institutions on January 1, 2015.

IV. 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 proposed rule would have required banking organizations to comply with the following minimum capital ratios: a common equity tier 1 capital to risk-weighted assets ratio of 4.5 percent; a tier 1 capital to risk-weighted assets ratio of 6 percent; a total capital to risk-weighted assets ratio of 8 percent; a leverage ratio of 4 percent; and for advanced approaches banking organizations only, a supplementary leverage ratio of 3 percent. The common equity tier 1 capital ratio is a new minimum requirement designed to ensure that banking organizations hold sufficient high-quality regulatory capital that is available to absorb losses on a going-concern basis. The proposed capital ratios would apply to a banking organization on a consolidated basis.

The agencies received a substantial number of comments on the proposed minimum risk-based capital requirements. Several commenters supported the proposal to increase the minimum tier 1 risk-based capital requirement. Other commenters commended the agencies for proposing to implement a minimum capital requirement that focuses primarily on common equity. These commenters argued that common equity is the strongest form of capital and that the proposed minimum common equity tier 1 capital ratio of 4.5 percent would promote the safety and soundness of the banking industry.

Other commenters provided general support for the proposed increases in minimum risk-based capital requirements, but expressed concern that the proposals could present unique challenges to mutual institutions because they can only raise common equity through retained earnings. A number of commenters asserted that the objectives of the proposal could be achieved through regulatory mechanisms other than the proposed risk-based capital requirements, including enhanced safety and soundness examinations, more stringent underwriting standards, and alternative measures of capital.

Other commenters objected to the proposed increase in the minimum tier 1 capital ratio and the implementation of a common equity tier 1 capital ratio. One commenter indicated that increases in regulatory capital ratios would severely limit growth at many community banking organizations and could encourage consolidation through mergers and acquisitions. Other commenters stated that for banks under $750 million in total assets, increased compliance costs would not allow them to provide a reasonable return to shareholders, and thus would force them to consolidate. Several commenters urged the agencies to recognize community banking organizations' limited access to the capital markets and related difficulties raising capital to comply with the proposal.

One banking organization indicated that implementation of the common equity tier 1 capital ratio would significantly reduce its capacity to grow and recommended that the proposal recognize differences in the risk and complexity of banking organizations and provide favorable, less stringent requirements for smaller and non-complex institutions. Another commenter suggested that the proposed implementation of an additional risk-based capital ratio would confuse market observers and recommended that the agencies implement a regulatory capital framework that allows investors and the market to ascertain regulatory capital from measures of equity derived from a banking organization's balance sheet.

Other commenters expressed concern that the proposed common equity tier 1 capital ratio would disadvantage MDIs relative to other banking organizations. According to the commenters, in order to retain their minority-owned status, MDIs historically maintain a relatively high percentage of non-voting preferred stockholders that provide long-term, stable sources of capital. Any public offering to increase common equity tier 1 capital levels would dilute the minority investors owning the common equity of the MDI and could potentially compromise the minority-owned status of such institutions. One commenter asserted that, for this reason, the implementation of the Basel III NPR would be contrary to the statutory mandate of section 308 of the Financial Institutions, Reform, Recovery and Enforcement Act (FIRREA).[26] Accordingly, the commenters encouraged the agencies to exempt MDIs from the proposed common equity tier 1 capital ratio requirement.

The FDIC believes that all FDIC-supervised institutions must have an adequate amount of loss-absorbing capital to continue to lend to their communities during times of economic stress, and therefore have decided to implement the regulatory capital requirements, including the minimum common equity tier 1 capital requirement, as proposed. For the reasons described in the NPR, including the experience during the crisis with lower quality capital instruments, the FDIC does not believe it is appropriate to maintain the general risk-based capital rules or to rely on the supervisory process or underwriting standards alone. Accordingly, the interim final rule maintains the minimum common equity tier 1 capital to total risk-weighted assets ratio of 4.5 percent. The FDIC has decided not to pursue the alternative regulatory mechanisms suggested by commenters, as such alternatives would be difficult to implement consistently across FDIC-supervised institutions and would not necessarily fulfill the objective of increasing the amount and quality of regulatory capital for all FDIC-supervised institutions.

In view of the concerns expressed by commenters with respect to MDIs, the FDIC evaluated the risk-based and leverage capital levels of MDIs to determine whether the interim final rule would disproportionately impact such institutions. This analysis found that of the 178 MDIs in existence as of March 31, 2013, 12 currently are not well capitalized for PCA purposes, whereas (according to the FDIC's estimates) 14 would not be considered well capitalized for PCA purposes under the interim final rule if it were fully implemented without transition today. Accordingly, the FDIC does not believe that the interim final rule would disproportionately impact MDIs and are not adopting any exemptions or special provisions for these institutions. While the FDIC recognizes MDIs may face impediments in meeting the common equity tier 1 capital ratio, the FDIC believes that the improvements to the safety and soundness of these institutions through higher capital standards are warranted and consistent with their obligations under section 308 of FIRREA. As a prudential matter, the FDIC has a long-established regulatory policy that FDIC-supervised institutions 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 FDIC-supervised institution's activities and risk profile. Section IV.G of this preamble describes the requirement for overall capital adequacy of FDIC-supervised institutions and the

[26] 12 U.S.C. 1463 note.

supervisory assessment of capital adequacy.

Furthermore, consistent with the FDIC's authority under the general risk-based capital rules and the proposals, section 1(d) of the interim final rule includes a reservation of authority that allows FDIC to require the FDIC-supervised institution to hold a greater amount of regulatory capital than otherwise is required under the interim final rule, if the FDIC determines that the regulatory capital held by the FDIC-supervised institution is not commensurate with its credit, market, operational, or other risks. In exercising reservation of authority under the rule, the FDIC expects to consider the size, complexity, risk profile, and scope of operations of the FDIC-supervised institution; and whether any public benefits would be outweighed by risk to an insured depository institution or to the financial system.

B. Leverage Ratio

The proposals would require a banking organization to satisfy a leverage ratio of 4 percent, calculated using the proposed definition of tier 1 capital and the banking organization's average total consolidated assets, minus amounts deducted from tier 1 capital. The agencies also proposed to eliminate the exception in the agencies' leverage rules that provides for a minimum leverage ratio of 3 percent for banking organizations with strong supervisory ratings.

The agencies received a number of comments on the proposed leverage ratio applicable to all banking organizations. Several of these commenters supported the proposed leverage ratio, stating that it serves as a simple regulatory standard that constrains the ability of a banking organization to leverage its equity capital base. Some of the commenters encouraged the agencies to consider an alternative leverage ratio measure of tangible common equity to tangible assets, which would exclude non-common stock elements from the numerator and intangible assets from the denominator of the ratio and thus, according to these commenters, provide a more reliable measure of a banking organization's viability in a crisis.

A number of commenters criticized the proposed removal of the 3 percent exception to the minimum leverage ratio requirement for certain banking organizations. One of these commenters argued that removal of this exception is unwarranted in view of the cumulative impact of the proposals and that raising the minimum leverage ratio requirement for the strongest banking organizations may lead to a deleveraging by the institutions most able to extend credit in a safe and sound manner. In addition, the commenters cautioned the agencies that a restrictive leverage measure, together with more stringent risk-based capital requirements, could magnify the potential impact of an economic downturn.

Several commenters suggested modifications to the minimum leverage ratio requirement. One commenter suggested increasing the minimum leverage ratio requirement for all banking organizations to 6 percent, whereas another commenter recommended a leverage ratio requirement as high as 20 percent. Another commenter suggested a tiered approach, with minimum leverage ratio requirements of 6.25 percent and 8.5 percent for community banking organizations and large banking organizations, respectively. According to this commenter, such an approach could be based on the risk characteristics of a banking organization, including liquidity, asset quality, and local deposit levels, as well as its supervisory rating. Another commenter suggested a fluid leverage ratio requirement that would adjust based on certain macroeconomic variables. Under such an approach, the agencies could require banking organizations to meet a minimum leverage ratio of 10 percent under favorable economic conditions and a 6 percent leverage ratio during an economic contraction.

The FDIC continues to believe that a minimum leverage ratio requirement of 4 percent for all FDIC-supervised institutions is appropriate in light of its role as a complement to the risk-based capital ratios. The proposed leverage ratio is more conservative than the current leverage ratio because it incorporates a more stringent definition of tier 1 capital. In addition, the FDIC believes that it is appropriate for all FDIC-supervised institutions, regardless of their supervisory rating or trading activities, to meet the same minimum leverage ratio requirements. As a practical matter, the FDIC generally has found a leverage ratio of less than 4 percent to be inconsistent with a supervisory composite rating of ''1.'' Modifying the scope of the leverage ratio measure or implementing a fluid or tiered approach for the minimum leverage ratio requirement would create additional operational complexity and variability in a minimum ratio requirement that is intended to place a constraint on the maximum degree to which an FDIC-supervised institution can leverage its equity base. Accordingly, the interim final rule retains the existing minimum leverage ratio requirement of 4 percent and removes the 3 percent leverage ratio exception as of January 1, 2014 for advanced approaches FDIC-supervised institutions and as of January 1, 2015 for all other FDIC-supervised institutions.

C. Supplementary Leverage Ratio for Advanced Approaches FDIC-Supervised Institutions

As part of Basel III, the BCBS introduced a minimum leverage ratio requirement of 3 percent (the Basel III leverage ratio) as a backstop measure to the risk-based capital requirements, designed to improve the resilience of the banking system worldwide by limiting the amount of leverage that a banking organization may incur. The Basel III leverage ratio is defined as the ratio of tier 1 capital to a combination of on- and off-balance sheet exposures.

As discussed in the Basel III NPR, the agencies proposed the supplementary leverage ratio only 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. Under the proposal, consistent with Basel III, advanced approaches banking organizations would be required to maintain a minimum supplementary leverage ratio of 3 percent of tier 1 capital to on- and off-balance sheet exposures (total leverage exposure).

The agencies received a number of comments on the proposed supplementary leverage ratio. Several commenters stated that the proposed supplementary leverage ratio is unnecessary in light of the minimum leverage ratio requirement applicable to all banking organizations. These commenters stated that the implementation of the supplementary leverage ratio requirement would create market confusion as to the inter-relationships among the ratios and as to which ratio serves as the binding constraint for an individual banking organization. One commenter noted that an advanced approaches banking organization would be required to calculate eight distinct regulatory capital ratios (common equity tier 1, tier 1, and total capital to risk-weighted assets under the advanced approaches and the standardized approach, as well as two leverage ratios) and encouraged the agencies to streamline the application of regulatory capital ratios. In addition, commenters suggested that the agencies postpone the implementation of the supplementary

leverage ratio until January 1, 2018, after the international supervisory monitoring process is complete, and to collect supplementary leverage ratio information on a confidential basis until then.

At least one commenter encouraged the agencies to consider extending the application of the proposed supplementary leverage ratio on a case-by-case basis to banking organizations with total assets of between $50 billion and $250 billion, stating that such institutions may have significant off-balance sheet exposures and engage in a substantial amount of repo-style transactions. Other commenters suggested increasing the proposed supplementary leverage ratio requirement to at least 8 percent for BHCs, under the Federal Reserve's authority in section 165 of the Dodd-Frank Act to implement enhanced capital requirements for systemically important financial institutions.[27]

With respect to specific aspects of the supplementary leverage ratio, some commenters criticized the methodology for the total leverage exposure. Specifically, one commenter expressed concern that using GAAP as the basis for determining a banking organization's total leverage exposure would exclude a wide range of off-balance sheet exposures, including derivatives and securities lending transactions, as well as permit extensive netting. To address these issues, the commenter suggested requiring advanced approaches banking organizations to determine their total leverage exposure using International Financial Reporting Standards (IFRS), asserting that it restricts netting and, relative to GAAP, requires the recognition of more off-balance sheet securities lending transactions.

Several commenters criticized the proposed incorporation of off-balance sheet exposures into the total leverage exposure. One commenter argued that including unfunded commitments in the total leverage exposure runs counter to the purpose of the supplementary leverage ratio as an on-balance sheet measure of capital that complements the risk-based capital ratios. This commenter was concerned that the proposed inclusion of unfunded commitments would result in a duplicative assessment against banking organizations when the forthcoming liquidity ratio requirements are implemented in the United States. The commenter noted that the proposed 100 percent credit conversion factor for all unfunded commitments is not appropriately calibrated to the vastly different types of commitments that exist across the industry. If the supplementary leverage ratio is retained in the interim final rule, the commenter requested that the agencies align the credit conversion factors for unfunded commitments under the supplementary leverage ratio and any forthcoming liquidity ratio requirements.

Another commenter encouraged the agencies to allow advanced approaches banking organizations to exclude from total leverage exposure the notional amount of any unconditionally cancellable commitment. According to this commenter, unconditionally cancellable commitments are not credit exposures because they can be extinguished at any time at the sole discretion of the issuing entity. Therefore, the commenter argued, the inclusion of these commitments could potentially distort a banking organization's measure of total leverage exposure.

A few commenters requested that the agencies exclude off-balance sheet trade finance instruments from the total leverage exposure, asserting that such instruments are based on underlying client transactions (for example, a shipment of goods) and are generally short-term. The commenters argued that trade finance instruments do not create excessive systemic leverage and that they are liquidated by fulfillment of the underlying transaction and payment at maturity. Another commenter requested that the agencies apply the same credit conversion factors to trade finance instruments as under the general risk-based capital rules—that is, 20 percent of the notional value for trade-related contingent items that arise from the movement of goods, and 50 percent of the notional value for transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit. According to this commenter, such an approach would appropriately consider the low-risk characteristics of these instruments and ensure price stability in trade finance.

Several commenters supported the proposed treatment for repo-style transactions (including repurchase agreements, securities lending and borrowing transactions, and reverse repos). These commenters stated that securities lending transactions are fully collateralized and marked to market daily and, therefore, the on-balance sheet amounts generated by these transactions appropriately capture the exposure for purposes of the supplementary leverage ratio. These commenters also supported the proposed treatment for indemnified securities lending transactions and encouraged the agencies to retain this treatment in the interim final rule. Other commenters stated that the proposed measurement of repo-style transactions is not sufficiently conservative and recommended that the agencies implement a methodology that includes in total leverage exposure the notional amounts of these transactions.

A few commenters raised concerns about the proposed methodology for determining the exposure amount of derivative contracts. Some commenters criticized the agencies for not allowing advanced approaches banking organizations to use the internal models methodology to calculate the exposure amount for derivative contracts. According to these commenters, the agencies should align the methods for calculating exposure for derivative contracts for purposes of the supplementary leverage ratio and the advanced approaches risk-based capital ratios to more appropriately reflect the risk-management activities of advanced approaches banking organizations and to measure these exposures consistently across the regulatory capital ratios. At least one commenter requested clarification of the proposed treatment of collateral received in connection with derivative contracts. This commenter also encouraged the agencies to permit recognition of eligible collateral for purposes of reducing total leverage exposure, consistent with proposed legislation in other BCBS member jurisdictions.

The introduction of an international leverage ratio requirement in the Basel III capital framework is an important development that would provide a consistent leverage ratio measure across internationally-active institutions. Furthermore, the supplementary leverage ratio is reflective of the on- and off-balance sheet activities of large, internationally active banking organizations. Accordingly, consistent with Basel III, the interim final rule implements for reporting purposes the proposed supplementary leverage ratio for advanced approaches FDIC-supervised institutions starting on January 1, 2015 and requires advanced approaches FDIC-supervised institutions to comply with the minimum supplementary leverage ratio requirement starting on January 1, 2018. Public reporting of the supplementary leverage ratio during the international supervisory monitoring period is consistent with the international implementation timeline and enables transparency and comparability of

[27] *See* section 165 of the Dodd-Frank Act, 12 U.S.C. 5365.

reporting the leverage ratio requirement across jurisdictions.

The FDIC is not applying the supplementary leverage ratio requirement to FDIC-supervised institutions that are not subject to the advanced approaches rule in the interim final rule. Applying the supplementary leverage ratio routinely could create operational complexity for smaller FDIC-supervised institutions that are not internationally active, and that generally do not have off-balance sheet activities that are as extensive as FDIC-supervised institutions that are subject to the advanced approaches rule. The FDIC notes that the interim final rule imposes risk-based capital requirements on all repo-style transactions and otherwise imposes constraints on all FDIC-supervised institutions' off-balance sheet exposures.

With regard to the commenters' views to require the use of IFRS for purposes of the supplementary leverage ratio, the FDIC notes that the use of GAAP in the interim final rule as a starting point to measure exposure of certain derivatives and repo-style transactions, has the advantage of maintaining consistency between regulatory capital calculations and regulatory reporting, the latter of which must be consistent with GAAP or, if another accounting principle is used, no less stringent than GAAP.[28]

In response to the commenters' views regarding the scope of the total leverage exposure, the FDIC notes that the supplementary leverage ratio is intended to capture on- and off-balance sheet exposures of an FDIC-supervised institution. Commitments represent an agreement to extend credit and thus including commitments (both funded and unfunded) in the supplementary leverage ratio is consistent with its purpose to measure the on- and off-balance sheet leverage of an FDIC-supervised institution, as well as with safety and soundness principles. Accordingly, the FDIC believes that total leverage exposure should include FDIC-supervised institutions' off-balance sheet exposures, including all loan commitments that are not unconditionally cancellable, financial standby letters of credit, performance standby letters of credit, and commercial and other similar letters of credit.

The proposal to include unconditionally cancellable commitments in the total leverage exposure recognizes that a banking organization may extend credit under the commitment before it is cancelled. If the banking organization exercises its option to cancel the commitment, its total leverage exposure amount with respect to the commitment will be limited to any extension of credit prior to cancellation. The proposal considered banking organizations' ability to cancel such commitments and, therefore, limited the amount of unconditionally cancellable commitments included in total leverage exposure to 10 percent of the notional amount of such commitments.

The FDIC notes that the credit conversion factors used in the supplementary leverage ratio and in any forthcoming liquidity ratio requirements have been developed to serve the purposes of the respective frameworks and may not be identical. Similarly, the commenters' proposed modifications to credit conversion factors for trade finance transactions would be inconsistent with the purpose of the supplementary leverage ratio—to capture all off-balance sheet exposures of banking organizations in a primarily non-risk-based manner.

For purposes of incorporating derivative contracts in the total leverage exposure, the proposal would require all advanced approaches banking organizations to use the same methodology to measure such exposures. The proposed approach provides a uniform measure of exposure for derivative contracts across banking organizations, without regard to their models. Accordingly, the FDIC does not believe an FDIC-supervised institution should be permitted to use internal models to measure the exposure amount of derivative contracts for purposes of the supplementary leverage ratio.

With regard to commenters requesting a modification of the proposed treatment for repo-style transactions, the FDIC does not believe that the proposed modifications are warranted at this time because international discussions and quantitative analysis of the exposure measure for repo-style transactions are still ongoing.

The FDIC is continuing to work with the BCBS to assess the Basel III leverage ratio, including its calibration and design, as well as the impact of any differences in national accounting frameworks material to the denominator of the Basel III leverage ratio. The FDIC will consider any changes to the supplementary leverage ratio as the BCBS revises the Basel III leverage ratio.

Therefore, the FDIC has adopted the proposed supplementary leverage ratio in the interim final rule without modification. An advanced approaches FDIC-supervised institution must calculate the supplementary leverage ratio as the simple arithmetic mean of the ratio of the FDIC-supervised institution's tier 1 capital to total leverage exposure as of the last day of each month in the reporting quarter. The FDIC also notes that collateral may not be applied to reduce the potential future exposure (PFE) amount for derivative contracts.

Under the interim final rule, total leverage exposure equals the sum of the following:

(1) The balance sheet carrying value of all of the FDIC-supervised institution's on-balance sheet assets *less* amounts deducted from tier 1 capital under section 22(a), (c), and (d) of the interim final rule;

(2) The PFE amount for each derivative contract to which the FDIC-supervised institution is a counterparty (or each single-product netting set of such transactions) determined in accordance with section 34 of the interim final rule, but without regard to section 34(b);

(3) 10 percent of the notional amount of unconditionally cancellable commitments made by the FDIC-supervised institution; and

(4) The notional amount of all other off-balance sheet exposures of the FDIC-supervised institution (excluding securities lending, securities borrowing, reverse repurchase transactions, derivatives and unconditionally cancellable commitments).

Advanced approaches FDIC-supervised institutions must maintain a minimum supplementary leverage ratio of 3 percent beginning on January 1, 2018, consistent with Basel III. However, as noted above, beginning on January 1, 2015, advanced approaches FDIC-supervised institutions must calculate and report their supplementary leverage ratio.

The FDIC is seeking commenters' views on the interaction of this interim final rule with the proposed rule regarding the supplementary leverage ratio for large, systemically important banking organizations.

D. Capital Conservation Buffer

During the recent financial crisis, some banking organizations continued to pay dividends and substantial discretionary bonuses even as their financial condition weakened. 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 enhance the resilience of the banking system, the proposed rule would have limited capital distributions and discretionary bonus payments for banking organizations that do not hold a

[28] *See* 12 U.S.C. 1831n(a)(2).

specified amount of common equity tier 1 capital in addition to the amount of regulatory capital necessary to meet the minimum risk-based capital requirements (capital conservation buffer), consistent with Basel III. In this way, the capital conservation buffer is intended to provide incentives for banking organizations to hold sufficient capital to reduce the risk that their capital levels would fall below their minimum requirements during a period of financial stress.

The proposed rules incorporated a capital conservation buffer composed of common equity tier 1 capital in addition to the minimum risk-based capital requirements. 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 limitations on capital distributions and discretionary bonus payments to executive officers, as defined in the proposal. The proposal provided that the maximum dollar amount that a banking organization could pay out in the form of capital distributions or discretionary bonus payments during the current calendar quarter (the maximum payout amount) would be equal to a maximum payout ratio, multiplied by the banking organization's eligible retained income, as discussed below. The proposal provided that a banking organization with a buffer of more than 2.5 percent of total risk-weighted assets (plus, for an advanced approaches banking organization, 100 percent of any applicable countercyclical capital buffer), would not be subject to a maximum payout amount. The proposal clarified that the agencies reserved the ability to restrict capital distributions under other authorities and that restrictions on capital distributions and discretionary bonus payments associated with the capital conservation buffer would not be part of the PCA framework. The calibration of the buffer is supported by an evaluation of the loss experience of U.S. banking organizations as part of an analysis conducted by the BCBS, as well as by evaluation of historical levels of capital at U.S. banking organizations.[29]

The agencies received a significant number of comments on the proposed capital conservation buffer. In general, the commenters characterized the capital conservation buffer as overly conservative, and stated that the aggregate amount of capital that would be required for a banking organization to avoid restrictions on dividends and discretionary bonus payments under the proposed rule exceeded the amount required for a safe and prudent banking system. Commenters expressed concern that the capital conservation buffer could disrupt the priority of payments in a banking organization's capital structure, as any restrictions on dividends would apply to both common and preferred stock. Commenters also questioned the appropriateness of restricting a banking organization that fails to comply with the capital conservation buffer from paying dividends or bonus payments if it has established and maintained cash reserves to cover future uncertainty. One commenter supported the establishment of a formal mechanism for banking organizations to request agency approval to make capital distributions even if doing so would otherwise be restricted under the capital conservation buffer.

Other commenters recommended an exemption from the proposed capital conservation buffer for certain types of banking organizations, such as community banking organizations, banking organizations organized in mutual form, and rural BHCs that rely heavily on bank stock loans for growth and expansion purposes. Commenters also recommended a wide range of institutions that should be excluded from the buffer based on a potential size threshold, such as banking organizations with total consolidated assets of less than $250 billion. Commenters also recommended that S-corporations be exempt from the proposed capital conservation buffer because under the U.S. Internal Revenue Code, S-corporations are not subject to a corporate-level tax; instead, S-corporation shareholders must report income and pay income taxes based on their share of the corporation's profit or loss. An S-corporation generally declares a dividend to help shareholders pay their tax liabilities that arise from reporting their share of the corporation's profits. According to some commenters, the proposal disadvantaged S-corporations because shareholders of S-corporations would be liable for tax on the S-corporation's net income, and the S-corporation may be prohibited from making a dividend to these shareholders to fund the tax payment.

One commenter criticized the proposed composition of the capital conservation buffer (which must consist solely of common equity tier 1 capital) and encouraged the agencies to allow banking organizations to include noncumulative perpetual preferred stock and other tier 1 capital instruments. Several commenters questioned the empirical basis for a capital conservation buffer of 2.5 percent, and encouraged the agencies to provide a quantitative analysis for the proposal. One commenter suggested application of the capital conservation buffer only during economic downturn scenarios, consistent with the agencies' objective to restrict dividends and discretionary bonus payments during these periods. According to this commenter, a banking organization that fails to maintain a sufficient capital conservation buffer during periods of economic stress also could be required to submit a plan to increase its capital.

After considering these comments, the FDIC has decided to maintain common equity tier 1 capital as the basis of the capital conservation buffer and to apply the capital conservation buffer to all types of FDIC-supervised institutions at all times. Application of the buffer to all types of FDIC-supervised institutions and maintenance of a capital buffer during periods of market and economic stability is appropriate to encourage sound capital management and help ensure that FDIC-supervised institutions will maintain adequate amounts of loss-absorbing capital going forward, strengthening the ability of the banking system to continue serving as a source of credit to the economy in times of stress. A buffer framework that restricts dividends and discretionary bonus payments only for certain types of FDIC-supervised institutions or only during an economic contraction would not achieve these objectives. Similarly, basing the capital conservation buffer on the most loss-absorbent form of capital is most consistent with the purpose of the capital conservation buffer as it helps to ensure that the buffer can be used effectively by FDIC-supervised institutions at a time when they are experiencing losses.

The FDIC recognizes that S-corporation FDIC-supervised institutions structure their tax payments differently from C corporations. However, the FDIC notes that this distinction results from S-corporations' pass-through taxation, in which profits are not subject to taxation at the corporate level, but rather at the shareholder level. The FDIC is charged with evaluating the capital levels and safety and soundness of the FDIC-supervised institution. At the point where a decrease in the organization's capital triggers dividend restrictions, the

[29] ''Calibrating regulatory capital requirements and buffers: A top-down approach.'' Basel Committee on Banking Supervision, October, 2010, available at *www.bis.org*.

FDIC believes that capital should stay within the FDIC-supervised institution. S-corporation shareholders may receive a benefit from pass-through taxation, but with that benefit comes the risk that the corporation has no obligation to make dividend distributions to help shareholders pay their tax liabilities. Therefore, the interim final rule does not exempt S-corporations from the capital conservation buffer.

Accordingly, under the interim final rule an FDIC-supervised institution must maintain a capital conservation buffer of common equity tier 1 capital in an amount greater than 2.5 percent of total risk-weighted assets (plus, for an advanced approaches FDIC-supervised institution, 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.

The proposal defined eligible retained income 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 and associated tax effects not already reflected in net income. The agencies received a number of comments regarding the proposed definition of eligible retained income, which is used to calculate the maximum payout amount. Some commenters suggested that the agencies limit capital distributions based on retained earnings instead of eligible retained income, citing the Federal Reserve's Regulation H as an example of this regulatory practice.[30] Several commenters representing banking organizations organized as S-corporations recommended revisions to the definition of eligible retained income so that it would be net of pass-through tax distributions to shareholders that have made a pass-through election for tax purposes, allowing S-corporation shareholders to pay their tax liability notwithstanding any dividend restrictions resulting from failure to comply with the capital conservation buffer. Some commenters suggested that the definition of eligible retained income be adjusted for items such as goodwill impairment that are captured in the definition of ''net income'' for regulatory reporting purposes but which do not affect regulatory capital.

The interim final rule adopts the proposed definition of eligible retained income without change. The FDIC believes the commenters' suggested modifications to the definition of eligible retained income would add complexity to the interim final rule and in some cases may be counter-productive by weakening the incentives of the capital conservation buffer. The FDIC notes that the definition of eligible retained income appropriately accounts for impairment charges, which reduce eligible retained income but also reduces the balance sheet amount of goodwill that is deducted from regulatory capital. Further, the proposed definition of eligible retained income, which is based on net income as reported in the banking organization's quarterly regulatory reports, reflects a simple measure of a banking organization's recent performance upon which to base restrictions on capital distributions and discretionary payments to executive officers. For the same reasons as described above regarding the application of the capital conservation buffer to S-corporations generally, the FDIC has determined that the definition of eligible retained income should not be modified to address the tax-related concerns raised by commenters writing on behalf of S-corporations.

The proposed rule generally defined a capital distribution as a reduction of tier 1 or tier 2 capital through the repurchase or redemption of a capital instrument or by other means; a dividend declaration or payment on any tier 1 or tier 2 capital instrument if the banking organization has full discretion to permanently or temporarily suspend such payments without triggering an event of default; or any similar transaction that the primary Federal supervisor determines to be in substance a distribution of capital.

Commenters provided suggestions on the definition of ''capital distribution.'' One commenter requested that a ''capital distribution'' be defined to exclude any repurchase or redemption to the extent the capital repurchased or redeemed was replaced in a contemporaneous transaction by the issuance of capital of an equal or higher quality tier. The commenter maintained that the proposal would unnecessarily penalize banking organizations that redeem capital but contemporaneously replace such capital with an equal or greater amount of capital of an equivalent or higher quality. In response to comments, and recognizing that redeeming capital instruments that are replaced with instruments of the same or similar quality does not weaken a banking organization's overall capital position, the interim final rule provides that a redemption or repurchase of a capital instrument is not a distribution provided that the banking organization fully replaces that capital instrument by issuing another capital instrument of the same or better quality (that is, more subordinate) based on the interim final rule's eligibility criteria for capital instruments, and provided that such issuance is completed within the same calendar quarter the banking organization announces the repurchase or redemption. For purposes of this definition, a capital instrument is issued at the time that it is fully paid in. For purposes of the interim final rule, the FDIC changed the defined term from ''capital distribution'' to ''distribution'' to avoid confusion with the term ''capital distribution'' used in the Federal Reserve's capital plan rule.[31]

The proposed rule defined discretionary bonus payment as a payment made to an executive officer of a banking organization (as defined below) that meets the following conditions: The banking organization retains discretion as to the fact of the payment and as to the amount of the payment until the payment is awarded to the executive officer; the amount paid is determined by the banking organization without prior promise to, or agreement with, the executive officer; and the executive officer has no contractual right, express or implied, to the bonus payment.

The agencies received a number of comments on the proposed definition of discretionary bonus payments to executive officers. One commenter expressed concern that the proposed definition of discretionary bonus payment may not be effective unless the agencies provided clarification as to the type of payments covered, as well as the timing of such payments. This commenter asked whether the proposed rule would prohibit the establishment of a pre-funded bonus pool with mandatory distributions and sought clarification as to whether non-cash compensation payments, such as stock options, would be considered a discretionary bonus payment.

The interim final rule's definition of discretionary bonus payment is unchanged from the proposal. The FDIC notes that if an FDIC-supervised institution prefunds a pool for bonuses payable under a contract, the bonus pool is not discretionary and, therefore, is not subject to the capital conservation buffer limitations. In addition, the definition of discretionary bonus payment does not include non-cash compensation payments that do not affect capital or earnings such as, in some cases, stock options.

[30] *See* 12 CFR part 208.

[31] *See* 12 CFR 225.8.

Commenters representing community banking organizations maintained that the proposed restrictions on discretionary bonus payments would disproportionately impact such institutions' ability to attract and retain qualified employees. One commenter suggested revising the proposed rule so that a banking organization that fails to satisfy the capital conservation buffer would be restricted from making a discretionary bonus payment only to the extent it exceeds 15 percent of the employee's salary, asserting that this would prevent excessive bonus payments while allowing community banking organizations flexibility to compensate key employees. The interim final rule does not incorporate this suggestion. The FDIC notes that the potential limitations and restrictions under the capital conservation buffer framework do not automatically translate into a prohibition on discretionary bonus payments. Instead, the overall dollar amount of dividends and bonuses to executive officers is capped based on how close the banking organization's regulatory capital ratios are to its minimum capital ratios and on the earnings of the banking organization that are available for distribution. This approach provides appropriate incentives for capital conservation while preserving flexibility for institutions to decide how to allocate income available for distribution between discretionary bonus payments and other distributions.

The proposal defined executive officer 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 equivalent responsibility.[32]

Commenters generally supported a more restrictive definition of executive officer, arguing that the definition of executive officer should be no broader than the definition under the Federal Reserve's Regulation O,[33] which governs any extension of credit between a member bank and an executive officer, director, or principal shareholder. Some commenters, however, favored a more expansive definition of executive officer, with one commenter supporting the inclusion of directors of the banking organization or directors of any of the banking organization's affiliates, any other person in control of the banking organization or the banking organizations' affiliates, and any person in control of a major business line. In accordance with the FDIC's objective to include those individuals within an FDIC-supervised institution with the greatest responsibility for the organization's financial condition and risk exposure, the interim final rule maintains the definition of executive officer as proposed.

Under the proposal, advanced approaches banking organizations would have calculated their capital conservation buffer (and any applicable countercyclical capital buffer amount) using their advanced approaches total risk-weighted assets. Several commenters supported this aspect of the proposal, and one stated that the methodologies for calculating risk-weighted assets under the advanced approaches rule would more effectively capture the individual risk profiles of such banking organizations, asserting further that advanced approaches banking organizations would face a competitive disadvantage relative to foreign banking organizations if they were required to use standardized total risk-weighted assets to determine compliance with the capital conservation buffer. In contrast, another commenter suggested that advanced approaches banking organizations be allowed to use the advanced approaches methodologies as the basis for calculating the capital conservation buffer only when it would result in a more conservative outcome than under the standardized approach in order to maintain competitive equity domestically. Another commenter expressed concerns that the capital conservation buffer is based only on risk-weighted assets and recommended additional application of a capital conservation buffer to the leverage ratio to avoid regulatory arbitrage opportunities and to accomplish the agencies' stated objective of ensuring that banking organizations have sufficient capital to absorb losses.

The interim final rule requires that advanced approaches FDIC-supervised institutions that have completed the parallel run process and that have received notification from the FDIC supervisor pursuant to section 121(d) of subpart E use their risk-based capital ratios under section 10 of the interim final rule (that is, the lesser of the standardized and the advanced approaches ratios) as the basis for calculating their capital conservation buffer (and any applicable countercyclical capital buffer). The FDIC believes such an approach is appropriate because it is consistent with how advanced approaches FDIC-supervised institutions compute their minimum risk-based capital ratios.

Many commenters discussed the interplay between the proposed capital conservation buffer and the PCA framework. Some commenters encouraged the agencies to reset the buffer requirement to two percent of total risk-weighted assets in order to align it with the margin between the ''adequately-capitalized'' category and the ''well-capitalized'' category under the PCA framework. Similarly, some commenters characterized the proposal as confusing because a banking organization could be considered well capitalized for PCA purposes, but at the same time fail to maintain a sufficient capital conservation buffer and be subject to restrictions on capital distributions and discretionary bonus payments. These commenters encouraged the agencies to remove the capital conservation buffer for purposes of the interim final rule, and instead use their existing authority to impose restrictions on dividends and discretionary bonus payments on a case-by-case basis through formal enforcement actions. Several commenters stated that compliance with a capital conservation buffer that operates outside the traditional PCA framework adds complexity to the interim final rule, and suggested increasing minimum capital requirements if the agencies determine they are currently insufficient. Specifically, one commenter encouraged the agencies to increase the minimum total risk-based capital requirement to 10.5 percent and remove the capital conservation buffer from the rule.

The capital conservation buffer has been designed to give banking organizations the flexibility to use the buffer while still being well capitalized. Banking organizations that maintain their risk-based capital ratios at least 50 basis points above the well capitalized PCA levels will not be subject to any restrictions imposed by the capital conservation buffer, as applicable. As losses begin to accrue or a banking organization's risk-weighted assets begin to grow such that the capital ratios of a banking organization are below the capital conservation buffer but above the well capitalized thresholds, the incremental limitations on distributions are unlikely to affect planned capital distributions or discretionary bonus payments but may provide a check on rapid expansion or other activities that

[32] *See* 76 FR 21170 (April 14, 2011) for a comparable definition of ''executive officer.''

[33] *See* 12 CFR part 215.

would weaken the organization's capital position.

Under the interim final rule, the maximum payout ratio is the percentage of eligible retained income that an FDIC-supervised institution is allowed to pay out in the form of distributions and discretionary bonus payments, each as defined under the rule, during the current calendar quarter. The maximum payout ratio is determined by the FDIC-supervised institution's capital conservation buffer as calculated as of the last day of the previous calendar quarter.

An FDIC-supervised institution's capital conservation buffer is the lowest of the following ratios: (i) The FDIC-supervised institution's common equity tier 1 capital ratio minus its minimum common equity tier 1 capital ratio; (ii) the FDIC-supervised institution's tier 1 capital ratio minus its minimum tier 1 capital ratio; and (iii) the FDIC-supervised institution's total capital ratio minus its minimum total capital ratio. If the FDIC-supervised institution's common equity tier 1, tier 1 or total capital ratio is less than or equal to its minimum common equity tier 1, tier 1 or total capital ratio, respectively, the FDIC-supervised institution's capital conservation buffer is zero.

The mechanics of the capital conservation buffer under the interim final rule are unchanged from the proposal. An FDIC-supervised institution's maximum payout amount for the current calendar quarter is equal to the FDIC-supervised institution's eligible retained income, multiplied by the applicable maximum payout ratio, in accordance with Table 1. An FDIC-supervised institution with a capital conservation buffer that is greater than 2.5 percent (plus, for an advanced approaches FDIC-supervised institution, 100 percent of any applicable countercyclical capital buffer) is not subject to a maximum payout amount as a result of the application of this provision. However, an FDIC-supervised institution may otherwise be subject to limitations on capital distributions as a result of supervisory actions or other laws or regulations.[34]

Table 1 illustrates the relationship between the capital conservation buffer and the maximum payout ratio. The maximum dollar amount that an FDIC-supervised institution is permitted to pay out in the form of distributions or discretionary bonus payments during the current calendar quarter is equal to the maximum payout ratio multiplied by the FDIC-supervised institution's eligible retained income. The calculation of the maximum payout amount is made as of the last day of the previous calendar quarter and any resulting restrictions apply during the current calendar quarter.

TABLE 1—CAPITAL CONSERVATION BUFFER AND MAXIMUM PAYOUT RATIO[35]

Capital conservation buffer (as a percentage of standardized or advanced total risk-weighted assets, as applicable)	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.

Table 1 illustrates that the capital conservation buffer requirements are divided into equal quartiles, each associated with increasingly stringent limitations on distributions and discretionary bonus payments to executive officers as the capital conservation buffer approaches zero. As described in the next section, each quartile expands proportionately for advanced approaches FDIC-supervised institutions when the countercyclical capital buffer amount is greater than zero. In a scenario where an FDIC-supervised institution'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 also would decline. An FDIC-supervised institution that becomes subject to a maximum payout ratio remains 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, an FDIC-supervised institution cannot make distributions or certain discretionary bonus payments during the current calendar quarter if the FDIC-supervised institution's eligible retained income is negative and its capital conservation buffer was less than 2.5 percent as of the end of the previous quarter.

Compliance with the capital conservation buffer is determined prior to any distribution or discretionary bonus payment. Therefore, an FDIC-supervised institution with a capital buffer of more than 2.5 percent is not subject to any restrictions on distributions or discretionary bonus payments even if such distribution or payment would result in a capital buffer of less than or equal to 2.5 percent in the current calendar quarter. However, to remain free of restrictions for purposes of any subsequent quarter, the FDIC-supervised institution must restore capital to increase the buffer to more than 2.5 percent prior to any distribution or discretionary bonus payment in any subsequent quarter.

In the proposal, the agencies solicited comment on the impact, if any, of prohibiting a banking organization that is subject to a maximum payout ratio of zero percent from making a penny dividend to common stockholders. One commenter stated that such banking organizations should be permitted to pay a penny dividend on their common stock notwithstanding the limitations imposed by the capital conservation buffer. This commenter maintained that the inability to pay any dividend on common stock could make it more difficult to attract equity investors such as pension funds that often are required to invest only in institutions that pay a quarterly dividend. While the FDIC did not incorporate a blanket exemption for penny dividends on common stock, under the interim final rule, as under the proposal, it may permit an FDIC-supervised institution to make a distribution or discretionary bonus payment if it determines that such distribution or payment would not be contrary to the purpose of the capital conservation buffer or the safety and soundness of the organization. In making such determinations, the FDIC would consider the nature of and circumstances giving rise to the request.

E. Countercyclical Capital Buffer

The proposed rule introduced a countercyclical capital buffer applicable to advanced approaches banking organizations to augment the capital conservation buffer during periods of excessive credit growth. Under the proposed rule, the countercyclical capital buffer would have required advanced approaches banking

[34] *See, e.g.,* 1831o(d)(1), 12 CFR 303.241, and 12 CFR part 324, Subpart H (state nonmember banks and state savings associations as of January 1, 2014 for advanced approaches banks and as of January 1, 2015 for all other organizations).

[35] Calculations in this table are based on the assumption that the countercyclical capital buffer amount is zero.

organizations to hold additional common equity tier 1 capital during specific, agency-determined periods in order to avoid limitations on distributions and discretionary bonus payments. The agencies requested comment on the countercyclical capital buffer and, specifically, on any factors that should be considered for purposes of determining whether to activate it. One commenter encouraged the agencies to consider readily available indicators of economic growth, employment levels, and financial sector profits. This commenter stated generally that the agencies should activate the countercyclical capital buffer during periods of general economic growth or high financial sector profits, instead of reserving it only for periods of ''excessive credit growth.''

Other commenters did not support using the countercyclical capital buffer as a macroeconomic tool. One commenter encouraged the agencies not to include the countercyclical capital buffer in the interim final rule and, instead, rely on the Federal Reserve's longstanding authority over monetary policy to mitigate excessive credit growth and potential asset bubbles. Another commenter questioned the buffer's effectiveness and encouraged the agencies to conduct a QIS prior to its implementation. One commenter recommended expanding the applicability of the proposed countercyclical capital buffer on a case-by-case basis to institutions with total consolidated assets between $50 and $250 billion. Another commenter, however, supported the application of the countercyclical capital buffer only to institutions with total consolidated assets above $250 billion.

The Dodd-Frank Act requires the agencies to consider the use of countercyclical aspects of capital regulation, and the countercyclical capital buffer is an explicitly countercyclical element of capital regulation.[36] The FDIC notes that implementation of the countercyclical capital buffer for advanced approaches FDIC-supervised institutions is an important part of the Basel III framework, which aims to enhance the resilience of the banking system and reduce systemic vulnerabilities. The FDIC believes that the countercyclical capital buffer is most appropriately applied only to advanced approaches FDIC-supervised institutions because, generally, such organizations are more interconnected with other financial institutions. Therefore, the marginal benefits to financial stability from a countercyclical capital buffer function should be greater with respect to such institutions. Application of the countercyclical capital buffer only to advanced approaches FDIC-supervised institutions also reflects the fact that making cyclical adjustments to capital requirements may produce smaller financial stability benefits and potentially higher marginal costs for smaller FDIC-supervised institutions. The countercyclical capital buffer is designed to take into account the macro-financial environment in which FDIC-supervised institutions function and to protect the banking system from the systemic vulnerabilities that may build-up during periods of excessive credit growth, which may potentially unwind in a disorderly way, causing disruptions to financial institutions and ultimately economic activity.

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 act to absorb the above-normal losses that an FDIC-supervised institution likely would face. Consequently, even after these losses are realized, FDIC-supervised institutions would remain healthy and able to access funding, meet obligations, and continue to serve as credit intermediaries. Second, a countercyclical capital buffer also may 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, a countercyclical capital buffer may limit excessive credit.[37] Thus, the FDIC believes that the countercyclical capital buffer is an appropriate macroeconomic tool and is including it in the interim final rule. One commenter expressed concern that the proposed rule would not require the agencies to activate the countercyclical capital buffer pursuant to a joint, interagency determination. This commenter encouraged the agencies to adopt an interagency process for activating the buffer for purposes of the interim final rule. As discussed in the Basel III NPR, 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. The agencies solicited comment on the appropriateness of the proposed 12-month prior notification period for the countercyclical capital buffer amount. One commenter expressed concern regarding the potential for the agencies to activate the countercyclical capital buffer without providing banking organizations sufficient notice, and specifically requested the implementation of a prior notification requirement of not less than 12 months for purposes of the interim final rule.

In general, to provide banking organizations with sufficient time to adjust to any changes to the countercyclical capital buffer under the interim final rule, the agencies expect to announce an increase in the U.S. countercyclical capital buffer amount with an effective date at least 12 months after their announcement. However, if the agencies determine that a more immediate implementation is necessary based on economic conditions, the agencies may require an earlier effective date. The agencies will follow the same procedures in adjusting the countercyclical capital buffer applicable for exposures located in foreign jurisdictions.

For purposes of the interim final rule, consistent with the proposal, a decrease in the countercyclical capital buffer amount will be effective on the day following announcement of the final determination or the earliest date permissible under applicable law or regulation, whichever is later. In addition, the countercyclical capital buffer amount will return to zero percent 12 months after its effective date, unless the agencies announce a decision to maintain the adjusted countercyclical capital buffer amount or adjust it again before the expiration of the 12-month period.

The countercyclical capital buffer augments the capital conservation buffer by up to 2.5 percent of an FDIC-supervised institution's total risk-weighted assets. Consistent with the proposal, the interim final rule requires an advanced approaches FDIC-

[36] Section 616(a), (b), and (c) of the Dodd-Frank Act, codified at 12 U.S.C. 1844(b), 1464a(g)(1), and 3907(a)(1).

[37] The operation of the countercyclical capital buffer is also consistent with sections 616(a), (b), and (c) of the Dodd-Frank Act, codified at 12 U.S.C. 1844(b), 1464a(g)(1), and 3907(a)(1).

supervised institution to determine its countercyclical capital buffer amount by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the FDIC-supervised institution has private sector credit exposures. The contributing weight assigned to a jurisdiction's countercyclical capital buffer amount is calculated by dividing the total risk-weighted assets for the FDIC-supervised institution's private sector credit exposures located in the jurisdiction by the total risk-weighted assets for all of the FDIC-supervised institution's private sector credit exposures.

Under the proposed rule, private sector credit exposure was 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 entity, 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 Enterprise (GSE). While the proposed definition excluded covered positions with specific risk under the market risk rule, the agencies explicitly recognized that they should be included in the measure of risk-weighted assets for private-sector exposures and asked a question regarding how to incorporate these positions in the measure of risk-weighted assets, particularly for positions for which an FDIC-supervised institution uses models to measure specific risk. The agencies did not receive comments on this question.

The interim final rule includes covered positions under the market risk rule in the definition of private sector credit exposure. Thus, a private sector credit exposure is an exposure to a company or an individual, not including an exposure to a sovereign entity, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, an MDB, a PSE, or a GSE. The interim final rule is also more specific than the proposal regarding how to calculate risk-weighted assets for private sector credit exposures, and harmonizes that calculation with the advanced approaches FDIC-supervised institution's determination of its capital conservation buffer generally. An advanced approaches FDIC-supervised institution is subject to the countercyclical capital buffer regardless of whether it has completed the parallel run process and received notification from the FDIC pursuant to section 121(d) of the rule. The methodology an advanced approaches FDIC-supervised institution must use for determining risk-weighted assets for private sector credit exposures must be the methodology that the FDIC-supervised institution uses to determine its risk-based capital ratios under section 10 of the interim final rule. Notwithstanding this provision, the risk-weighted asset amount for a private sector credit exposure that is a covered position is its specific risk add-on, as determined under the market risk rule's standardized measurement method for specific risk, multiplied by 12.5. The FDIC chose this methodology because it allows the specific risk of a position to be allocated to the position's geographic location in a consistent manner across FDIC-supervised institutions.

Consistent with the proposal, under the interim final rule the geographic location of a private sector credit exposure (that is not a securitization exposure) is the national jurisdiction where the borrower is located (that is, where the borrower 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 a protection provider, the location of the non-securitization exposure is the location of the protection provider. The location of a securitization exposure is the location of the underlying exposures, determined by reference to the location of the borrowers on those exposures. If the underlying exposures are located in more than one national jurisdiction, the location of a securitization exposure is the national jurisdiction where the underlying exposures with the largest aggregate unpaid principal balance are located.

Table 2 illustrates how an advanced approaches FDIC-supervised institution calculates its weighted average countercyclical capital buffer amount. In the following example, the countercyclical capital buffer established in the various jurisdictions in which the FDIC-supervised institution has private sector credit exposures is reported in column A. Column B contains the FDIC-supervised institution's risk-weighted asset amounts for the private sector credit exposures in each jurisdiction. Column C shows the contributing weight for each countercyclical capital 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 FDIC-supervised institution's weighted average countercyclical capital buffer, which is 1.4 percent of risk-weighted assets.

TABLE 2—EXAMPLE OF WEIGHTED AVERAGE BUFFER CALCULATION FOR AN ADVANCED APPROACHES FDIC-SUPERVISED INSTITUTION

	(A) Countercyclical capital buffer amount set by national supervisor (percent)	(B) FDIC-supervised institution's risk-weighted assets 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

The countercyclical capital buffer expands an FDIC-supervised institution's capital conservation buffer range for purposes of determining the FDIC-supervised institution's maximum payout ratio. For instance, if an advanced approaches FDIC-supervised institution's countercyclical capital buffer amount is equal to zero percent of total risk-weighted assets, the FDIC-supervised institution must maintain a buffer of greater than 2.5 percent of total risk-weighted assets to avoid restrictions on its distributions and discretionary bonus payments. However, if its countercyclical capital buffer amount is equal to 2.5 percent of total risk-weighted assets, the FDIC-supervised institution must maintain a buffer of greater than 5 percent of total risk-weighted assets to avoid restrictions on its distributions and discretionary bonus payments.

As another example, if the advanced approaches FDIC-supervised institution from the example in Table 2 above has a capital conservation buffer of 2.0 percent, and each of the jurisdictions in which it has private sector credit exposures sets its countercyclical capital buffer amount equal to zero, the FDIC-supervised institution would be subject to a maximum payout ratio of 60 percent. If, instead, each country sets its countercyclical capital buffer amount as shown in Table 2, resulting in a countercyclical capital buffer amount of 1.4 percent of total risk-weighted assets, the FDIC-supervised institution's capital conservation buffer ranges would be expanded as shown in Table 3 below. As a result, the FDIC-supervised institution would now be subject to a stricter 40 percent maximum payout ratio based on its capital conservation buffer of 2.0 percent.

TABLE 3—CAPITAL CONSERVATION BUFFER AND MAXIMUM PAYOUT RATIO [38]

Capital conservation buffer as expanded by the countercyclical capital buffer amount from Table 2	Maximum payout ratio (as a percentage of eligible retained income)
Greater than 3.9 percent (2.5 percent + 100 percent of the countercyclical capital buffer of 1.4).	No payout ratio limitation applies.
Less than or equal to 3.9 percent, and greater than 2.925 percent (1.875 percent plus 75 percent of the countercyclical capital buffer of 1.4).	60 percent.
Less than or equal to 2.925 percent, and greater than 1.95 percent (1.25 percent plus 50 percent of the countercyclical capital buffer of 1.4).	40 percent.
Less than or equal to 1.95 percent, and greater than 0.975 percent (.625 percent plus 25 percent of the countercyclical capital buffer of 1.4).	20 percent.
Less than or equal to 0.975 percent.	0 percent.

The countercyclical capital buffer amount under the interim final rule for U.S. credit exposures is initially set to zero, but it could increase if the agencies determine that there is excessive credit in the markets that could lead to subsequent wide-spread market failures. 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 system-wide credit risk.

F. Prompt Corrective Action Requirements

All insured depository institutions, regardless of total asset size or foreign exposure, currently are required to compute PCA capital levels using the agencies' general risk-based capital rules, as supplemented by the market risk rule. Section 38 of the Federal Deposit Insurance Act directs the federal banking agencies to resolve the problems of insured depository institutions at the least cost to the Deposit Insurance Fund.[39] To facilitate this purpose, the agencies have established five regulatory capital categories in the 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.[40] Insured depository institutions are expected to be closed within 90 days of becoming ''critically undercapitalized,'' unless their primary Federal supervisor takes such other action as that primary Federal supervisor determines, with the concurrence of the FDIC, would better achieve the purpose of PCA.[41]

The proposal maintained the structure of the PCA framework while increasing some of the thresholds for the PCA capital categories and adding the proposed common equity tier 1 capital ratio. For example, under the proposed rule, the thresholds for adequately capitalized FDIC-supervised institutions would be equal to the minimum capital requirements. The risk-based capital ratios for well capitalized FDIC-supervised institutions under PCA would continue to be two percentage points higher than the ratios for adequately-capitalized FDIC-supervised institutions, and the leverage ratio for well capitalized FDIC-supervised institutions under PCA would be one percentage point higher than for adequately-capitalized FDIC-supervised institutions. Advanced approaches FDIC-supervised institutions that are insured depository institutions also would be required to satisfy a supplementary leverage ratio of 3 percent in order to be considered adequately capitalized. While the proposed PCA levels do not incorporate the capital conservation buffer, the PCA and capital conservation buffer frameworks would complement each other to ensure that FDIC-supervised institutions hold an adequate amount of common equity tier 1 capital.

The agencies received a number of comments on the proposed PCA framework. Several commenters suggested modifications to the proposed PCA levels, particularly with respect to the leverage ratio. For example, a few commenters encouraged the agencies to

[38] Calculations in this table are based on the assumption that the countercyclical capital buffer amount is 1.4 percent of risk-weighted assets, per the example in Table 2.

[39] 12 U.S.C. 1831o.

[40] 12 U.S.C. 1831o(e)–(i). *See* 12 CFR part 325, subpart B.

[41] 12 U.S.C. 1831o(g)(3).

increase the adequately-capitalized and well capitalized categories for the leverage ratio to six percent or more and eight percent or more, respectively. According to one commenter, such thresholds would more closely align with the actual leverage ratios of many state-charted depository institutions.

Another commenter expressed concern regarding the operational complexity of the proposed PCA framework in view of the addition of the common equity tier 1 capital ratio and the interaction of the PCA framework and the capital conservation buffer. For example, under the proposed rule a banking organization could be well capitalized for PCA purposes and, at the same time, be subject to restrictions on dividends and bonus payments. Other banking organizations expressed concern that the proposed PCA levels would adversely affect their ability to lend and generate income. This, according to a commenter, also would reduce net income and return-on-equity.

The FDIC believes the capital conservation buffer complements the PCA framework—the former works to keep FDIC-supervised institutions above the minimum capital ratios, whereas the latter imposes increasingly stringent consequences on depository institutions, particularly as they fall below the minimum capital ratios. Because the capital conservation buffer is designed to absorb losses in stressful periods, the FDIC believes it is appropriate for a depository institution to be able to use some of its capital conservation buffer without being considered less than well capitalized for PCA purposes.

Consistent with the proposal, the interim final rule augments 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).[42] In addition, the interim final rule revises the three current risk-based capital measures for four of the five PCA categories to reflect the interim final rule's changes to the minimum risk-based capital ratios, as provided in revisions to the FDIC's PCA regulations. All FDIC-supervised institutions will remain subject to leverage measure thresholds using the current leverage ratio in the form of tier 1 capital to average total consolidated assets. In addition, the interim final rule amends the PCA leverage measure for advanced approaches depository institutions to include the supplementary leverage ratio that explicitly applies to the ''adequately capitalized'' and ''undercapitalized'' capital categories.

All insured depository institutions must comply with the revised PCA thresholds beginning on January 1, 2015. Consistent with transition provisions in the proposed rules, the supplementary leverage measure for advanced approaches FDIC-supervised institutions that are insured depository institutions becomes effective on January 1, 2018. Changes to the definitions of the individual capital components that are used to calculate the relevant capital measures under PCA are governed by the transition arrangements discussed in section VIII.3 below. Thus, the changes to these definitions, including any deductions from or adjustments to regulatory capital, automatically flow through to the definitions in the PCA framework.

Table 4 sets forth the risk-based capital and leverage ratio thresholds under the interim final rule for each of the PCA capital categories for all insured depository institutions. For each PCA category except critically undercapitalized, an insured depository institution must satisfy 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. In addition to the aforementioned requirements, advanced approaches FDIC-supervised institutions that are insured depository institutions are also subject to a supplementary leverage ratio.

TABLE 4—PCA LEVELS FOR ALL INSURED DEPOSITORY INSTITUTIONS

PCA category	Total risk-based Capital (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	>3.0	(*).
Undercapitalized	<8	<6	<4.5	<4	<3.00	(*).
Significantly undercapitalized.	<6	<4	<3	<3	Not applicable	(*).
Critically undercapitalized.	Tangible Equity (defined as tier 1 capital plus non-tier 1 perpetual preferred stock) to Total Assets ≤2				Not applicable	(*).

* The supplementary leverage ratio as a PCA requirement applies only to advanced approaches FDIC-supervised institutions that are insured depository institutions. The supplementary leverage ratio also applies to advanced approaches bank holding companies, although not in the form of a PCA requirement.

To be well capitalized for purposes of the interim final rule, an insured depository institution must maintain a total risk-based capital ratio of 10 percent or more; a tier 1 capital ratio of 8 percent or more; a common equity tier 1 capital ratio of 6.5 percent or more; and a leverage ratio of 5 percent or more. An adequately-capitalized depository institution must maintain a total risk-based capital ratio of 8 percent or more; a tier 1 capital ratio of 6 percent or more; a common equity tier 1 capital ratio of 4.5 percent or more; and a leverage ratio of 4 percent or more.

An insured depository institution is undercapitalized under the interim final rule if its total capital ratio is less than 8 percent, if its tier 1 capital ratio is less than 6 percent, its common equity tier

[42] 12 U.S.C. 1831o(c)(1)(B)(i).

1 capital ratio is less than 4.5 percent, or its leverage ratio is less than 4 percent. If an institution's tier 1 capital ratio is less than 4 percent, or its common equity tier 1 capital ratio is less than 3 percent, it would be considered significantly undercapitalized. The other numerical capital ratio thresholds for being significantly undercapitalized remain unchanged from the current rules.[43]

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.[44] 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 stockholder'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 to the extent permitted 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.

Consistent with the proposal, the interim final rule revises the calculation of the capital measure 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 more appropriately aligns the calculation of tangible equity with the calculation of tier 1 capital generally for regulatory capital requirements. Assets included in an FDIC-supervised institution's equity under GAAP, such as DTAs, are included in tangible equity only to the extent that they are included in tier 1 capital. The FDIC believes this modification promotes consistency and provides for clearer boundaries across and between the various PCA categories.

G. 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 FDIC's general risk-based capital rules indicate that the capital requirements are minimum standards generally based on broad credit-risk considerations.[45] The risk-based capital ratios under these rules do not explicitly take account of the quality of individual asset portfolios or the range of other types of risk to which FDIC-supervised institutions may be exposed, such as interest-rate, liquidity, market, or operational risks.[46]

An FDIC-supervised institution 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] The nature of such capital adequacy assessments should be commensurate with FDIC-supervised institutions' size, complexity, and risk-profile. Consistent with longstanding practice, supervisory assessment of capital adequacy will take account of whether an FDIC-supervised institution plans appropriately to maintain an adequate level of capital given its activities and risk profile, as well as risks and other factors that can affect an FDIC-supervised institution's financial condition, including, for example, the level and severity of problem assets and its exposure to operational and interest rate risk, and significant asset concentrations. For this reason, a supervisory assessment of capital adequacy may differ significantly from conclusions that might be drawn solely from the level of an FDIC-supervised institution's regulatory capital ratios.

In light of these considerations, as a prudential matter, an FDIC-supervised institution 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 requirements. For example, FDIC-supervised institutions 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. FDIC-supervised institutions with high levels of risk are also expected to operate even further above minimum standards. In addition to evaluating the appropriateness of an FDIC-supervised institution's capital level given its overall risk profile, the supervisory assessment takes into account the quality and trends in an FDIC-supervised institution's capital composition, including the share of common and non-common-equity capital elements.

Some commenters stated that they manage their capital so that they operate with a buffer over the minimum and that examiners expect such a buffer. These commenters expressed concern that examiners will expect even higher capital levels, such as a buffer in addition to the new higher minimums and capital conservation buffer (and countercyclical capital buffer, if applicable). Consistent with the longstanding approach employed by the FDIC in its supervision of FDIC-supervised institutions, section 10(d) of the interim final rule maintains and reinforces supervisory expectations by requiring that an FDIC-supervised institution maintain capital commensurate with the level and nature of all risks to which it is exposed and that an FDIC-supervised institution 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 an FDIC-supervised institution's capital adequacy, including compliance with section 10(d), may include such factors as whether the FDIC-supervised institution is newly chartered, entering new activities, or introducing new products. The assessment also would consider whether an FDIC-supervised

[43] 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 its primary Federal regulator 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. *See* 12 CFR 325.103(b)(1)(iv) (state nonmember banks) and 12 CFR 390.453(b)(1)(iv) (state savings associations). The interim final rule does not change this requirement.

[44] *See* 12 U.S.C. 1831o(c)(3)(A) and (B), which for purposes of the ''critically undercapitalized'' PCA category requires the ratio of tangible equity to total assets to be set at an amount ''not less than 2 percent of total assets''.

[45] *See* 12 CFR 325.3(a) (state nonmember banks) and 12 CFR 390.463 (state savings associations).

[46] The risk-based capital ratios of an FDIC-supervised institution subject to the market risk rule do include capital requirements for the market risk of covered positions, and the risk-based capital ratios calculated using advanced approaches total risk-weighted assets for an advanced approaches FDIC-supervised institution that has completed the parallel run process and received notification from the FDIC pursuant to section 324.121(d) do include a capital requirement for operational risks.

[47] The Basel framework incorporates similar requirements under Pillar 2 of Basel II.

institution 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 an FDIC-supervised institution's holding company or other affiliates.

Supervisors also evaluate the comprehensiveness and effectiveness of an FDIC-supervised institution's capital planning in light of its activities and capital levels. An effective capital planning process involves an assessment of the risks to which an FDIC-supervised institution is exposed and its processes for managing and mitigating those risks, an evaluation of its capital adequacy relative to its risks, and consideration of the potential impact on its earnings and capital base from current and prospective economic conditions. While the elements of supervisory review of capital adequacy would be similar across FDIC-supervised institutions, evaluation of the level of sophistication of an individual FDIC-supervised institution's capital adequacy process would be commensurate with the FDIC-supervised institution's size, sophistication, and risk profile, similar to the current supervisory practice.

H. Tangible Capital Requirement for State Savings Associations

State savings associations currently are required to maintain tangible capital in an amount not less than 1.5 percent of total assets.[48] This statutory requirement is implemented under the FDIC's current capital rules applicable to state savings associations.[49] For purposes of the Basel III NPR, the FDIC also proposed to include a tangible capital requirement for state savings associations. The FDIC received no comments on this aspect of the proposal.

Concerning state savings associations, the FDIC does not believe that a unique regulatory definition of ''tangible capital'' is necessary for purposes of implementing HOLA. Accordingly, for purposes of the interim final rule, as of January 1, 2014 or January 1, 2015 depending on whether the state savings associations applies the advanced approaches rule, the FDIC is defining ''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.[50] This definition is analogous to the definition of tangible capital adopted under the interim final rule for purposes of the PCA framework. The FDIC believes that this approach will reduce implementation burden associated with separate measures of tangible capital and is consistent with the purposes of HOLA and PCA.

The FDIC notes that for purposes of the interim final rule, as of January 1, 2015, the term ''total adjusted assets'' in the definition of ''state savings associations tangible capital ratio'' has been replaced with the term ''total assets.'' The term total assets has the same definition as provided in the FDIC's PCA rules.[51] As a result of this change, which should further reduce implementation burden, state savings associations will no longer calculate the tangible equity ratio using period-end total assets.

V. Definition of Capital

A. Capital Components and Eligibility Criteria for Regulatory Capital Instruments

1. Common Equity Tier 1 Capital

Under the proposed rule, common equity tier 1 capital was defined as the sum of a banking organization's outstanding common equity tier 1 capital instruments that satisfy the criteria set forth in section 20(b) of the proposal, related surplus (net of treasury stock), retained earnings, AOCI, and common equity tier 1 minority interest subject to certain limitations, minus regulatory adjustments and deductions.

The proposed rule set forth a list of criteria that an instrument would be required to meet to be included in common equity tier 1 capital. The proposed criteria were 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. In the proposals, the agencies indicated that they believe most existing common stock instruments issued by U.S. banking organizations already would satisfy the proposed criteria.

The proposed criteria also applied to instruments issued by banking organizations such as mutual banking organizations where ownership of the organization is not freely transferable or evidenced by certificates of ownership or stock. For these entities, the proposal provided that instruments issued by such organizations would be considered common equity tier 1 capital if they are fully equivalent to common stock instruments in terms of their subordination and availability to absorb losses, and do not possess features that could cause the condition of the organization to weaken as a going concern during periods of market stress.

The agencies noted in the proposal that stockholders' voting rights generally are a valuable corporate governance tool that permits parties with an economic interest to participate in the decision-making process through votes on establishing corporate objectives and policy, and in electing the banking organization's board of directors. Therefore, the agencies believe 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. The proposal also provided that to the extent that a banking organization issues non-voting common stock or common stock with limited voting rights, the underlying stock must be identical to those underlying the banking organization's voting common stock in all respects except for any limitations on voting rights.

To ensure that a banking organization's common equity tier 1 capital would be available to absorb losses as they occur, the proposed rule would have required common equity tier 1 capital instruments issued by a banking organization to 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

[48] Tangible capital is defined in section 5(t)(9)(B) of HOLA to mean ''core capital minus any intangible assets (as intangible assets are defined by the OCC for national banks).'' 12 U.S.C. 1464(t)(9)(B). Core capital means ''core capital as defined by the OCC for national banks, less unidentifiable intangible assets'', unless the OCC prescribes a more stringent definition. 12 U.S.C. 1464(t)(9)(A).

[49] 12 CFR 390.468.

[50] Until January 1, 2014 or January 1, 2015 depending on whether the state savings association applies the advanced approaches rule, the state savings association shall determine its tangible capital ratio as provided under 12 CFR 390.468.

[51] *See* 12 CFR 324.401(g).

discretionary repurchases with the prior approval of the banking organization's primary Federal supervisor, 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.

The agencies requested comment on the proposed criteria for inclusion in common equity tier 1, and specifically on whether any of the criteria would be problematic, given the main characteristics of existing outstanding common stock instruments.

A substantial number of comments addressed the criteria for common equity tier 1 capital. Generally, commenters stated that the proposed criteria could prevent some instruments currently included in tier 1 capital from being included in the new common equity tier 1 capital measure. Commenters stated that this could create complicated and unnecessary burden for banking organizations that either would have to raise capital to meet the common equity tier 1 capital requirement or shrink their balance sheets by selling off or winding down assets and exposures. Many commenters stated that the burden of raising new capital would have the effect of reducing lending overall, and that it would be especially acute for smaller banking organizations that have limited access to capital markets.

Many commenters asked the agencies to clarify several aspects of the proposed criteria. For instance, a few commenters asked the agencies to clarify the proposed requirement that a common equity tier 1 capital instrument be redeemed only with prior approval by a banking organization's primary Federal supervisor. These commenters asked if this criterion would require a banking organization to note this restriction on the face of a regulatory capital instrument that it may be redeemed only with the prior approval of the banking organization's primary Federal supervisor.

The FDIC notes that the requirement that common equity tier 1 capital instruments be redeemed only with prior agency approval is consistent with the FDIC's rules and federal law, which generally provide that an FDIC-supervised institution may not reduce its capital by redeeming capital instruments without receiving prior approval from the FDIC.[52] The interim final rule does not obligate the FDIC-supervised institution to include this restriction explicitly in the common equity tier 1 capital instrument's documentation. However, regardless of whether the instrument documentation states that its redemption is subject to FDIC approval, the FDIC-supervised institution must receive prior approval before redeeming such instruments. The FDIC believes that the approval requirement is appropriate as it provides for the monitoring of the strength of an FDIC-supervised institution's capital position, and therefore, have retained the proposed requirement in the interim final rule.

Several commenters also expressed concern about the proposed requirement that dividend payments and any other distributions on a common equity tier 1 capital 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. Commenters stated that, as proposed, this requirement could be construed to prevent a banking organization from paying a dividend on a common equity tier 1 capital instrument because of obligations that have not yet become due or because of immaterial delays in paying trade creditors [53] for obligations incurred in the ordinary course of business.

The FDIC notes that this criterion should not prevent an FDIC-supervised institution from paying a dividend on a common equity tier 1 capital instrument where it has incurred operational obligations in the normal course of business that are not yet due or that are subject to minor delays for reasons unrelated to the financial condition of the FDIC-supervised institution, such as delays related to contractual or other legal disputes.

A number of commenters also suggested that the proposed criteria providing that dividend payments may be paid only out of current and retained earnings potentially could conflict with state corporate law, including Delaware state law. According to these commenters, Delaware state law permits a corporation to make dividend payments out of its capital surplus account, even when the organization does not have current or retained earnings.

The FDIC observes that requiring that dividends be paid only out of net income and retained earnings is consistent with federal law and the existing regulations applicable to insured depository institutions. Under applicable statutes and regulations this aspect of the proposal did not include any substantive changes from the

[52] *See* 12 CFR 303.241 (state nonmember banks) and 12 CFR 390.345 (state savings associations).

[53] Trade creditors, for this purpose, would include counterparties with whom the banking organization contracts to procure office space and/or supplies as well as basic services, such as building maintenance.

general risk-based capital rules.[54] With respect to FDIC-supervised institutions, prior supervisory approval is required to make a distribution that involves a reduction or retirement of capital stock. Under FDIC's general risk-based capital rules, a state nonmember bank is prohibited from paying a dividend that reduces the amount of its common or preferred capital stock (which includes any surplus), or retiring any part of its capital notes or debentures without prior approval from the FDIC.

Finally, several commenters expressed concerns about the potential impact of the proposed criteria on stock issued as part of certain employee stock ownership plans (ESOPs) (as defined under Employee Retirement Income Security Act of 1974[55] (ERISA) regulations at 29 CFR 2550.407d–6). Under the proposed rule, an instrument would not be included in common equity tier 1 capital if the banking organization creates an expectation that it will buy back, cancel, or redeem the instrument, or if the instrument includes any term or feature that might give rise to such an expectation. Additionally, the criteria would prevent a banking organization from including in common equity tier 1 capital any instrument that is subject to any type of arrangement that legally or economically enhances the seniority of the instrument. Commenters noted that under ERISA, stock that is not publicly traded and issued as part of an ESOP must include a ''put option'' that requires the company to repurchase the stock. By exercising the put option, an employee can redeem the stock instrument upon termination of employment. Commenters noted that this put option clearly creates an expectation that the instrument will be redeemed and arguably enhances the seniority of the instrument. Therefore, the commenters stated that the put option could prevent a privately-held banking organization from including earned ESOP shares in its common equity tier 1 capital.

The FDIC does not believe that an ERISA-mandated put option should prohibit ESOP shares from being included in common equity tier 1 capital. Therefore, under the interim final rule, shares issued under an ESOP by an FDIC-supervised institution that is not publicly-traded are exempt from the criteria that the shares can be redeemed only via discretionary repurchases and are not subject to any other arrangement that legally or economically enhances their seniority, and that the FDIC-supervised institution not create an expectation that the shares will be redeemed. In addition to the concerns described above, because stock held in an ESOP is awarded by a banking organization for the retirement benefit of its employees, some commenters expressed concern that such stock may not conform to the criterion prohibiting a banking organization from directly or indirectly funding a capital instrument. Because the FDIC believes that an FDIC-supervised institution should have the flexibility to provide an ESOP as a benefit for its employees, the interim final rule provides that ESOP stock does not violate such criterion. Under the interim final rule, an FDIC-supervised institution's common stock held in trust for the benefit of employees as part of an ESOP in accordance with both ERISA and ERISA-related U.S. tax code requirements will qualify for inclusion as common equity tier 1 capital only to the extent that the instrument is includable as equity under GAAP and that it meets all other criteria of section 20(b)(1) of the interim final rule. Stock instruments held by an ESOP that are unawarded or unearned by employees or reported as ''temporary equity'' under GAAP (in the case of U.S. Securities and Exchange Commission (SEC) registrants), may not be counted as equity under GAAP and therefore may not be included in common equity tier 1 capital.

After reviewing the comments received, the FDIC has decided to finalize the proposed criteria for common equity tier 1 capital instruments, modified as discussed above. Although it is possible some currently outstanding common equity instruments may not meet the common equity tier 1 capital criteria, the FDIC believes that most common equity instruments that are currently eligible for inclusion in FDIC-supervised institutions' tier 1 capital meet the common equity tier 1 capital criteria, and have not received information that would support a different conclusion. The FDIC therefore believes that most FDIC-supervised institutions will not be required to reissue common equity instruments in order to comply with the final common equity tier 1 capital criteria. The final revised criteria for inclusion in common equity tier 1 capital are set forth in section 324.20(b)(1) of the interim final rule.

2. Additional Tier 1 Capital

Consistent with Basel III, the agencies proposed that additional tier 1 capital would equal the sum of: Additional tier 1 capital instruments that satisfy the criteria set forth in section 20(c) of the proposal, related surplus, and any tier 1 minority interest that is not included in a banking organization's common equity tier 1 capital (subject to the proposed limitations on minority interest), less applicable regulatory adjustments and deductions. The agencies proposed the following criteria for additional tier 1 capital instruments in section 20(c):

(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 its primary Federal supervisor 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 proposed rule (replacement can be concurrent with redemption of existing additional tier 1 capital instruments); or

(B) Demonstrate to the satisfaction of its primary Federal supervisor 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

[54] 12 U.S.C. 1828(i), 12 CFR 303.241 (state nonmember banks), and 12 CFR 390.345 (state savings associations).

[55] 29 U.S.C. 1002, *et seq.*

the banking organization's primary Federal supervisor.

(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.[56]

(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 were designed to ensure that additional tier 1 capital instruments would be available to absorb losses on a going-concern basis. TruPS 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, generally would not qualify for inclusion in additional tier 1 capital.[57] As explained in the proposal, the agencies believe that instruments that allow for the accumulation of interest payable, like cumulative preferred securities, are not likely to absorb losses to the degree appropriate for inclusion in tier 1 capital. In addition, the exclusion of these instruments from the tier 1 capital of depository institution holding companies would be consistent with section 171 of the Dodd-Frank Act.

The agencies noted in the proposal that under Basel III, instruments classified as liabilities for accounting purposes could potentially be included in additional tier 1 capital. However, the agencies proposed that an instrument classified as a liability under GAAP could not qualify as additional tier 1 capital, reflecting the agencies' view that allowing only instruments classified as equity under GAAP in tier 1 capital helps strengthen the loss-absorption capabilities of additional tier 1 capital instruments, thereby increasing the quality of the capital base of U.S. banking organizations.

The agencies also proposed to allow banking organizations to include in additional tier 1 capital instruments that were: (1) Issued under the Small Business Jobs Act of 2010[58] or, prior to October 4, 2010, under the Emergency Economic Stabilization Act of 2008,[59] and (2) included in tier 1 capital under the agencies' general risk-based capital rules. Under the proposal, these instruments would be included in tier 1 capital regardless of whether they satisfied the proposed qualifying criteria for common equity tier 1 or additional tier 1 capital. The agencies explained in the proposal that continuing to permit these instruments to be included in tier 1 capital is important to promote financial recovery and stability following the recent financial crisis.[60]

A number of commenters addressed the proposed criteria for additional tier 1 capital. Consistent with comments on the criteria for common equity tier 1 capital, commenters generally argued that imposing new restrictions on qualifying regulatory capital instruments would be burdensome for many banking organizations that would be required to raise additional capital or to shrink their balance sheets to phase out existing regulatory capital instruments that no longer qualify as regulatory capital under the proposed rule.

With respect to the proposed criteria, commenters requested that the agencies make a number of changes and clarifications. Specifically, commenters asked the agencies to clarify the use of the term ''secured'' in criterion (3) above. In this context, a ''secured'' instrument is an instrument that is backed by collateral. In order to qualify as additional tier 1 capital, an instrument may not be collateralized, guaranteed by the issuing organization or an affiliate of the issuing organization, or subject to any other arrangement that legally or economically enhances the seniority of the instrument relative to more senior claims. Instruments backed by collateral, guarantees, or other arrangements that affect their seniority are less able to absorb losses than instruments without such enhancements. Therefore, instruments secured by collateral, guarantees, or other enhancements would not be included in additional tier 1 capital under the proposal. The FDIC has adopted this criterion as proposed.

Commenters also asked the agencies to clarify whether terms allowing a banking organization to convert a fixed-rate instrument to a floating rate in combination with a call option, without any increase in credit spread, would constitute an ''incentive to redeem'' under criterion (4). The FDIC does not consider the conversion from a fixed rate to a floating rate (or from a floating rate to a fixed rate) in combination with a call option without any increase in credit spread to constitute an ''incentive to redeem'' for purposes of this criterion. More specifically, a call option combined with a change in reference rate where the credit spread over the second reference rate is equal to or less than the initial dividend rate less the swap rate (that is, the fixed rate paid to the call date to receive the second reference rate) would not be considered an incentive to redeem. For example, if the initial reference rate is 0.9 percent, the credit spread over the initial reference rate is 2 percent (that is, the initial dividend rate is 2.9 percent), and the swap rate to the call date is 1.2 percent, a credit spread over the second reference rate greater than 1.7 percent

[56] *De minimis* assets related to the operation of the issuing entity could be disregarded for purposes of this criterion.

[57] *See* 12 CFR part 225, appendix A, section II.A.1.

[58] Public Law 111–240, 124 Stat. 2504 (2010).

[59] Public Law 110–343, 122 Stat. 3765 (October 3, 2008).

[60] *See, e.g.,* 73 FR 43982 (July 29, 2008); *see also* 76 FR 35959 (June 21, 2011).

(2.9 percent minus 1.2 percent) would be considered an incentive to redeem. The FDIC believes that the clarification above should address the commenters' concerns, and the FDIC is retaining this criterion in the interim final rule as proposed.

Several commenters noted that the proposed requirement that a banking organization seek prior approval from its primary Federal supervisor before exercising a call option is redundant with the existing requirement that a banking organization seek prior approval before reducing regulatory capital by redeeming a capital instrument. The FDIC believes that the proposed requirement clarifies existing requirements and does not add any new substantive restrictions or burdens. Including this criterion also helps to ensure that the regulatory capital rules provide FDIC-supervised institutions a complete list of the requirements applicable to regulatory capital instruments in one location. Accordingly, the FDIC has retained this requirement in the interim final rule.

Banking industry commenters also asserted that some of the proposed criteria could have an adverse impact on ESOPs. Specifically, the commenters noted that the proposed requirement that instruments not be callable for at least five years after issuance could be problematic for compensation plans that enable a company to redeem shares after employment is terminated. Commenters asked the agencies to exempt from this requirement stock issued as part of an ESOP. For the reasons stated above in the discussion of common equity tier 1 capital instruments, under the interim final rule, additional tier 1 instruments issued under an ESOP by an FDIC-supervised institution that is not publicly traded are exempt from the criterion that additional tier 1 instruments not be callable for at least five years after issuance. Moreover, similar to the discussion above regarding the criteria for common equity tier 1 capital, the FDIC believes that required compliance with ERISA and ERISA-related tax code requirements alone should not prevent an instrument from being included in regulatory capital. Therefore, the FDIC is including a provision in the interim final rule to clarify that the criterion prohibiting an FDIC-supervised institution from directly or indirectly funding a capital instrument, the criterion prohibiting a capital instrument from being covered by a guarantee of the FDIC-supervised institution or from being subject to an arrangement that enhances the seniority of the instrument, and the criterion pertaining to the creation of an expectation that the instrument will be redeemed, shall not prevent an instrument issued by a non-publicly traded FDIC-supervised institution as part of an ESOP from being included in additional tier 1 capital. In addition, capital instruments held by an ESOP trust that are unawarded or unearned by employees or reported as ''temporary equity'' under GAAP (in the case of U.S. SEC registrants) may not be counted as equity under GAAP and therefore may not be included in additional tier 1 capital.

Commenters also asked the agencies to add exceptions for early calls within five years of issuance in the case of an ''investment company event'' or a ''rating agency event,'' in addition to the proposed exceptions for regulatory and tax events. After considering the comments on these issues, the FDIC has decided to revise the interim final rule to permit an FDIC-supervised institution to call an instrument prior to five years after issuance in the event that the issuing entity is required to register as an investment company pursuant to the Investment Company Act of 1940.[61] The FDIC recognizes that the legal and regulatory burdens of becoming an investment company could make it uneconomic to leave some structured capital instruments outstanding, and thus would permit the FDIC-supervised institution to call such instruments early.

In order to ensure the loss-absorption capacity of additional tier 1 capital instruments, the FDIC has decided not to revise the rule to permit an FDIC-supervised institution to include in its additional tier 1 capital instruments issued on or after the effective date of the interim final rule that may be called prior to five years after issuance upon the occurrence of a rating agency event. However, understanding that many currently outstanding instruments have this feature, the FDIC has decided to revise the rule to allow an instrument that may be called prior to five years after its issuance upon the occurrence of a rating agency event to be included into additional tier 1 capital, provided that (i) the instrument was issued and included in an FDIC-supervised institution's tier 1 capital prior to the effective date of the rule, and (ii) that such instrument meets all other criteria for additional tier 1 capital instruments under the interim final rule.

In addition, a number of commenters reiterated the concern that restrictions on the payment of dividends from net income and current and retained earnings may conflict with state corporate laws that permit an organization to issue dividend payments from its capital surplus accounts. This criterion for additional tier 1 capital in the interim final rule reflects the identical final criterion for common equity tier 1 for the reasons discussed above with respect to common equity tier 1 capital.

Commenters also noted that proposed criterion (10), which requires the paid-in amounts of tier 1 capital instruments to be classified as equity under GAAP before they may be included in regulatory capital, generally would prevent contingent capital instruments, which are classified as liabilities, from qualifying as additional tier 1 capital. These commenters asked the agencies to revise the rules to provide that contingent capital instruments will qualify as additional tier 1 capital, regardless of their treatment under GAAP. Another commenter noted the challenges for U.S. banking organizations in devising contingent capital instruments that would satisfy the proposed criteria, and noted that if U.S. banking organizations develop an acceptable instrument, the instrument likely would initially be classified as debt instead of equity for GAAP purposes. Thus, in order to accommodate this possibility, the commenter urged the agencies to revise the criterion to allow the agencies to permit such an instrument in additional tier 1 capital through interpretive guidance or specifically in the case of a particular instrument.

The FDIC continues to believe that restricting tier 1 capital instruments to those classified as equity under GAAP will help to ensure those instruments' capacity to absorb losses and further increase the quality of U.S. FDIC-supervised institutions' regulatory capital. The FDIC therefore has decided to retain this aspect of the proposal. To the extent that a contingent capital instrument is considered a liability under GAAP, an FDIC-supervised institution may not include the instrument in its tier 1 capital under the interim final rule. At such time as an instrument converts from debt to equity under GAAP, the instrument would then satisfy this criterion.

In the preamble to the proposed rule, the agencies included a discussion regarding whether criterion (7) should be revised to require banking organizations to reduce the dividend payment on tier 1 capital instruments to a penny when a banking organization reduces dividend payments on a common equity tier 1 capital instrument to a penny per share. Such a revision would increase the capacity of

[61] 15 U.S.C. 80 a–1 *et seq.*

additional tier 1 instruments to absorb losses as it would permit a banking organization to reduce its capital distributions on additional tier 1 instruments without eliminating entirely its common stock dividend. Commenters asserted that such a revision would be unnecessary and could affect the hierarchy of subordination in capital instruments. Commenters also claimed the revision could prove burdensome as it could substantially increase the cost of raising capital through additional tier 1 capital instruments. In light of these comments the FDIC has decided to not modify criterion (7) to accommodate the issuance of a penny dividend as discussed in the proposal.

Several commenters expressed concern that criterion (7) for additional tier 1 capital, could affect the tier 1 eligibility of existing noncumulative perpetual preferred stock. Specifically, the commenters were concerned that such a criterion would disallow contractual terms of an additional tier 1 capital instrument that restrict payment of dividends on another capital instrument that is *pari passu* in liquidation with the additional tier 1 capital instrument (commonly referred to as dividend stoppers). Consistent with Basel III, the FDIC agrees that restrictions related to capital distributions to holders of common stock instruments and holders of other capital instruments that are *pari passu* in liquidation with such additional tier 1 capital instruments are acceptable, and have amended this criterion accordingly for purposes of the interim final rule.

After considering the comments on the proposal, the FDIC has decided to finalize the criteria for additional tier 1 capital instruments with the modifications discussed above. The final revised criteria for additional tier 1 capital are set forth in section 324.20(c)(1) of the interim final rule. The FDIC expects that most outstanding noncumulative perpetual preferred stock that qualifies as tier 1 capital under the FDIC's general risk-based capital rules will qualify as additional tier 1 capital under the interim final rule.

3. Tier 2 Capital

Consistent with Basel III, under the proposed rule, tier 2 capital would equal the sum of: tier 2 capital instruments that satisfy the criteria set forth in section 20(d) of the proposal, related surplus, total capital minority interest not included in a banking organization's tier 1 capital (subject to certain limitations and requirements), 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 total capital ratio using the standardized approach, a banking organization would be permitted to include in tier 2 capital the amount of ALLL that does not exceed 1.25 percent of its standardized total risk-weighted assets which would not include any amount of the ALLL. A banking organization subject to the market risk rule would exclude its standardized market risk-weighted assets from the calculation.[62] In contrast, when calculating its total capital ratio using the advanced approaches, a banking organization would be permitted to include in tier 2 capital the excess of its eligible credit reserves over its total expected credit loss, provided the amount does not exceed 0.6 percent of its credit risk-weighted assets.

Consistent with Basel III, the agencies proposed the following criteria for tier 2 capital instruments:

(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 its primary Federal supervisor to exercise a call option on the instrument.

(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 section 20 of the proposed rule;[63] or

(B) Demonstrate to the satisfaction of the banking organization's primary Federal supervisor 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.[64]

(10) Redemption of the instrument prior to maturity or repurchase requires

[62] 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 its standardized total risk-weighted risk assets.

[63] Replacement of tier 2 capital instruments can be concurrent with redemption of existing tier 2 capital instruments.

[64] *De minimis* assets related to the operation of the issuing entity can be disregarded for purposes of this criterion.

the prior approval of the banking organization's primary Federal supervisor.

(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.

The agencies also proposed to eliminate the inclusion of a portion of certain unrealized gains on AFS equity securities in tier 2 capital given that unrealized gains and losses on AFS securities would flow through to common equity tier 1 capital under the proposed rules.

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 proposal eliminated the existing limitations on the amount of tier 2 capital that could be recognized in total capital, as well as the existing limitations on the amount of certain capital instruments (that is, term subordinated debt) that could be included in tier 2 capital.

Finally, the agencies proposed 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,[65] 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 met all of the proposed qualifying criteria.

Several commenters addressed the proposed eligibility criteria for tier 2 capital. A few banking industry commenters asked the agencies to clarify criterion (2) above to provide that trade creditors are not among the class of senior creditors whose claims rank ahead of subordinated debt holders. In response to these comments, the FDIC notes that the intent of the final rule, with its requirement that tier 2 capital instruments be subordinated to depositors and general creditors, is to effectively retain the subordination standards for the tier 2 capital subordinated debt under the general risk-based capital rules. Therefore, the FDIC is clarifying that under the interim final rule, and consistent with the FDIC's general risk-based capital rules, subordinated debt instruments that qualify as tier 2 capital must be subordinated to general creditors, which generally means senior indebtedness, excluding trade creditors. Such creditors include at a minimum all borrowed money, similar obligations arising from off-balance sheet guarantees and direct-credit substitutes, and obligations associated with derivative products such as interest rate and foreign-exchange contracts, commodity contracts, and similar arrangements, and, in addition, for depository institutions, depositors.

In addition, one commenter noted that while many existing banking organizations' subordinated debt indentures contain subordination provisions, they may not explicitly include a subordination provision with respect to ''general creditors'' of the banking organization. Thus, they recommended that this aspect of the rules be modified to have only prospective application. The FDIC notes that if it is clear from an instrument's governing agreement, offering circular, or prospectus, that the instrument is subordinated to general creditors despite not specifically stating ''general creditors,'' criterion (2) above is satisfied (that is, criterion (2) should not be read to mean that the phrase ''general creditors'' must appear in the instrument's governing agreement, offering circular, or prospectus, as the case may be).

One commenter also asked whether a debt instrument that automatically converts to an equity instrument within five years of issuance, and that satisfies all criteria for tier 2 instruments other than the five-year maturity requirement, would qualify as tier 2 capital. The FDIC notes that because such an instrument would automatically convert to a permanent form of regulatory capital, the five-year maturity requirement would not apply and, thus, it would qualify as tier 2 capital. The FDIC has clarified the interim final rule in this respect.

Commenters also expressed concern about the impact of a number of the proposed criteria on outstanding TruPS. For example, commenters stated that a strict reading of criterion (3) above could exclude certain TruPS under which the banking organization guarantees that any payments made by the banking organization to the trust will be used by the trust to pay its obligations to security holders. However, the proposed rule would not have disqualified an instrument with this type of guarantee, which does not enhance or otherwise alter the subordination level of an instrument. Additionally, the commenters asked the agencies to allow in tier 2 capital instruments that provide for default and the acceleration of principal and interest if the issuer banking organization defers interest payments for five consecutive years. Commenters stated that these exceptions would be necessary to accommodate existing TruPS, which generally include such call, default and acceleration features.

Commenters also asked the agencies to clarify the use of the term ''secured'' in criterion (3). As discussed above with respect to the criteria for additional tier 1 capital, a ''secured'' instrument is an instrument where payments on the instrument are secured by collateral. Therefore, under criterion (3), a collateralized instrument will not qualify as tier 2 capital. Instruments secured by collateral are less able to absorb losses than instruments without such enhancement.

With respect to subordinated debt instruments included in tier 2 capital, a commenter recommended eliminating criterion (4)'s proposed five-year amortization requirement, arguing that that it was unnecessary given other capital planning requirements that banking organizations must satisfy. The FDIC declined to adopt the commenter's recommendation, as it believes that the proposed amortization schedule results in a more accurate reflection of the loss-absorbency of an FDIC-supervised institution's tier 2 capital. The FDIC notes that if an FDIC-supervised institution begins deferring interest payments on a TruPS instrument included in tier 2 capital, such an instrument will be treated as having a maturity of five years at that point and the FDIC-supervised institution must begin excluding the appropriate amount of the instrument from capital in accordance with section 324.20(d)(1)(iv) of the interim final rule.

Similar to the comments received on the criteria for additional tier 1 capital, commenters asked the agencies to add exceptions to the prohibition against call options that could be exercised within five years of the issuance of a capital instrument, specifically for an ''investment company event'' and a ''rating agency event.''

Although the FDIC declined to permit instruments that include acceleration provisions in tier 2 capital in the interim final rule, the FDIC believes that the inclusion in tier 2 capital of existing TruPS, which allow for acceleration after five years of interest deferral, does not raise safety and soundness concerns. Although the majority of existing TruPS would not technically comply with the interim final rule's tier 2 eligibility criteria, the FDIC acknowledges that the

[65] Public Law 111–240, 124 Stat. 2504 (2010).

inclusion of existing TruPS in tier 2 capital (until they are redeemed or they mature) would benefit certain FDIC-supervised institutions until they are able to replace such instruments with new capital instruments that fully comply with the eligibility criteria of the interim final rule.

As with additional tier 1 capital instruments, the interim final rule permits an FDIC-supervised institution to call an instrument prior to five years after issuance in the event that the issuing entity is required to register with the SEC as an investment company pursuant to the Investment Company Act of 1940, for the reasons discussed above with respect to additional tier 1 capital. Also for the reasons discussed above with respect to additional tier 1 capital instruments, the FDIC has decided not to permit an FDIC-supervised institution to include in its tier 2 capital an instrument issued on or after the effective date of the interim final rule that may be called prior to five years after its issuance upon the occurrence of a rating agency event. However, the FDIC has decided to allow such an instrument to be included in tier 2 capital, provided that the instrument was issued and included in an FDIC-supervised institution's tier 1 or tier 2 capital prior to January 1, 2014, and that such instrument meets all other criteria for tier 2 capital instruments under the interim final rule.

In addition, similar to the comment above with respect to the proposed criteria for additional tier 1 capital instruments, commenters noted that the proposed criterion that a banking organization seek prior approval from its primary Federal supervisor before exercising a call option is redundant with the requirement that a banking organization seek prior approval before reducing regulatory capital by redeeming a capital instrument. Again, the FDIC believes that this proposed requirement restates and clarifies existing requirements without adding any new substantive restrictions, and that it will help to ensure that the regulatory capital rules provide FDIC-supervised institutions with a complete list of the requirements applicable to their regulatory capital instruments. Therefore, the FDIC is retaining the requirement as proposed.

Under the proposal, an advanced approaches banking organization may include in tier 2 capital the excess of its eligible credit reserves over expected credit loss (ECL) to the extent that such amount does not exceed 0.6 percent of credit risk-weighted assets, rather than including the amount of ALLL described above. Commenters asked the agencies to clarify whether an advanced approaches banking organization that is in parallel run includes in tier 2 capital its ECL or ALLL (as described above). To clarify, for purposes of the interim final rule, an advanced approaches FDIC-supervised institution will always include in total capital its ALLL up to 1.25 percent of (non-market risk) risk-weighted assets when measuring its total capital relative to standardized risk-weighted assets. When measuring its total capital relative to its advanced approaches risk-weighted assets, as described in section 324.10(c)(3)(ii) of the interim final rule, an advanced approaches FDIC-supervised institution that has completed the parallel run process and that has received notification from the FDIC pursuant to section 324.121(d) of subpart E must adjust its total capital to reflect its excess eligible credit reserves rather than its ALLL.

Some commenters recommended that the agencies remove the limit on the amount of the ALLL includable in regulatory capital. Specifically, one commenter recommended allowing banking organizations to include ALLL in tier 1 capital equal to an amount of up to 1.25 percent of total risk-weighted assets, with the balance in tier 2 capital, so that the entire ALLL would be included in regulatory capital. Moreover, some commenters recommended including in tier 2 capital the entire amount of reserves held for residential mortgage loans sold with recourse, given that the proposal would require a 100 percent credit conversion factor for such loans. Consistent with the ALLL treatment under the general risk-based capital rules, for purposes of the interim final rule the FDIC has elected to permit only limited amounts of the ALLL in tier 2 capital given its limited purpose of covering incurred rather than unexpected losses. For similar reasons, the FDIC has further elected not to recognize in tier 2 capital reserves held for residential mortgage loans sold with recourse.

As described above, an FDIC-supervised institution that has made an AOCI opt-out election may incorporate up to 45 percent of any net unrealized gains on AFS preferred stock classified as an equity security under GAAP and AFS equity exposures into its tier 2 capital.

After reviewing the comments received on this issue, the FDIC has determined to finalize the criteria for tier 2 capital instruments to include the aforementioned changes. The revised criteria for inclusion in tier 2 capital are set forth in section 324.20(d)(1) of the interim final rule.

4. Capital Instruments of Mutual FDIC-Supervised Institutions

Under the proposed rule, the qualifying criteria for common equity tier 1, additional tier 1, and tier 2 capital generally would apply to mutual banking organizations. Mutual banking organizations and industry groups representing mutual banking organizations encouraged the agencies to expand the qualifying criteria for additional tier 1 capital to recognize certain cumulative instruments. These commenters stressed that mutual banking organizations, which do not issue common stock, have fewer options for raising regulatory capital relative to other types of banking organizations.

The FDIC does not believe that cumulative instruments are able to absorb losses sufficiently reliably to be included in tier 1 capital. Therefore, after considering these comments, the FDIC has decided not to include in tier 1 capital under the interim final rule any cumulative instrument. This would include any previously-issued mutual capital instrument that was included in the tier 1 capital of mutual FDIC-supervised institutions under the general risk-based capital rules, but that does not meet the eligibility requirements for tier 1 capital under the interim final rule. These cumulative capital instruments will be subject to the transition provisions and phased out of the tier 1 capital of mutual FDIC-supervised institutions over time, as set forth in Table 9 of section 324.300 in the interim final rule. However, if a mutual FDIC-supervised institution develops a new capital instrument that meets the qualifying criteria for regulatory capital under the interim final rule, such an instrument may be included in regulatory capital with the prior approval of the FDIC under section 324.20(e) of the interim final rule.

The FDIC notes that the qualifying criteria for regulatory capital instruments under the interim final rule permit mutual FDIC-supervised institutions to include in regulatory capital many of their existing regulatory capital instruments (for example, non-withdrawable accounts, pledged deposits, or mutual capital certificates). The FDIC believes that the quality and quantity of regulatory capital currently maintained by most mutual FDIC-supervised institutions should be sufficient to satisfy the requirements of the interim final rule. For those organizations that do not currently hold enough capital to meet the revised minimum requirements, the transition arrangements are designed to ease the

burden of increasing regulatory capital over time.

5. Grandfathering of Certain Capital Instruments

As described above, a substantial number of commenters objected to the proposed phase-out of non-qualifying capital instruments, including TruPS and cumulative perpetual preferred stock, from tier 1 capital. Community FDIC-supervised institutions in particular expressed concerns that the costs related to the replacement of such capital instruments, which they generally characterized as safe and loss-absorbent, would be excessive and unnecessary. Commenters noted that the proposal was more restrictive than section 171 of the Dodd-Frank Act, which requires the phase-out of non-qualifying capital instruments issued prior to May 19, 2010, only for depository institution holding companies with $15 billion or more in total consolidated assets as of December 31, 2009. Commenters argued that the agencies were exceeding Congressional intent by going beyond what was required under the Dodd-Frank Act Commenters requested that the agencies grandfather existing TruPS and cumulative perpetual preferred stock issued by depository institution holding companies with less than $15 billion and 2010 MHCs.

Although the FDIC continues to believe that TruPS are not sufficiently loss-absorbing to be includable in tier 1 capital as a general matter, the FDIC is also sensitive to the difficulties community banking organizations often face when issuing new capital instruments and are aware of the importance their capacity to lend plays in local economies. Therefore the FDIC has decided in the interim final rule to grandfather such non-qualifying capital instruments in tier 1 capital subject to a limit of 25 percent of tier 1 capital elements excluding any non-qualifying capital instruments and after all regulatory capital deductions and adjustments applied to tier 1 capital, which is substantially similar to the limit in the general risk-based capital rules. In addition, the FDIC acknowledges that the inclusion of existing TruPS in tier 2 capital would benefit certain FDIC-supervised institutions until they are able to replace such instruments with new capital instruments that fully comply with the eligibility criteria of the interim final rule.

6. Agency Approval of Capital Elements

The agencies noted in the proposal that they believe most existing regulatory capital instruments will continue to be includable in banking organizations' regulatory capital. However, over time, capital instruments that are equivalent in quality and capacity to absorb losses to existing instruments may be created to satisfy different market needs. Therefore, the agencies proposed to create a process to consider the eligibility of such instruments on a case-by-case basis. Under the proposed rule, a banking organization must request approval from its primary Federal supervisor before including 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 ability to absorb losses, to an element described in a previous decision made publicly available by the banking organization's primary Federal supervisor.

In the preamble to the proposal, the agencies indicated that they intend to consult each other when determining whether a new element should be included in common equity tier 1, additional tier 1, or tier 2 capital, and indicated that once one 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, that agency would make its decision publicly available, including a brief description of the capital element and the rationale for the conclusion.

The FDIC continues to believe that it is appropriate to retain the flexibility necessary to consider new instruments on a case-by-case basis as they are developed over time to satisfy different market needs. The FDIC has decided to move its authority in section 20(e)(1) of the proposal to the its reservation of authority provision included in section 324.1(d)(2)(ii) of the interim final rule. Therefore, the FDIC is adopting this aspect of the interim final rule substantively as proposed to create a process to consider the eligibility of such instruments on a permanent or temporary basis, in accordance with the applicable requirements in subpart C of the interim final rule (section 324.20(e) of the interim final rule).

Section 324.20(e)(1) of the interim final rule provides that an FDIC-supervised institution must receive FDIC's prior approval to include a capital element in its common equity tier 1 capital, additional tier 1 capital, or tier 2 capital *unless* that element: (i) was included in the FDIC-supervised institution's tier 1 capital or tier 2 capital prior to May 19, 2010 in accordance with that supervisor'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 determined by that supervisor to be includable in regulatory capital pursuant to paragraph (e)(3) of section 324.20. In exercising this reservation of authority, the FDIC expects to consider the requirements for capital elements in the interim final rule; the size, complexity, risk profile, and scope of operations of the FDIC-supervised institution, and whether any public benefits would be outweighed by risk to an insured depository institution or to the financial system.

7. Addressing the Point of Non-Viability Requirements Under Basel III

During the recent financial crisis, the United States and foreign governments lent to, and made capital investments in, 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 potential 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 (the 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 at which either: (1) the write-off or conversion of those instruments occurs; or (2) a 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 taxpayers 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]

U.S. law is consistent with the Basel non-viability standard. The resolution regime established in Title II, 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 a 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 would absorb losses in bankruptcy before instruments held by more senior unsecured creditors.

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 date on which such organizations would have been required to comply with any interim final rule would have been 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 a receivership, insolvency, liquidation, or similar proceeding. The FDIC is adopting this provision of the proposed rule without change.

8. Qualifying Capital Instruments Issued by Consolidated Subsidiaries of an FDIC-Supervised Institution

As highlighted during the recent financial crisis, capital issued by consolidated subsidiaries and not owned by the parent banking organization (minority interest) is available to absorb losses at the subsidiary level, but that capital does not always absorb losses at the consolidated level. Accordingly, and consistent with Basel III, the proposed rule revised limitations on the amount of minority interest that may be included in regulatory capital at the consolidated level to prevent highly capitalized subsidiaries from overstating the amount of capital available to absorb losses at the consolidated organization.

Under the proposal, minority interest would have been classified as a common equity tier 1, tier 1, or total capital minority interest depending on the terms of the underlying capital instrument and on the type of subsidiary issuing such instrument. Any instrument issued by a consolidated subsidiary to third parties would have been required to satisfy the qualifying criteria under the proposal to be included in the banking organization's common equity tier 1, additional tier 1, or tier 2 capital, as appropriate. In addition, common equity tier 1 minority interest would have been limited to instruments issued by a depository institution or a foreign bank that is a consolidated subsidiary of a banking organization.

The proposed limits on the amount of minority interest that could have been included in the consolidated capital of a banking organization would have been based on the amount of capital held by the consolidated subsidiary, relative to the amount of capital the subsidiary would have had to hold to avoid any restrictions on capital distributions and discretionary bonus payments under the capital conservation buffer framework. For example, a subsidiary with a common equity tier 1 capital ratio of 8 percent that 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 would have been considered to have ''surplus'' common equity tier 1 capital and, at the consolidated level, the banking organization would not have been able to include the portion of such surplus common equity tier 1 capital that is attributable to third party investors.

In general, the amount of common equity tier 1 minority interest that could have been included in the common equity tier 1 capital of a banking organization under the proposal would have been equal to:

(i) The common equity tier 1 minority interest of the subsidiary *minus*

(ii) 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)(a) the standardized total risk-weighted assets of the banking organization that relate to the subsidiary, *multiplied* by

(b) The common equity tier 1 capital ratio needed by the banking organization subsidiary to avoid restrictions on capital distributions and discretionary bonus payments.

If a subsidiary were not subject to the same minimum regulatory capital requirements or capital conservation buffer framework as the banking organization, the banking organization would have needed to assume, for the purposes of the calculation described above, that the subsidiary is in fact subject to the same minimum capital requirements and the same capital conservation buffer framework as the banking organization.

To determine the amount of tier 1 minority interest that could be included in the tier 1 capital of the banking organization and the total capital minority interest that could be included 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. The proposal set forth sample calculations. The amount of tier 1 minority interest that could have been included in the additional tier 1 capital of a banking organization under the proposal was equivalent to the banking organization's tier 1 minority interest, subject to the limitations outlined above, less any common equity tier 1 minority interest included in the banking organization's common equity tier 1 capital. Likewise, the amount of total capital minority interest that could have been included in the tier 2 capital of the banking organization was equivalent to its total capital minority interest, subject to the limitations outlined above, less any tier

[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] *See* 12 U.S.C. 5384.

[69] 12 U.S.C. 1821.

1 minority interest that is included in the banking organization's tier 1 capital.

Under the proposal, 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 is eligible for inclusion in tier 1 capital under the general risk-based capital rules without limitation, generally would qualify for inclusion in common equity tier 1 and additional tier 1 capital, respectively, subject to the proposed limits. However, under the proposal, minority interest related to qualifying cumulative perpetual preferred stock directly issued by a consolidated U.S. depository institution or foreign bank subsidiary, which is eligible for limited inclusion in tier 1 capital under the general risk-based capital rules, generally would not have qualified for inclusion in additional tier 1 capital under the proposal.

A number of commenters addressed the proposed limits on the inclusion of minority interest in regulatory capital. Commenters generally asserted that the proposed methodology for calculating the amount of minority interest that could be included in regulatory capital was overly complex, overly conservative, and would reduce incentives for bank subsidiaries to issue capital to third-party investors. Several commenters suggested that the agencies should adopt a more straightforward and simple approach that would provide a single blanket limitation on the amount of minority interest includable in regulatory capital. For example, one commenter suggested allowing a banking organization to include minority interest equal to 18 percent of common equity tier 1 capital. Another commenter suggested that minority interest where shareholders have commitments to provide additional capital, as well as minority interest in joint ventures where there are guarantees or other credit enhancements, should not be subject to the proposed limitations.

Commenters also objected to any limitations on the amount of minority interest included in the regulatory capital of a parent banking organization attributable to instruments issued by a subsidiary when the subsidiary is a depository institution. These commenters stated that restricting such minority interest could create a disincentive for depository institutions to issue capital instruments directly or to maintain capital at levels substantially above regulatory minimums. To address this concern, commenters asked the agencies to consider allowing a depository institution subsidiary to consider a portion of its capital above its minimum as not being part of its ''surplus'' capital for the purpose of calculating the minority interest limitation. Alternatively, some commenters suggested allowing depository institution subsidiaries to calculate surplus capital independently for each component of capital.

Several commenters also addressed the proposed minority interest limitation as it would apply to subordinated debt issued by a depository institution. Generally, these commenters stated that the proposed minority interest limitation either should not apply to such subordinated debt, or that the limitation should be more flexible to permit a greater amount to be included in the total capital of the consolidated organization.

Finally, some commenters pointed out that the application of the proposed calculation for the minority interest limitation was unclear in circumstances where a subsidiary depository institution does not have ''surplus'' capital. With respect to this comment, the FDIC has revised the proposed rule to specifically provide that the minority interest limitation will not apply in circumstances where a subsidiary's capital ratios are equal to or below the level of capital necessary to meet the minimum capital requirements plus the capital conservation buffer. That is, in the interim final rule the minority interest limitation would apply only where a subsidiary has ''surplus'' capital.

The FDIC continues to believe that the proposed limitations on minority interest are appropriate, including for capital instruments issued by depository institution subsidiaries, tier 2 capital instruments, and situations in which a depository institution holding company conducts the majority of its business through a single depository institution subsidiary. As noted above, the FDIC's experience during the recent financial crisis showed that while minority interest generally is available to absorb losses at the subsidiary level, it may not always absorb losses at the consolidated level. Therefore, the FDIC continues to believe limitations on including minority interest will prevent highly-capitalized subsidiaries from overstating the amount of capital available to absorb losses at the consolidated organization. The increased safety and soundness benefits resulting from these limitations should outweigh any compliance burden issues related to the complexity of the calculations. Therefore, the FDIC is adopting the proposed treatment of minority interest without change, except for the clarification described above.

9. 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 included in the regulatory capital of the consolidated banking organization as minority interest under the general risk-based capital rules.

Under the general risk-based capital rules, preferred stock issued by a REIT subsidiary generally can be included in a banking organization's tier 1 capital as minority interest if the preferred stock meets the eligibility requirements for tier 1 capital.[70] The agencies interpreted this to require that the REIT-preferred stock 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 stock 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 have applied to capital instruments issued by consolidated REIT subsidiaries. Specifically, preferred stock issued by a REIT subsidiary that met the proposed definition of an operating entity (as defined below) would have qualified 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 stock met the criteria for additional tier 1 or tier 2 capital instruments outlined in section 20 of the proposed rules. Because a REIT must distribute 90 percent of its earnings to maintain its tax-advantaged status, a banking organization might be reluctant to cancel dividends on the REIT preferred

[70] 12 CFR part 325, subpart B.

[71] 12 CFR part 325, subpart A (state nonmember banks), and 12 CFR part 390, subpart Y (state savings associations).

[72] 12 CFR part 325, subpart B (state nonmember banks) and 12 CFR part 390, subpart Y (state savings associations).

stock. However, for a capital instrument to qualify as additional tier 1 capital the issuer must have the ability to cancel dividends. In cases where a REIT could maintain its tax status, for example, by declaring a consent dividend and it has the ability to do so, the agencies generally would consider REIT preferred stock to satisfy criterion (7) of the proposed eligibility criteria for additional tier 1 capital instruments.[73] The FDIC notes that the ability to declare a consent dividend need not be included in the documentation of the REIT preferred instrument, but the FDIC-supervised institution must provide evidence to the relevant banking agency that it has such an ability. The FDIC does not expect preferred stock issued by a REIT that does not have the ability to declare a consent dividend or otherwise cancel cash dividends to qualify as tier 1 minority interest under the interim final rule; however, such an instrument could qualify as total capital minority interest if it meets all of the relevant tier 2 capital eligibility criteria under the interim final rule.

Commenters requested clarification on whether a REIT subsidiary would be considered an operating entity for the purpose of the interim final rule. For minority interest issued from a subsidiary to be included in regulatory capital, the subsidiary must be either an operating entity or an entity whose only asset is its investment in the capital of the parent banking organization and for which proceeds are immediately available without limitation to the banking organization. Since a REIT has assets that are not an investment in the capital of the parent banking organization, minority interest in a REIT subsidiary can be included in the regulatory capital of the consolidated parent banking organization only if the REIT is an operating entity. For purposes of the interim final rule, an operating entity is defined as a company established to conduct business with clients with the intention of earning a profit in its own right. However, certain REIT subsidiaries currently used by FDIC-supervised institutions to raise regulatory capital are not actively managed for the purpose of earning a profit in their own right, and therefore, will not qualify as operating entities for the purpose of the interim final rule. Minority interest investments in REIT subsidiaries that are actively managed for purposes of earning a profit in their own right will be eligible for inclusion in the regulatory capital of the FDIC-supervised institution subject to the limits described in section 21 of the interim final rule. To the extent that an FDIC-supervised institution is unsure whether minority interest investments in a particular REIT subsidiary will be includable in the FDIC-supervised institution's regulatory capital, the organization should discuss the concern with its primary Federal supervisor prior to including any amount of the minority interest in its regulatory capital.

Several commenters objected to the application of the limitations on the inclusion of minority interest resulting from noncumulative perpetual preferred stock issued by REIT subsidiaries. Commenters noted that to be included in the regulatory capital of the consolidated parent banking organization under the general risk-based capital rules, REIT preferred stock must include an exchange feature that allows the REIT preferred stock to absorb losses at the parent banking organization through the exchange of REIT preferred instruments into noncumulative perpetual preferred stock of the parent banking organization. Because of this exchange feature, the commenters stated that REIT preferred instruments should be included in the tier 1 capital of the parent consolidated organization without limitation. Alternatively, some commenters suggested that the agencies should allow REIT preferred instruments to be included in the tier 2 capital of the consolidated parent organization without limitation. Commenters also noted that in light of the eventual phase-out of TruPS pursuant to the Dodd-Frank Act, REIT preferred stock would be the only tax-advantaged means for bank holding companies to raise tier 1 capital. According to these commenters, limiting this tax-advantaged option would increase the cost of doing business for many banking organizations.

After considering these comments, the FDIC has decided not to create specific exemptions to the limitations on the inclusion of minority interest with respect to REIT preferred instruments. As noted above, the FDIC believes that the inclusion of minority interest in 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 organization.

B. Regulatory Adjustments and Deductions

1. Regulatory Deductions From Common Equity Tier 1 Capital

Under the proposal, a banking organization must deduct from common equity tier 1 capital elements the items described in section 22 of the proposed rule. A banking organization would exclude the amount of these deductions from its total risk-weighted assets and leverage exposure. This section B discusses the deductions from regulatory capital elements as revised for purposes of the interim final rule.

a. Goodwill and Other Intangibles (Other Than Mortgage Servicing Assets)

U.S. federal banking statutes generally prohibit the inclusion of goodwill (as it is an ''unidentified intangible asset'') in the regulatory capital of insured depository institutions.[74] Accordingly, goodwill and other intangible assets have long been either fully or partially excluded from regulatory capital in the United States 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.[75] Under the proposed rule, a banking organization was required to deduct from common equity tier 1 capital elements goodwill and other intangible assets other than MSAs[76] net of associated deferred tax liabilities (DTLs). For purposes of this deduction, goodwill would have included any goodwill embedded in the valuation of significant investments in the capital of an unconsolidated financial institution in the form of common stock. This deduction of embedded goodwill would have applied to investments accounted for under the equity method.[77] Consistent with Basel III, these items would have been deducted from common equity tier 1 capital elements. MSAs would have been subject to a different treatment under Basel III and the proposal, as explained below in this section.

One commenter sought clarification regarding the amount of goodwill that must be deducted from common equity tier 1 capital elements when a banking organization has an investment in the

[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.

[74] 12 U.S.C. 1828(n).

[75] 54 FR 11500, 11509 (March 21, 1989).

[76] Examples of other intangible assets include purchased credit card relationships (PCCRs) and non-mortgage servicing assets.

[77] 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).

capital of an unconsolidated financial institution that is accounted for under the equity method of accounting under GAAP. The FDIC has revised section 22(a)(1) in the interim final rule to clarify that it is the amount of goodwill that is embedded in the valuation of a significant investment in the capital of an unconsolidated financial institution in the form of common stock that is accounted for under the equity method, and reflected in the consolidated financial statements of the FDIC-supervised institution that an FDIC-supervised institution must deduct from common equity tier 1 capital elements.

Another commenter requested clarification regarding the amount of embedded goodwill that a banking organization would be required to deduct where there are impairments to the embedded goodwill subsequent to the initial investment. The FDIC notes that, for purposes of the interim final rule, an FDIC-supervised institution must deduct from common equity tier 1 capital elements any embedded goodwill in the valuation of significant investments in the capital of an unconsolidated financial institution in the form of common stock net of any related impairments (subsequent to the initial investment) as determined under GAAP, not the goodwill reported on the balance sheet of the unconsolidated financial institution.

The proposal did not include a transition period for the implementation of the requirement to deduct goodwill from common equity tier 1 capital. A number of commenters expressed concern that this could disadvantage U.S. banking organizations relative to those in jurisdictions that permit such a transition period. The FDIC notes that section 221 of FIRREA (12 U.S.C. 1828(n)) requires all unidentifiable intangible assets (goodwill) acquired after April 12, 1989, to be deducted from an FDIC-supervised institution's capital elements. The only exception to this requirement, permitted under 12 U.S.C. 1464(t) (applicable to Federal savings association), has expired. Therefore, consistent with the requirements of section 221 of FIRREA and the general risk-based capital rules, the FDIC believes that it is not appropriate to permit any goodwill to be included in an FDIC-supervised institution's capital. The interim final rule does not include a transition period for the deduction of goodwill.

b. Gain-on-sale Associated With a Securitization Exposure

Under the proposal, a banking organization would deduct from common equity tier 1 capital elements any after-tax gain-on-sale associated with a securitization exposure. Under the proposal, gain-on-sale was defined as an increase in the equity capital of a banking organization resulting from a securitization (other than an increase in equity capital resulting from the banking organization's receipt of cash in connection with the securitization).

A number of commenters requested clarification that the proposed deduction for gain-on-sale would not require a double deduction for MSAs. According to the commenters, a sale of loans to a securitization structure that creates a gain may include an MSA that also meets the proposed definition of ''gain-on-sale.'' The FDIC agrees that a double deduction for MSAs is not required, and the interim final rule clarifies in the definition of ''gain-on-sale'' that a gain-on-sale excludes any portion of the gain that was reported by the FDIC-supervised institution as an MSA. The FDIC also notes that the definition of gain-on-sale was intended to relate only to gains associated with the sale of loans for the purpose of traditional securitization. Thus, the definition of gain-on-sale has been revised in the interim final rule to mean an increase in common equity tier 1 capital of the FDIC-supervised institution resulting from a traditional securitization except where such an increase results from the FDIC-supervised institution's receipt of cash in connection with the securitization or initial recognition of an MSA.

c. Defined Benefit Pension Fund Net Assets

For banking organizations other than insured depository institutions, the proposal required the deduction of a net pension fund asset in calculating common equity tier 1 capital. A banking organization was permitted to make such deduction net of any associated DTLs. This deduction would be required where a defined benefit pension fund is over-funded due to the high level of uncertainty regarding the ability of the banking organization to realize value from such assets.

The proposal provided that, with supervisory approval, a banking organization would not have been required to deduct defined benefit pension fund assets to which the banking organization had unrestricted and unfettered access.[78] In this case, the proposal established that the banking organization would have assigned to such assets the risk weight they would receive if the assets underlying the plan were directly owned and included on the balance sheet of the banking organization. The proposal set forth that unrestricted and unfettered access would mean that a banking organization would not have been required to request and receive specific approval from pension beneficiaries each time it accessed excess funds in the plan.

One commenter asked whether shares of a banking organization that are owned by the banking organization's pension fund are subject to deduction. The FDIC notes that the interim final rule does not require deduction of banking organization shares owned by the pension fund. Another commenter asked for clarification regarding the treatment of an overfunded pension asset at an insured depository institution if the pension plan sponsor is the parent BHC. The FDIC clarifies that the requirement to deduct a defined benefit pension plan net asset is not dependent upon the sponsor of the plan; rather it is dependent upon whether the net pension fund asset is an asset of an insured depository institution. The agencies also received questions regarding the appropriate risk-weight treatment for a pension fund asset. As discussed above, with the prior agency approval, a banking organization that is not an insured depository institution may elect to not deduct any defined benefit pension fund net asset to the extent such banking organization has unrestricted and unfettered access to the assets in that defined benefit pension fund. Any portion of the defined benefit pension fund net asset that is not deducted by the banking organization must be risk-weighted as if the banking organization directly holds a proportional ownership share of each exposure in the defined benefit pension fund. For example, if the banking organization has a defined benefit pension fund net asset of $10 and it has unfettered and unrestricted access to the assets of defined benefit pension fund, and assuming 20 percent of the defined benefit pension fund is composed of assets that are risk-weighted at 100 percent and 80 percent is composed of assets that are risk-weighted at 300 percent, the banking organization would risk weight $2 at 100 percent and $8 at 300 percent. This treatment is consistent with the full look-through approach described in section 53(b) of the interim final rule. If the defined benefit pension fund invests in the capital of a financial institution, including an investment in the banking organization's own capital

[78] The FDIC has unfettered access to the pension fund assets of an insured depository institution's pension plan in the event of receivership; therefore, the FDIC determined that an insured depository institution would not be required to deduct a net pension fund asset.

instruments, the banking organization would risk weight the proportional share of such exposure in accordance with the treatment under subparts D or E, as appropriate.

The FDIC is adopting as final this section of the proposal with the changes described above.

d. Expected Credit Loss That Exceeds Eligible Credit Reserves

The proposal required an advanced approaches banking organization to deduct from common equity tier 1 capital elements the amount of expected credit loss that exceeds the banking organization's eligible credit reserves.

Commenters sought clarification that the proposed deduction would not apply for advanced approaches banking organizations that have not received the approval of their primary Federal supervisor to exit parallel run. The FDIC agrees that the deduction would not apply to FDIC-supervised institutions that have not received approval from their primary Federal supervisor to exit parallel run. In response, the FDIC has revised this provision of the interim final rule to apply to an FDIC-supervised institution subject to subpart E of the interim final rule that has completed the parallel run process and that has received notification from the FDIC under section 324.121(d) of the advanced approaches rule.

e. Equity Investments in Financial Subsidiaries

Section 121 of the Gramm-Leach-Bliley Act allows national banks and insured state banks to establish entities known as financial subsidiaries.[79] 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 depository institution's assets and tangible equity.[80] The FDIC implemented this statutory requirement through regulation at 12 CFR 362.18.

Under section 22(a)(7) of the proposal, investments by an insured state bank in financial subsidiaries would be deducted entirely from the bank's common equity tier 1 capital.[81] Because common equity tier 1 capital is a component of tangible equity, the proposed deduction from common equity tier 1 would have automatically resulted in a deduction from tangible equity. The FDIC believes that the more conservative treatment is appropriate for financial subsidiaries given the risks associated with nonbanking activities, and are finalizing this treatment as proposed. Therefore, under the interim final rule, an FDIC-supervised institution must deduct the aggregate amount of its outstanding equity investment in a financial subsidiary, including the retained earnings of a subsidiary from common equity tier 1 capital elements, and the assets and liabilities of the subsidiary may not be consolidated with those of the parent bank.

f. Deduction for Subsidiaries of Savings Associations That Engage in Activities That Are Not Permissible for National Banks

Section 5(t)(5)[82] of HOLA requires a separate capital calculation for state savings associations for ''investments in and extensions of credit to any subsidiary engaged in activities not permissible for a national bank.'' This statutory provision was implemented in the state savings associations' capital rules through a deduction from the core (tier 1) capital of the state savings association for those subsidiaries that are not ''includable subsidiaries.'' The FDIC proposed to continue the general risk-based capital treatment of includable subsidiaries, with some technical modifications. Aside from those technical modifications, the proposal would have transferred, without substantive change, the current general regulatory treatment of deducting subsidiary investments where a subsidiary is engaged in activities not permissible for a national bank. Such treatment is consistent with how a national bank deducts its equity investments in financial subsidiaries. The FDIC proposed an identical treatment for state savings associations.[83]

The FDIC received no comments on this proposed deduction. The interim final rule adopts the proposal with one change and other minor technical edits, consistent with 12 U.S.C. 1464(t)(5), to clarify that the required deduction for a state savings association's investment in a subsidiary that is engaged in activities not permissible for a national bank includes extensions of credit to such a subsidiary.

g. Identified Losses for State Nonmember Banks

Under its existing capital rules, the FDIC requires state nonmember banks to deduct from tier 1 capital elements identified losses to the extent that tier 1 capital would have been reduced if the appropriate accounting entries had been recorded on the insured depository institution's books. Generally, for purposes of these rules, identified losses are those items that an examiner from the federal or state supervisor for that institution determines to be chargeable against income, capital, or general valuation allowances. For example, identified losses may include, among other items, assets classified loss, off-balance sheet items classified loss, any expenses that are necessary for the institution to record in order to replenish its general valuation allowances to an adequate level, and estimated losses on contingent liabilities.

The FDIC is revising the interim final rule to clarify that state nonmember banks and state savings associations remain subject to its long-standing supervisory procedures regarding the deduction of identified losses. Therefore, for purposes of the interim final rule, such institutions must deduct identified losses from common equity tier 1 capital elements.

2. Regulatory Adjustments to Common Equity Tier 1 Capital

a. Accumulated Net Gains and Losses on Certain Cash-Flow Hedges

Consistent with Basel III, under the proposal, a banking organization would have been required to exclude from regulatory capital any accumulated net gains and losses on cash-flow hedges relating to items that are not recognized at fair value on the balance sheet.

This proposed regulatory adjustment was intended to reduce the artificial volatility that can arise in a situation in which the accumulated net 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. The agencies received a number of comments on this proposed regulatory capital adjustment. In general, the commenters noted that while the intent of the adjustment is to remove an element that gives rise to artificial volatility in common equity, the proposed adjustment may actually increase volatility in the measure of common equity tier 1 capital. These commenters indicated that the proposed adjustment, together with the proposed treatment of net unrealized gains and losses on AFS debt securities, would create incentives for banking organizations to avoid hedges that reduce interest rate risk; shorten maturity of their investments in AFS securities; or move their investment

[79] Public Law 106–102, 113 Stat. 1338, 1373 (Nov. 12, 1999).

[80] 12 U.S.C. 24a(c); 12 U.S.C. 1831w(a)(2).

[81] The deduction provided for in the FDIC's existing regulations would be removed and would exist solely in the interim final rule.

[82] 12 U.S.C. 1464(t)(5).

[83] 12 CFR 324.22.

securities portfolio from AFS to HTM. To address these concerns, commenters suggested several alternatives, such as including all accumulated net gains and losses on cash-flow hedges in common equity tier 1 capital to match the proposal to include in common equity tier 1 capital net unrealized gains and losses on AFS debt securities; retaining the provisions in the agencies' general risk-based capital rules that exclude most elements of AOCI from regulatory capital; or using a principles-based approach to accommodate variations in the interest rate management techniques employed by each banking organization.

Under the interim final rule, the FDIC has retained the requirement that all FDIC-supervised institutions subject to the advanced approaches rule, and those FDIC-supervised institutions that elect to include AOCI in common equity tier 1 capital, must subtract from common equity tier 1 capital elements any accumulated net gains and must add any accumulated net 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. The FDIC believes that this adjustment removes an element that gives rise to artificial volatility in common equity tier 1 capital as it would avoid a situation in which the changes in the fair value of the cash-flow hedge are reflected in capital but the changes in the fair value of the hedged item are not.

b. Changes in an FDIC-Supervised Institution's Own Credit Risk

The proposal provided that a banking organization would not be permitted to include in regulatory capital any change in the fair value of a liability attributable to changes in the banking organization's own credit risk. In addition, the proposal would have required advanced approaches banking organizations to deduct the credit spread premium over the risk-free rate for derivatives that are liabilities. Consistent with Basel III, these provisions were intended to prevent a banking organization from recognizing increases in regulatory capital resulting from any change in the fair value of a liability attributable to changes in the banking organization's own creditworthiness. Under the interim final rule, all FDIC-supervised institutions not subject to the advanced approaches rule must deduct any cumulative gain from and add back to common equity tier 1 capital elements any cumulative loss attributed to changes in the value of a liability measured at fair value arising from changes in the FDIC-supervised institution's own credit risk. This requirement would apply to all liabilities that an FDIC-supervised institution must measure at fair value under GAAP, such as derivative liabilities, or for which the FDIC-supervised institution elects to measure at fair value under the fair value option.[84]

Similarly, advanced approaches FDIC-supervised institutions must deduct any cumulative gain from and add back any cumulative loss to common equity tier 1 capital elements attributable to changes in the value of a liability that the FDIC-supervised institution elects to measure at fair value under GAAP. For derivative liabilities, advanced approaches FDIC-supervised institutions must implement this requirement by deducting the credit spread premium over the risk-free rate.

c. Accumulated Other Comprehensive Income

Under the agencies' general risk-based capital rules, most of the components of AOCI included in a company's GAAP equity are not included in an FDIC-supervised institution's regulatory capital. Under GAAP, AOCI includes unrealized gains and losses on certain assets and liabilities that are not included in net income. Among other items, AOCI includes unrealized gains and losses on AFS securities; other than temporary impairment on securities reported as HTM that are not credit-related; cumulative gains and losses on cash-flow hedges; foreign currency translation adjustments; and amounts attributed to defined benefit post-retirement plans resulting from the initial and subsequent application of the relevant GAAP standards that pertain to such plans.

Under the agencies' general risk-based capital rules, FDIC-supervised institutions do not include most amounts reported in AOCI in their regulatory capital calculations. Instead, they exclude these amounts by subtracting unrealized or accumulated net gains from, and adding back unrealized or accumulated net losses to, equity capital. The only amounts of AOCI included in regulatory capital are unrealized losses on AFS equity securities and foreign currency translation adjustments, which are included in tier 1 capital. Additionally, FDIC-supervised institutions may include up to 45 percent of unrealized gains on AFS equity securities in their tier 2 capital.

In contrast, consistent with Basel III, the proposed rule required banking organizations to include all AOCI components in common equity tier 1 capital elements, except gains and losses on cash-flow hedges where the hedged item is not recognized on a banking organization's balance sheet at fair value. Unrealized gains and losses on all AFS securities would flow through to common equity tier 1 capital elements, including unrealized gains and losses on debt securities due to changes in valuations that result primarily from fluctuations in benchmark interest rates (for example, U.S. Treasuries and U.S. government agency debt obligations), as opposed to changes in credit risk.

In the Basel III NPR, the agencies indicated that the proposed regulatory capital treatment of AOCI would better reflect an institution's actual risk. In particular, the agencies stated that while unrealized gains and losses on AFS debt securities might be temporary in nature and reverse over a longer time horizon (especially when those gains and losses are primarily attributable to changes in benchmark interest rates), unrealized losses could materially affect a banking organization's capital position at a particular point in time and associated risks should therefore be reflected in its capital ratios. In addition, the agencies observed that the proposed treatment would be consistent with the common market practice of evaluating a firm's capital strength by measuring its tangible common equity, which generally includes AOCI.

However, the agencies also acknowledged that including unrealized gains and losses related to debt securities (especially those 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. Specifically, the agencies observed that for some banking organizations, including unrealized losses on AFS debt securities in their regulatory capital calculations could mean that fluctuations in a benchmark interest rate could lead to changes in their PCA categories from quarter to quarter. Recognizing the potential impact of such fluctuations on regulatory capital management for some institutions, the agencies described possible alternatives to the proposed treatment of unrealized gains and losses on AFS debt securities, including an approach that would exclude from regulatory capital calculations those unrealized gains and losses that are related to AFS debt securities whose valuations primarily change as a result of fluctuations in benchmark interest rates, including U.S. government and

[84] 825–10–25 (former Financial Accounting Standards Board Statement No. 159).

agency debt obligations, GSE debt obligations, and other sovereign debt obligations that would qualify for a zero percent risk weight under the standardized approach.

A large proportion of commenters addressed the proposed treatment of AOCI in regulatory capital. Banking organizations of all sizes, banking and other industry groups, public officials (including members of the U.S. Congress), and other individuals strongly opposed the proposal to include most AOCI components in common equity tier 1 capital.

Specifically, commenters asserted that the agencies should not implement the proposal and should instead continue to apply the existing treatment for AOCI that excludes most AOCI amounts from regulatory capital. Several commenters stated that the accounting standards that require banking organizations to take a charge against earnings (and thus reduce capital levels) to reflect credit-related losses as part of other-than-temporary impairments already achieve the agencies' goal to create regulatory capital ratios that provide an accurate picture of a banking organization's capital position, without also including AOCI in regulatory capital. For unrealized gains and losses on AFS debt securities that typically result from changes in benchmark interest rates rather than changes in credit risk, most commenters expressed concerns that the value of such securities on any particular day might not be a good indicator of the value of those securities for a banking organization, given that the banking organization could hold them until they mature and realize the amount due in full. Most commenters argued that the inclusion of unrealized gains and losses on AFS debt securities in regulatory capital could result in volatile capital levels and adversely affect other measures tied to regulatory capital, such as legal lending limits, especially if and when interest rates rise from their current historically-low levels.

Accordingly, several commenters requested that the agencies permit banking organizations to remove from regulatory capital calculations unrealized gains and losses on AFS debt securities that have low credit risk but experience price movements based primarily on fluctuations in benchmark interest rates. According to commenters, these debt securities would include securities issued by the United States and other stable sovereign entities, U.S. agencies and GSEs, as well as some municipal entities. One commenter expressed concern that the proposed treatment of AOCI would lead banking organizations to invest excessively in securities with low volatility. Some commenters also suggested that unrealized gains and losses on high-quality asset-backed securities and high-quality corporate securities should be excluded from regulatory capital calculations. The commenters argued that these adjustments to the proposal would allow regulatory capital to reflect unrealized gains or losses related to the credit quality of a banking organization's AFS debt securities.

Additionally, commenters noted that, under the proposal, offsetting changes in the value of other items on a banking organization's balance sheet would not be recognized for regulatory capital purposes when interest rates change. For example, the commenters observed that banking organizations often hold AFS debt securities to hedge interest rate risk associated with deposit liabilities, which are not marked to fair value on the balance sheet. Therefore, requiring banking organizations to include AOCI in regulatory capital would mean that interest rate fluctuations would be reflected in regulatory capital only for one aspect of this hedging strategy, with the result that the proposed treatment could greatly overstate the economic impact that interest rate changes have on the safety and soundness of the banking organization.

Several commenters used sample AFS securities portfolio data to illustrate how an upward shift in interest rates could have a substantial impact on a banking organization's capital levels (depending on the composition of its AFS portfolio and its defined benefit postretirement obligations). According to these commenters, the potential negative impact on capital levels that could follow a substantial increase in interest rates would place significant strains on banking organizations.

To address the potential impact of incorporating the volatility associated with AOCI into regulatory capital, banking organizations also noted that they could increase their overall capital levels to create a buffer above regulatory minimums, hedge or reduce the maturities of their AFS debt securities, or shift more debt securities into their HTM portfolio. However, commenters asserted that these strategies would be complicated and costly, especially for smaller banking organizations, and could lead to a significant decrease in lending activity. Many community banking organization commenters observed that hedging or raising additional capital may be especially difficult for banking organizations with limited access to capital markets, while shifting more debt securities into the HTM portfolio would impair active management of interest rate risk positions and negatively impact a banking organization's liquidity position. These commenters also expressed concern that this could be especially problematic given the increased attention to liquidity by banking regulators and industry analysts.

A number of commenters indicated that in light of the potential impact of the proposed treatment of AOCI on a banking organization's liquidity position, the agencies should, at the very least, postpone implementing this aspect of the proposal until after implementation of the BCBS's revised liquidity standards. Commenters suggested that postponing the implementation of the AOCI treatment would help to ensure that the final capital rules do not create disincentives for a banking organization to increase its holdings of high-quality liquid assets. In addition, several commenters suggested that the agencies not require banking organizations to include in regulatory capital unrealized gains and losses on assets that would qualify as ''high quality liquid assets'' under the BCBS's ''liquidity coverage ratio'' under the Basel III liquidity framework.

Finally, several commenters addressed the inclusion in AOCI of actuarial gains and losses on defined benefit pension fund obligations. Commenters stated that many banking organizations, particularly mutual banking organizations, offer defined benefit pension plans to attract employees because they are unable to offer stock options to employees. These commenters noted that actuarial gains and losses on defined benefit obligations represent the difference between benefit assumptions and, among other things, actual investment experiences during a given year, which is influenced predominantly by the discount rate assumptions used to determine the value of the plan obligation. The discount rate is tied to prevailing long-term interest rates at a point in time each year, and while market returns on the underlying assets of the plan and the discount rates may fluctuate year to year, the underlying liabilities typically are longer term—in some cases 15 to 20 years. Therefore, changing interest rate environments could lead to material fluctuations in the value of a banking organization's defined benefit post-retirement fund assets and liabilities, which in turn could create material swings in a banking organization's regulatory capital that would not be tied to changes

in the credit quality of the underlying assets. Commenters stated that the added volatility in regulatory capital could lead some banking organizations to reconsider offering defined benefit pension plans.

The FDIC has considered the comments on the proposal to incorporate most elements of AOCI in regulatory capital, and has taken into account the potential effects that the proposed AOCI treatment could have on FDIC-supervised institutions and their function in the economy. As discussed in the proposal, the FDIC believes that the proposed AOCI treatment results in a regulatory capital measure that better reflects FDIC-supervised institutions' actual risk at a specific point in time. The FDIC also believes that AOCI is an important indicator that market observers use to evaluate the capital strength of an FDIC-supervised institution.

However, the FDIC recognizes that for many FDIC-supervised institutions, the volatility in regulatory capital that could result from the proposal could lead to significant difficulties in capital planning and asset-liability management. The FDIC also recognizes that the tools used by advanced approaches FDIC-supervised institutions and other larger, more complex FDIC-supervised institutions for managing interest rate risk are not necessarily readily available to all FDIC-supervised institutions.

Therefore, in the interim final rule, the FDIC has decided to permit those FDIC-supervised institutions that are not subject to the advanced approaches risk-based capital rules to elect to calculate regulatory capital by using the treatment for AOCI in the FDIC's general risk-based capital rules, which excludes most AOCI amounts. Such FDIC-supervised institutions, may make a one-time, permanent election [85] to effectively continue using the AOCI treatment under the general risk-based capital rules for their regulatory calculations (''AOCI opt-out election'') when filing the Call Report for the first reporting period after the date upon which they become subject to the interim final rule.

Pursuant to a separate notice under the Paperwork Reduction Act, the agencies intend to propose revisions to the Call Report to implement changes in reporting items that would correspond to the interim final rule. These revisions will include a line item for FDIC-supervised institutions to indicate their AOCI opt-out election in their first regulatory report filed after the date the FDIC-supervised institution becomes subject to the interim final rule. Information regarding the AOCI opt-out election will be made available to the public and will be reflected on an ongoing basis in publicly available regulatory reports. An FDIC-supervised institution that does not make an AOCI opt-out election on the Call Report filed for the first reporting period after the effective date of the interim final rule must include all AOCI components, except accumulated net gains and losses on cash-flow hedges related to items that are not recognized at fair value on the balance sheet, in regulatory capital elements starting the first quarter in which the FDIC-supervised institution calculates its regulatory capital requirements under the interim final rule.

Consistent with regulatory capital calculations under the FDIC's general risk-based capital rules, an FDIC-supervised institution that makes an AOCI opt-out election under the interim final rule must adjust common equity tier 1 capital elements by: (1) Subtracting any net unrealized gains and adding any net unrealized losses on AFS securities; (2) subtracting any net unrealized losses on AFS preferred stock classified as an equity security under GAAP and AFS equity exposures; (3) subtracting any accumulated net gains and adding back any accumulated net losses on cash-flow hedges included in AOCI; (4) subtracting amounts attributed to defined benefit postretirement plans resulting from the initial and subsequent application of the relevant GAAP standards that pertain to such plans (excluding, at the FDIC-supervised institution's option, the portion relating to pension assets deducted under section 324.22(a)(5)); and (5) subtracting any net unrealized gains and adding any net unrealized losses on held-to-maturity securities that are included in AOCI. In addition, consistent with the general risk-based capital rules, the FDIC-supervised institution must incorporate into common equity tier 1 capital any foreign currency translation adjustment. An FDIC-supervised institution may also incorporate up to 45 percent of any net unrealized gains on AFS preferred stock classified as an equity security under GAAP and AFS equity exposures into its tier 2 capital elements. However, the FDIC may exclude all or a portion of these unrealized gains from an FDIC-supervised institution's tier 2 capital under the reservation of authority provision of the interim final rule if the FDIC determines that such preferred stock or equity exposures are not prudently valued.

The FDIC believes that FDIC-supervised institutions that apply the advanced approaches rule or that have opted to use the advanced approaches rule should already have the systems in place necessary to manage the added volatility resulting from the new AOCI treatment. Likewise, pursuant to the Dodd-Frank Act, these large, complex FDIC-supervised institutions are subject to enhanced prudential standards, including stress-testing requirements, and therefore should be prepared to manage their capital levels through the types of stressed economic environments, including environments with shifting interest rates, that could lead to substantial changes in amounts reported in AOCI. Accordingly, under the interim final rule, advanced approaches FDIC-supervised institutions will be required to incorporate all AOCI components, except accumulated net gains and losses on cash-flow hedges that relate to items that are not measured at fair value on the balance sheet, into their common equity tier 1 capital elements according to the transition provisions set forth in the interim final rule.

The interim final rule additionally provides that in a merger, acquisition, or purchase transaction between two FDIC-supervised institutions that have each made an AOCI opt-out election, the surviving entity will be required to continue with the AOCI opt-out election, unless the surviving entity is an advanced approaches FDIC-supervised institution. Similarly, in a merger, acquisition, or purchase transaction between two FDIC-supervised institutions that have each not made an AOCI opt-out election, the surviving entity must continue implementing such treatment going forward. If an entity surviving a merger, acquisition, or purchase transaction becomes subject to the advanced approaches rule, it is no longer permitted to make an AOCI opt-out election and, therefore, must include most elements of AOCI in regulatory capital in accordance with the interim final rule.

However, following a merger, acquisition or purchase transaction involving all or substantially all of the assets or voting stock between two banking organizations of which only one made an AOCI opt-out election (and the surviving entity is not subject to the advanced approaches rule), the

[85] This one-time, opt-out selection does not cover a merger, acquisition or purchase transaction involving all or substantially all of the assets or voting stock between two banking organizations of which only one made an AOCI opt-out election. The resulting organization may make an AOCI election with prior agency approval.

surviving entity must decide whether to make an AOCI opt-out election by its first regulatory reporting date following the consummation of the transaction.[86] For example, if all of the equity of a banking organization that has made an AOCI opt-out election is acquired by a banking organization that has not made such an election, the surviving entity may make a new AOCI opt-out election in the Call Report filed for the first reporting period after the effective date of the merger. The interim final rule also provides the FDIC with discretion to allow a new AOCI opt-out election where a merger, acquisition or purchase transaction between two banking organizations that have made different AOCI opt-out elections does not involve all or substantially all of the assets or voting stock of the purchased or acquired banking organization. In making such a determination, the FDIC may consider the terms of the merger, acquisition, or purchase transaction, as well as the extent of any changes to the risk profile, complexity, and scope of operations of the banking organization resulting from the merger, acquisition, or purchase transaction. The FDIC may also look to the Bank Merger Act[87] for guidance on the types of transactions that would allow the surviving entity to make a new AOCI opt-out election. Finally, a de novo FDIC-supervised institution formed after the effective date of the interim final rule is required to make a decision to opt out in the first Call Report it is required to file.

The interim final rule also provides that if a top-tier depository institution holding company makes an AOCI opt-out election, any subsidiary insured depository institution that is consolidated by the depository institution holding company also must make an AOCI opt-out election. The FDIC is concerned that if some FDIC-supervised institutions subject to regulatory capital rules under a common parent holding company make an AOCI opt-out election and others do not, there is a potential for these organizations to engage in capital arbitrage by choosing to book exposures or activities in the legal entity for which the relevant components of AOCI are treated most favorably.

Notwithstanding the availability of the AOCI opt-out election under the interim final rule, the FDIC has reserved the authority to require an FDIC-supervised institution to recognize all or some components of AOCI in regulatory capital if an agency determines it would be appropriate given an FDIC-supervised institution's risks under the FDIC's general reservation of authority under the interim final rule. The FDIC will continue to expect each FDIC-supervised institution to maintain capital appropriate for its actual risk profile, regardless of whether it has made an AOCI opt-out election. Therefore, the FDIC may determine that an FDIC-supervised institution with a large portfolio of AFS debt securities, or that is otherwise engaged in activities that expose it to high levels of interest-rate or other risks, should raise its common equity tier 1 capital level substantially above the regulatory minimums, regardless of whether that FDIC-supervised institution has made an AOCI opt-out election.

d. Investments in Own Regulatory Capital Instruments

To avoid the double-counting of regulatory capital, the proposal would have required a banking organization to deduct the amount of its investments in its own capital instruments, including direct and indirect exposures, to the extent such instruments are not already excluded from regulatory capital. Specifically, the proposal would require a banking organization to deduct its investment in its own common equity tier 1, additional tier 1, and tier 2 capital instruments from the sum of its common equity tier 1, additional tier 1, and tier 2 capital, respectively. In addition, under the proposal any common equity tier 1, additional tier 1, or tier 2 capital instrument issued by a banking organization that the banking organization could be contractually obligated to purchase also would have been deducted from common equity tier 1, additional tier 1, or tier 2 capital elements, respectively. The proposal noted that if a banking organization had already deducted its investment in its own capital instruments (for example, treasury stock) from its common equity tier 1 capital, it would not need to make such deductions twice.

The proposed rule would have required a banking organization to look through its holdings of an index 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 would have been netted against short positions in the same underlying index. Short positions in indexes to hedge long cash or synthetic positions could have been decomposed to recognize the hedge. More specifically, the portion of the index composed of the same underlying exposure that is being hedged could have been used to offset the long position only if both the exposure being hedged and the short position in the index were covered positions under the market risk rule and the hedge was deemed effective by the banking organization's internal control processes which would have been assessed by the primary Federal supervisor of the banking organization. If the banking organization found it operationally burdensome to estimate the investment amount of an index holding, the proposal permitted the institution to use a conservative estimate with prior approval from its primary Federal supervisor. In all other cases, gross long positions would have been allowed to be deducted net of short positions in the same underlying instrument only if the short positions involved no counterparty risk (for example, the position was fully collateralized or the counterparty is a qualifying central counterparty (QCCP)).

As discussed above, under the proposal, a banking organization would be required to look through its holdings of an index security to deduct investments in its own capital instruments. Some commenters asserted that the burden of the proposed look-through approach outweighs its benefits because it is not likely a banking organization would re-purchase its own stock through such indirect means. These commenters suggested that the agencies should not require a look-through test for index securities on the grounds that they are not ''covert buybacks,'' but rather are incidental positions held within a banking organization's trading book, often entered into on behalf of clients, customers or counterparties, and are economically hedged. However, the FDIC believes that it is important to avoid the double-counting of regulatory capital, whether held directly or indirectly. Therefore, the interim final rule implements the look-through requirements of the proposal without change. In addition, consistent with the treatment for indirect investments in an FDIC-supervised institution's own capital instruments, the FDIC has clarified in the interim final rule that FDIC-supervised institutions must

[86] A merger would involve ''all or substantially all'' of the assets or voting stock where, for example: (1) a banking organization buys all of the voting stock of a target banking organization, except for the stock of a dissenting, non-controlling minority shareholder; or (2) the banking organization buys all of the assets and major business lines of a target banking organization, but does not purchase a minor business line of the target. Circumstances in which the ''all or substantially all'' standard likely would not be met would be, for example: (1) a banking organization buys less than 80 percent of another banking organization; or (3) a banking organization buys only three out of four of another banking organization's major business lines.

[87] 12 U.S.C. 1828(c).

deduct synthetic exposures related to investments in own capital instruments.

e. Definition of Financial Institution

Under the proposed rule, a banking organization would have been required to deduct an investment in the capital of an unconsolidated financial institution exceeding certain thresholds, as described below. The proposed definition of financial institution was designed to include entities whose activities and primary business are financial in nature and therefore could contribute to interconnectedness in the financial system. The proposed definition covered entities whose primary business is banking, insurance, investing, and trading, or a combination thereof, and included BHCs, SLHCs, nonbank financial institutions supervised by the Federal Reserve under Title I of the Dodd-Frank Act, depository institutions, foreign banks, credit unions, insurance companies, securities firms, commodity pools, covered funds for purposes of section 13 of the Bank Holding Company Act and regulations issued thereunder, companies ''predominantly engaged'' in financial activities, non-U.S.-domiciled entities that would otherwise have been covered by the definition if they were U.S.-domiciled, and any other company that the agencies determined was a financial institution based on the nature and scope of its activities. The definition excluded GSEs and firms that were ''predominantly engaged'' in activities that are financial in nature but focus on community development, public welfare projects, and similar objectives. Under the proposed definition, a company would have been ''predominantly engaged'' in financial activities if (1) 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 (2) 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.

The proposed definition of ''financial institution'' was also relevant for purposes of the Advanced Approaches NPR. Specifically, the proposed rule would have required banking organizations to 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. The proposed rule also would have required advanced approaches banking organizations to apply a multiplier of 1.25 to wholesale exposures to regulated financial institutions with consolidated assets greater than or equal to $100 billion.[88]

The agencies received a number of comments on the proposed definition of ''financial institution.'' Commenters expressed concern that the definition of a financial institution was overly broad and stated that it should not include investments in funds, commodity pools, or ERISA plans. Other commenters stated that the ''predominantly engaged'' test would impose significant operational burdens on banking organizations in determining what companies would be included in the proposed definition of ''financial institution.'' Commenters suggested that the agencies should risk weight such exposures, rather than subjecting them to a deduction from capital based on the definition of financial institution.

Some of the commenters noted that many of the exposures captured by the financial institution definition may be risk-weighted under certain circumstances, and expressed concerns that overlapping regulation would result in confusion. For similar reasons, commenters recommended that the agencies limit the definition of financial institution to specific enumerated entities, such as regulated financial institutions, including insured depository institutions and holding companies, nonbank financial companies designated by the Financial Stability Oversight Council, insurance companies, securities holding companies, foreign banks, securities firms, futures commission merchants, swap dealers, and security based swap dealers. Other commenters stated that the definition should cover only those entities subject to consolidated regulatory capital requirements. Commenters also encouraged the agencies to adopt alternatives to the ''predominantly engaged'' test for identifying a financial institution, such as the use of standard industrial classification codes or legal entity identifiers. Other commenters suggested that the agencies should limit the application of the ''predominantly engaged'' test in the definition of ''financial institution'' to companies above a specified size threshold. Similarly, others requested that the agencies exclude any company with total assets of less than $50 billion. Many commenters indicated that the broad definition proposed by the agencies was not required by Basel III and was unnecessary to promote systemic stability and avoid interconnectivity. Some commenters stated that funds covered by Section 13 of the Bank Holding Company Act also should be excluded. Other commenters suggested that the agencies should exclude investment funds registered with the SEC under the Investment Company Act of 1940 and their foreign equivalents, while some commenters suggested methods of narrowing the definition to cover only leveraged funds. Commenters also requested that the agencies clarify that investment or financial advisory activities include providing both discretionary and non-discretionary investment or financial advice to customers, and that the definition would not capture either registered investment companies or investment advisers to registered funds.

After considering the comments, the FDIC has modified the definition of ''financial institution'' to provide more clarity around the scope of the definition as well as reduce operational burden. Separate definitions are adopted under the advanced approaches provisions of the interim final rule for ''regulated financial institution'' and ''unregulated financial institution'' for purposes of calculating the correlation factor for wholesale exposures, as discussed in section XII.A of this preamble.

Under the interim final rule, the first paragraph of the definition of a financial institution includes an enumerated list of regulated institutions similar to the list that appeared in the first paragraph of the proposed definition: A BHC; SLHC; nonbank financial institution supervised by the Federal Reserve under Title I of the Dodd-Frank Act; depository institution; foreign bank; credit union; industrial loan company, industrial bank, or other similar institution described in section 2 of the Bank Holding Company Act; national association, state member bank, or state nonmember bank that is not a depository institution; insurance company; securities holding company as defined in section 618 of the Dodd-Frank Act; broker or dealer registered with the SEC; futures commission merchant and swap dealer, each as

[88] The definitions of regulated financial institutions and unregulated financial institutions are discussed in further detail in section XII.A of this preamble. Under the proposal, a ''regulated financial institution'' would include a financial institution subject to consolidated supervision and regulation comparable to that imposed on U.S. companies that are depository institutions, depository institution holding companies, nonbank financial companies supervised by the Board, broker dealers, credit unions, insurance companies, and designated financial market utilities.

defined in the Commodity Exchange Act; or security-based swap dealer; or any designated financial market utility (FMU). The definition also includes foreign companies that would be covered by the definition if they are supervised and regulated in a manner similar to the institutions described above that are included in the first paragraph of the definition of ''financial institution.'' The FDIC also has retained in the final definition of ''financial institution'' a modified version of the proposed ''predominantly engaged'' test to capture additional entities that perform certain financial activities that the FDIC believes appropriately addresses those relationships among financial institutions that give rise to concerns about interconnectedness, while reducing operational burden. Consistent with the proposal, a company is ''predominantly engaged'' in financial activities for the purposes of the definition if it meets the test to the extent the following activities make up more than 85 percent of the company's total assets or gross revenues:

(1) Lending money, securities or other financial instruments, including servicing loans;

(2) Insuring, guaranteeing, indemnifying against loss, harm, damage, illness, disability, or death, or issuing annuities;

(3) Underwriting, dealing in, making a market in, or investing as principal in securities or other financial instruments; or

(4) Asset management activities (not including investment or financial advisory activities).

In response to comments expressing concerns regarding operational burden and potential lack of access to necessary information in applying the proposed ''predominantly engaged'' test, the FDIC has revised that portion of the definition. Now, the FDIC-supervised institution would only apply the test if it has an investment in the GAAP equity instruments of the company with an adjusted carrying value or exposure amount equal to or greater than $10 million, or if it owns more than 10 percent of the company's issued and outstanding common shares (or similar equity interest). The FDIC believes that this modification would reduce burden on FDIC-supervised institutions with small exposures, while those with larger exposures should have sufficient information as a shareholder to conduct the predominantly engaged analysis.[89]

In cases when an FDIC-supervised institution's investment in the FDIC-supervised institution exceeds one of the thresholds described above, the FDIC-supervised institution must determine whether the company is predominantly engaged in financial activities, in accordance with the interim final rule. The FDIC believes that this modification will substantially reduce operational burden for FDIC-supervised institutions with investments in multiple institutions. The FDIC also believes that an investment of $10 million in or a holding of 10 percent of the outstanding common shares (or equivalent ownership interest) of an entity has the potential to create a risk of interconnectedness, and also makes it reasonable for the FDIC-supervised institution to gain information necessary to understand the operations and activities of the company in which it has invested and to apply the proposed ''predominantly engaged'' test under the definition. The FDIC is clarifying that, consistent with the proposal, investment or financial advisers (whether they provide discretionary or non-discretionary advisory services) are not covered under the definition of financial institution. The revised definition also specifically excludes employee benefit plans. The FDIC believes, upon review of the comments, that employee benefit plans are heavily regulated under ERISA and do not present the same kind of risk of systemic interconnectedness that the enumerated financial institutions present. The revised definition also explicitly excludes investment funds registered with the SEC under the Investment Company Act of 1940, as the FDIC believes that such funds create risks of systemic interconnectedness largely through their investments in the capital of financial institutions. These investments are addressed directly by the interim final rule's treatment of indirect investments in financial institutions. Although the revised definition does not specifically include commodities pools, under some circumstances an FDIC-supervised institution's investment in a commodities pool might meet the requirements of the modified ''predominantly engaged'' test.

Some commenters also requested that the agencies establish an asset threshold below which an entity would not be included in the definition of ''financial institution.'' The FDIC has not included such a threshold because they are concerned that it could create an incentive for multiple investments and aggregated exposures in smaller financial institutions, thereby undermining the rationale underlying the treatment of investments in the capital of unconsolidated financial institutions. The FDIC believes that the definition of financial institution appropriately captures both large and small entities engaged in the core financial activities that the FDIC believes should be addressed by the definition and associated deductions from capital. The FDIC believes, however, that the modification to the ''predominantly engaged'' test, should serve to alleviate some of the burdens with which the commenters who made this point were concerned.

Consistent with the proposal, investments in the capital of unconsolidated financial institutions that are held indirectly (indirect exposures) are subject to deduction. Under the proposal, a banking organization's entire investment in, for example, a registered investment company would have been subject to deduction from capital. Although those entities are excluded from the definition of financial institution in the interim final rule unless the ownership threshold is met, any holdings in the capital instruments of financial institutions held indirectly through investment funds are subject to deduction from capital. More generally, and as described later in this section of the preamble, the interim final rule provides an explicit mechanism for calculating the amount of an indirect investment subject to deduction.

f. The Corresponding Deduction Approach

The proposals incorporated the Basel III corresponding deduction approach for the deductions from regulatory capital related to reciprocal crossholdings, 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 proposal, a banking organization would have been 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 did not have a sufficient amount of a specific regulatory capital component against which to effect the deduction, the shortfall would have been deducted from the next higher (that is, more subordinated) regulatory

[89] For advanced approaches FDIC-supervised institutions, for purposes of section 131 of the interim final rule, the definition of ''unregulated financial institution'' does not include the ownership limitation in applying the ''predominantly engaged'' standard.

capital component. For example, if a banking organization did not have enough additional tier 1 capital to satisfy the required deduction, the shortfall would be deducted from common equity tier 1 capital elements.

Under the proposal, if the banking organization invested in an instrument issued by an financial institution that is not a regulated financial institution, the banking organization would have treated 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 supervisor of the financial institution.

Some commenters sought clarification on whether, under the corresponding deduction approach, TruPS would be deducted from tier 1 or tier 2 capital. In response to these comments the FDIC has revised the interim final rule to clarify the deduction treatment for investments of non-qualifying capital instruments, including TruPS, under the corresponding deduction approach. The interim final rule includes a new paragraph section 22(c)(2)(iii) to provide that if an investment is in the form of a non-qualifying capital instrument described in section 300(d) of the interim final rule, the FDIC-supervised institution must treat the instrument as a: (1) tier 1 capital instrument if it was included in the issuer's tier 1 capital prior to May 19, 2010; or (2) tier 2 capital instrument if it was included in the issuer's tier 2 capital (but not eligible for inclusion in the issuer's tier 1 capital) prior to May 19, 2010.

In addition, to avoid a potential circularity issue (related to the combined impact of the treatment of ALLL and the risk-weight treatment for threshold items that are not deducted from common equity tier 1 capital) in the calculation of common equity tier 1 capital, the interim final rule clarifies that FDIC-supervised institutions must apply any deductions under the corresponding deduction approach resulting from insufficient amounts of a specific regulatory capital component after applying any deductions from the items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds discussed further below. This was accomplished by removing proposed paragraph 22(c)(2)(i) from the corresponding deduction approach section and inserting paragraph 22(f). Under section 22(f) of the interim final rule, and as noted above, if an FDIC-supervised institution does not have a sufficient amount of a specific component of capital to effect the required deduction under the corresponding deduction approach, the shortfall must be deducted from the next higher (that is, more subordinated) component of regulatory capital.

g. Reciprocal Crossholdings in the Capital Instruments of Financial Institutions

A reciprocal crossholding 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 crossholdings of capital instruments to artificially inflate the capital positions of each of the financial institutions involved would undermine the purpose of regulatory capital, potentially affecting the stability of such financial institutions as well as the financial system.

Under the agencies' general risk-based capital rules, reciprocal crossholdings of capital instruments of FDIC-supervised institutions are deducted from regulatory capital. Consistent with Basel III, the proposal would have required a banking organization to deduct reciprocal crossholdings of capital instruments of other financial institutions using the corresponding deduction approach. The interim final rule maintains this treatment.

h. Investments in the FDIC-Supervised Institution's Own Capital Instruments or in the Capital of Unconsolidated Financial Institutions

In the interim final rule, the FDIC made several non-substantive changes to the wording in the proposal to clarify that the amount of an investment in the FDIC-supervised institution's own capital instruments or in the capital of unconsolidated financial institutions is the net long position (as calculated under section 22(h) of the interim final rule) of such investments. The interim final rule also clarifies how to calculate the net long position of these investments, especially for the case of indirect exposures. It is the net long position that is subject to deduction. In addition, the interim final rule generally harmonizes the recognition of hedging for own capital instruments and for investments in the capital of unconsolidated financial institutions. Under the interim final rule, an investment in an FDIC-supervised institution's own capital instrument is deducted from regulatory capital and an investment in the capital of an unconsolidated financial institution is subject to deduction from regulatory capital if such investment exceeds certain thresholds.

An investment in the capital of an unconsolidated financial institution refers to the net long position (calculated in accordance with section 22(h) of the interim final rule) 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 GAAP equity of an unconsolidated unregulated financial institution. It includes direct, indirect, and synthetic exposures to capital instruments, and excludes underwriting positions held by an FDIC-supervised institution for fewer than five business days.

An investment in the FDIC-supervised institution's own capital instrument means a net long position calculated in accordance with section 22(h) of the interim final rule in the FDIC-supervised institution's own common stock instrument, own additional tier 1 capital instrument or own tier 2 capital instrument, including direct, indirect or synthetic exposures to such capital instruments. An investment in the FDIC-supervised institution's own capital instrument includes any contractual obligation to purchase such capital instrument.

The interim final rule also clarifies that the gross long position for an investment in the FDIC-supervised institution's own capital instrument or the capital of an unconsolidated financial institution that is an equity exposure refers to the adjusted carrying value (determined in accordance with section 51(b) of the interim final rule). For the case of an investment in the FDIC-supervised institution's own capital instrument or the capital of an unconsolidated financial institution that is not an equity exposure, the gross long position is defined as the exposure amount (determined in accordance with section 2 of the interim final rule).

Under the proposal, the agencies included the methodology for the recognition of hedging and for the calculation of the net long position regarding investments in the banking organization's own capital instruments and in investments in the capital of unconsolidated financial institutions in the definitions section. However, such methodology appears in section 22 of the interim final rule as the FDIC believes it is more appropriate to include it in the adjustments and deductions to regulatory capital section.

The interim final rule provides that the net long position is the gross long position in the underlying instrument (including covered positions under the market risk rule) net of short positions in the same instrument 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. An FDIC-supervised institution may only net a short position against a long position in the FDIC-supervised institution's own capital instrument if the short position involves no counterparty credit risk. The long and short positions in the same index without a maturity date are considered to have matching maturities. If both the long position and the short position do not have contractual maturity dates, then the positions are considered maturity-matched. For positions that are reported on an FDIC-supervised institution's regulatory report as trading assets or trading liabilities, if the FDIC-supervised institution has a contractual right or obligation to sell a long position at a specific point in time, and the counterparty to the contract has an obligation to purchase the long position if the FDIC-supervised institution 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 own capital instruments or in the capital instruments of unconsolidated financial institutions resulting from positions in an index 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, provided both the exposure being hedged and the short position in the index are trading assets or trading liabilities, and the hedge is deemed effective by the FDIC-supervised institution's internal control processes, which the FDIC has found not to be inadequate.

An indirect exposure results from an FDIC-supervised institution's investment in an investment fund that has an investment in the FDIC-supervised institution's own capital instrument or the capital of an unconsolidated financial institution. A synthetic exposure results from an FDIC-supervised institution's investment in an instrument where the value of such instrument is linked to the value of the FDIC-supervised institution's own capital instrument or a capital instrument of a financial institution. Examples of indirect and synthetic exposures include: (1) An investment in the capital of an investment fund that has an investment in the capital of an unconsolidated financial institution; (2) a total return swap on a capital instrument of the FDIC-supervised institution or 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; (5) a forward purchase agreement on the capital of another financial institution; and (6) a trust preferred security collateralized debt obligation (TruPS CDO).

Investments, including indirect and synthetic exposures, in the capital of unconsolidated financial institutions are subject to the corresponding deduction approach if they surpass certain thresholds described below. With the prior written approval of the FDIC, for the period of time stipulated by the supervisor, an FDIC-supervised institution is not required to deduct investments in the capital of unconsolidated financial institutions described in this section if the investment is made in connection with the FDIC-supervised institution providing financial support to a financial institution in distress, as determined by the supervisor. Likewise, an FDIC-supervised institution that is an underwriter of a failed underwriting can request approval from the FDIC to exclude underwriting positions related to such failed underwriting held for longer than five days.

Some commenters requested clarification that a long position and short hedging position are considered ''maturity matched'' if (1) the maturity period of the short position extends beyond the maturity period of the long position or (2) both long and short positions mature or terminate within the same calendar quarter. The FDIC notes that they concur with these commenters' interpretation of the maturity matching of long and short hedging positions.

For purposes of calculating the net long position in the capital of an unconsolidated financial institution, several commenters expressed concern that allowing banking organizations to net gross long positions with short positions only where the maturity of the short position either matches the maturity of the long position or has a maturity of at least one year is not practical, as some exposures, such as cash equities, have no maturity. These commenters expressed concern that such a maturity requirement could result in banking organizations deducting equities held as hedges for equity swap transactions with a client, making the latter transactions uneconomical and resulting in disruptions to market activity. Similarly, these commenters argued that providing customer accommodation equity swaps could become burdensome as a strict reading of the proposal could affect the ability of banking organizations to offset the equity swap with the long equity position because the maturity of the equity swap is typically less than one year. The FDIC has considered the comments and have decided to retain the maturity requirement as proposed. The FDIC believes that the proposed maturity requirements will reduce the possibility of ''cliff effects'' resulting from the deduction of open equity positions when an FDIC-supervised institution is unable to replace the hedge or sell the long equity position.

i. Indirect Exposure Calculations

The proposal provided that an indirect exposure would result from a banking organization's investment in an unconsolidated entity that has an exposure to a capital instrument of a financial institution, while a synthetic exposure would result 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. With the exception of index securities, the proposal did not, however, provide a mechanism for calculating the amount of the indirect exposure that is subject to deduction. The interim final rule clarifies the methodologies for calculating the net long position related to an indirect exposure (which is subject to deduction under the interim final rule) by

providing a methodology for calculating the gross long position of such indirect exposure. The FDIC believes that the options provided in the interim final rule will provide FDIC-supervised institutions with increased clarity regarding the treatment of indirect exposures, as well as increased risk-sensitivity to the FDIC-supervised institution's actual potential exposure.

In order to limit the potential difficulties in determining whether an unconsolidated entity in fact holds the FDIC-supervised institution's own capital or the capital of unconsolidated financial institutions, the interim final rule also provides that the indirect exposure requirements only apply when the FDIC-supervised institution holds an investment in an investment fund, as defined in the rule. Accordingly, an FDIC-supervised institution invested in, for example, a commercial company is not required to determine whether the commercial company has any holdings of the FDIC-supervised institution's own capital or the capital instruments of financial institutions.

The interim final rule provides that an FDIC-supervised institution may determine that its gross long position is equivalent to its carrying value of its investment in an investment fund that holds the FDIC-supervised institution's own capital or that holds an investment in the capital of an unconsolidated financial institution, which would be subject to deduction according to section 324.22(c). Recognizing, however, that the FDIC-supervised institution's exposure to those capital instruments may be less than its carrying value of its investment in the investment fund, the interim final rule provides two alternatives for calculating the gross long position of an indirect exposure. For an indirect exposure resulting from a position in an index, an FDIC-supervised institution may, with the prior approval of the FDIC, use a conservative estimate of the amount of its investment in its own capital instruments or the capital instruments of other financial institutions. If the investment is held through an investment fund, an FDIC-supervised institution may use a look-through approach similar to the approach used for risk weighting equity exposures to investment funds. Under this approach, an FDIC-supervised institution may multiply the carrying value of its investment in an investment fund by either the exact percentage of the FDIC-supervised institution's own capital instrument or capital instruments of unconsolidated financial institutions held by the investment fund or by the highest stated prospectus limit for such investments held by the investment fund. Accordingly, if an FDIC-supervised institution with a carrying value of $10,000 for its investment in an investment fund knows that the investment fund has invested 30 percent of its assets in the capital of financial institutions, then the FDIC-supervised institution could subject $3,000 (the carrying value times the percentage invested in the capital of financial institutions) to deduction from regulatory capital. The FDIC believes that the approach is flexible and benefits an FDIC-supervised institution that obtains and maintains information about its investments through investment funds. It also provides a simpler calculation method for an FDIC-supervised institution that either does not have information about the holdings of the investment fund or chooses not to do the more complex calculation.

j. Non-significant Investments in the Capital of Unconsolidated Financial Institutions

The proposal provided that non-significant investments in the capital of unconsolidated financial institutions would be the net long position in investments where a banking organization owns 10 percent or less of the issued and outstanding common stock 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 own common equity tier 1 capital, 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 been required 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.[90]

Under the proposal, 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 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, under the proposal, generally be assigned the applicable risk weight under section 32 or section 131, as applicable (in the case of non-common stock instruments), section 52 or section 152, as applicable (in the case of common stock instruments), or section 53, section 154, as applicable (in the case of indirect investments via an investment fund), or, in the case of a covered position, in accordance with subpart F, as applicable.

One commenter requested clarification that a banking organization would not have to take a ''double deduction'' for an investment made in unconsolidated financial institutions held through another unconsolidated financial institution in which the banking organization has invested. The FDIC notes that, under the interim final rule, where an FDIC-supervised institution has an investment in an unconsolidated financial institution (Institution A) and Institution A has an investment in another unconsolidated financial institution (Institution B), the FDIC-supervised institution would not be deemed to have an indirect investment in Institution B for purposes of the interim final rule's capital thresholds and deductions because the FDIC-supervised institution's investment in Institution A is already subject to capital thresholds and deductions. However, if an FDIC-supervised institution has an investment in an investment fund that does not meet the definition of a financial institution, it must consider

[90] 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 (when the banking organization has elected to net DTLs in accordance with section 22(e)), DTAs that arise from net operating loss and tax credit carryforwards net of related valuation allowances and DTLs (in accordance with section 22(e)), cash-flow hedges associated with items that are not recognized at fair value on the balance sheet, 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 financial liabilities measured at fair value, defined benefit pension fund net assets for banking organizations that are not insured by the FDIC (net of associated DTLs in accordance with section 22(e)), investments in own regulatory capital instruments (not deducted as treasury stock), and reciprocal crossholdings.

the assets of the investment fund to be indirect holdings.

Some commenters requested clarification that the deductions for non-significant investments in the capital of unconsolidated financial institutions may be net of associated DTLs. The FDIC has clarified in the interim final rule that an FDIC-supervised institution must deduct the net long position in non-significant investments in the capital of unconsolidated financial institutions, net of associated DTLs in accordance with section 324.22(e) of the interim final rule, that exceeds the 10 percent threshold for non-significant investments. Under section 324.22(e) of the interim final rule, the netting of DTLs against assets that are subject to deduction or fully deducted under section 324.22 of the interim final rule is permitted but not required.

Other commenters asked the agencies to confirm that the proposal would not require that investments in TruPS CDOs be treated as investments in the capital of unconsolidated financial institutions, but rather treat the investments as securitization exposures. The FDIC believes that investments in TruPS CDOs are synthetic exposures to the capital of unconsolidated financial institutions and are thus subject to deduction. Under the interim final rule, any amounts of TruPS CDOs that are not deducted are subject to the securitization treatment.

k. Significant Investments in the Capital of Unconsolidated Financial Institutions That Are Not in the Form of Common Stock

Under the proposal, a significant investment in the capital of an unconsolidated financial institution would be the net long position in an investment where a banking organization owns more than 10 percent of the issued and outstanding common stock of the unconsolidated financial institution. Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock are investments where the banking organization owns capital of an unconsolidated financial institution that is not in the form of common stock in addition to 10 percent of the issued and outstanding common stock of that financial institution. Such a non-common stock investment would be deducted by applying the corresponding deduction approach. Significant investments in the capital of unconsolidated financial institutions that are in the form of common stock would be subject to 10 and 15 percent common equity tier 1 capital threshold deductions described below in this section.

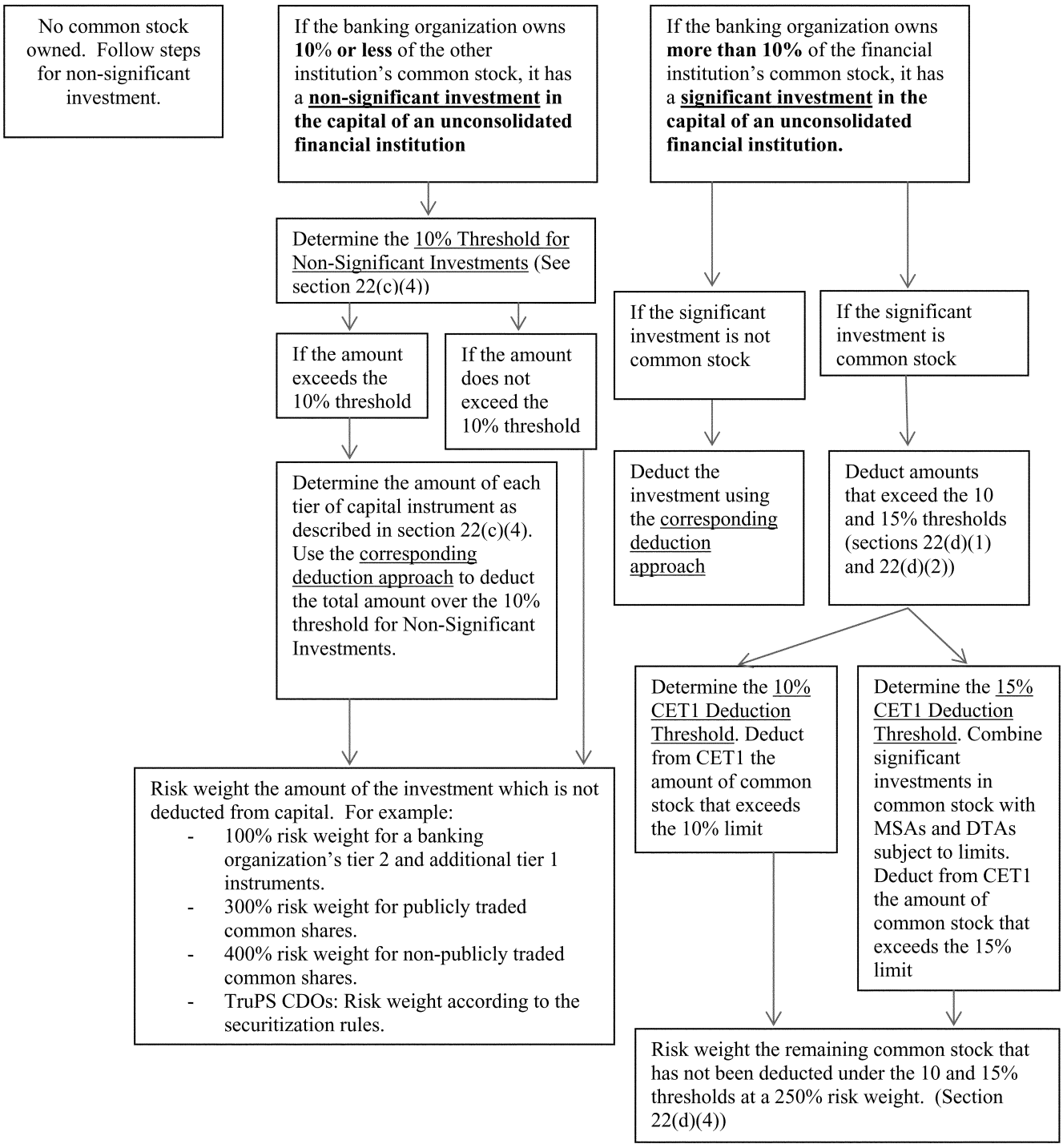
A number of commenters sought clarification as to whether under section 22(c) of the proposal, a banking organization may deduct any significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock net of associated DTLs. The interim final rule clarifies that such deductions may be net of associated DTLs in accordance with paragraph 324.22(e) of the interim final rule. Other than this revision, the interim final rule adopts the proposed rule.

More generally, commenters also sought clarification on the treatment of investments in the capital of unconsolidated financial institutions (for example, the distinction between significant and non-significant investments). Thus, the chart below summarizes the treatment of investments in the capital of unconsolidated financial institutions.

BILLING CODE 6714–01–P

Treatment of Investments in the Capital of Unconsolidated Financial Institutions

Perform the following steps to determine the capital treatment of capital instruments in unconsolidated financial institutions:



BILLING CODE 6714–01–C

l. Items Subject to the 10 and 15 Percent Common Equity Tier 1 Capital Threshold Deductions

Under the proposal, a banking organization would have deducted 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 in accordance with section 22(e) of the proposal; and (3) significant investments in the capital of unconsolidated financial institutions in the form of common stock (referred to herein as items subject to the threshold deductions).

Under the proposal, a banking organization would have calculated 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.

As mentioned above in section V.B, under the proposal banking organizations would have been required to deduct from common equity tier 1 capital any goodwill embedded in the valuation of significant investments in the capital of unconsolidated financial institutions in the form of common stock. A banking organization would have been allowed to reduce the investment amount of such significant investment by the goodwill embedded in such 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 reduce the investment amount of such significant investment by the amount of embedded goodwill (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, under the proposal 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 must not 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 have been required to deduct in full the amounts of the items subject to the threshold deductions on a combined basis 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 deduction thresholds. As described below, the proposal required a banking organization 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.

Some commenters asserted that subjecting DTAs resulting from net unrealized losses in an investment portfolio to the proposed 10 percent common equity tier 1 capital deduction threshold under section 22(d) of the proposal would result in a ''double deduction'' in that the net unrealized losses would have already been included in common equity tier 1 through the AOCI treatment. Under GAAP, net unrealized losses recognized in AOCI are reported net of tax effects (that is, taxes that give rise to DTAs). The tax effects related to net unrealized losses would reduce the amount of net unrealized losses reflected in common equity tier 1 capital. Given that the tax effects reduce the losses that would otherwise accrue to common equity tier 1 capital, the FDIC is of the view that subjecting these DTAs to the 10 percent limitation would not result in a ''double deduction.''

More generally, several commenters noted that the proposed 10 and 15 percent common equity tier 1 capital deduction thresholds and the proposed 250 percent risk-weight are unduly punitive. Commenters recommended several alternatives including, for example, that the agencies should only retain the 10 percent limit on each threshold item but eliminate the 15 percent aggregate limit. The FDIC believes that the proposed thresholds are appropriate as they increase the quality and loss-absorbency of regulatory capital, and are therefore adopting the proposed deduction thresholds as final. The FDIC realizes that these stricter limits on threshold items may require FDIC-supervised institutions to make appropriate changes in their capital structure or business model, and thus have provided a lengthy transition period to allow FDIC-supervised institutions to adequately plan for the new limits.

Under section 475 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (12 U.S.C. 1828 note), the amount of readily marketable purchased mortgage servicing rights (PMSRs) that a banking organization may include in regulatory capital cannot be more than 90 percent of their fair value. In addition to this statutory requirement, the general risk-based capital rules require the same treatment for all MSAs, including PMSRs. Under the proposed rule, if the amount of MSAs a banking organization deducts after applying the 10 percent and 15 percent common equity tier 1 deduction threshold is less than 10 percent of the fair value of its MSAs, then the banking organization would have deducted 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.

Some commenters requested removal of the 90 percent MSA fair value limitation, including for PMSRs under FDICIA. These commenters note that section 475(b) of FDICIA provides the agencies with authority to remove the 90 percent limitation on PMSRs, subject to a joint determination by the agencies that its removal would not have an adverse effect on the deposit insurance fund or the safety and soundness of insured depository institutions. The commenters asserted that removal of the 90 percent limitation would be appropriate because other provisions of the proposal pertaining to MSAs (including PMSRs) would require more capital to be retained even if the fair value limitation were removed.

The FDIC agrees with these commenters and, pursuant to section 475(b) of FDICIA, has determined that PMSRs may be valued at not more than 100 percent of their fair value, because the capital treatment of PMSRs in the interim final rule (specifically, the deduction approach for MSAs (including PMSRs) exceeding the 10 and 15 common equity deduction thresholds and the 250 percent risk weight applied to all MSAs not subject to deduction) is more conservative than the FDICIA fair value limitation and the 100 percent risk weight applied to MSAs under existing rules and such approach will not have an adverse effect on the deposit insurance fund or safety and soundness of insured depository institutions. For the same reasons, the

FDIC is also removing the 90 percent fair value limitation for all other MSAs.

Commenters also provided a variety of recommendations related to the proposed limitations on the inclusion of MSAs in regulatory capital. For instance, some commenters advocated removing the proposed deduction provision for hedged and commercial and multifamily-related MSAs, as well as requested an exemption from the proposed deduction requirement for community banking organizations with less than $10 billion.

Other commenters recommended increasing the amount of MSAs includable in regulatory capital. For example, one commenter recommended that MSAs should be limited to 100 percent of tier l capital if the underlying loans are prudently underwritten. Another commenter requested that the interim final rule permit thrifts and commercial banking organizations to include in regulatory capital MSAs equivalent to 50 and 25 percent of tier 1 capital, respectively.

Several commenters also objected to the proposed risk weights for MSAs, asserting that a 250 percent risk weight for an asset that is marked-to-fair value quarterly is unreasonably punitive and that a 100 percent risk weight should apply; that MSAs allowable in capital should be increased, at a minimum, to 30 percent of tier 1 capital, with a risk weight of no greater than 50 percent for existing MSAs; that commercial MSAs should continue to be subject to the risk weighting and deduction methodology under the general risk-based capital rules; and that originated MSAs should retain the same risk weight treatment under the general risk-based capital rules given that the ability to originate new servicing to replace servicing lost to prepayment in a falling-rate environment provides for a substantial hedge. Another commenter recommended that the agencies grandfather all existing MSAs that are being fair valued on banking organizations' balance sheets and exclude MSAs from the proposed 15 percent deduction threshold.

After considering these comments, the FDIC is adopting the proposed limitation on MSAs includable in common equity tier 1 capital without change in the interim final rule. MSAs, like other intangible assets, have long been either fully or partially excluded from regulatory capital in the United States because of the high level of uncertainty regarding the ability of FDIC-supervised institutions to realize value from these assets, especially under adverse financial conditions.

m. Netting of Deferred Tax Liabilities Against Deferred Tax Assets and Other Deductible Assets

Under the proposal, banking organizations would have been permitted to net DTLs against assets (other than DTAs) subject to deduction under section 22 of the proposal, 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 more than once for netting purposes. 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, under the proposal the amount of DTAs that arise from net 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, could be netted against DTLs if certain conditions are met.

The agencies received numerous comments recommending changes to and seeking clarification on various aspects of the proposed treatment of deferred taxes. Certain commenters asked whether deductions of significant and non-significant investments in the capital of unconsolidated financial institutions under section 22(c)(4) and 22(c)(5) of the proposed rule may be net of associated DTLs. A commenter also recommended that a banking organization be permitted to net a DTA against a fair value measurement or similar adjustment to an asset (for example, in the case of a certain cash-flow hedges) or a liability (for example, in the case of changes in the fair value of a banking organization's liabilities attributed to changes in the banking organization's own credit risk) that is associated with the adjusted value of the asset or liability that itself is subject to a capital adjustment or deduction under the Basel III NPR. These DTAs would be derecognized under GAAP if the adjustment were reversed. Accordingly, one commenter recommended that proposed text in section 22(e) be revised to apply to netting of DTAs as well as DTLs.

The FDIC agrees that for regulatory capital purposes, an FDIC-supervised institution may exclude from the deduction thresholds DTAs and DTLs associated with fair value measurement or similar adjustments to an asset or liability that are excluded from common equity tier 1 capital under the interim final rule. The FDIC notes that GAAP requires net unrealized gains and losses [91] recognized in AOCI to be recorded net of deferred tax effects. Moreover, under the FDIC's general risk-based capital rules and associated regulatory reporting instructions, FDIC-supervised institutions must deduct certain net unrealized gains, net of applicable taxes, and add back certain net unrealized losses, again, net of applicable taxes. Permitting FDIC-supervised institutions to exclude net unrealized gains and losses included in AOCI without netting of deferred tax effects would cause an FDIC-supervised institution to overstate the amount of net unrealized gains and losses excluded from regulatory capital and potentially overstate or understate deferred taxes included in regulatory capital.

Accordingly, under the interim final rule, FDIC-supervised institutions must make all adjustments to common equity tier 1 capital under section 22(b) of the interim final rule net of any associated deferred tax effects. In addition, FDIC-supervised institutions may make all deductions from common equity tier 1 capital elements under section 324.22(c) and (d) of the interim final rule net of associated DTLs, in accordance with section 324.22(e) of the interim final rule.

Commenters also sought clarification as to whether banking organizations may change from reporting period to reporting period their decision to net DTLs against DTAs as opposed to netting DTLs against other assets subject to deduction. Consistent with the FDIC's general risk-based capital rules, the interim final rule permits, but does not require, an FDIC-supervised institution to net DTLs associated with items subject to regulatory deductions from common equity tier 1 capital under section 22(a). The FDIC's general risk-based capital rules do not explicitly address whether or how often an FDIC-supervised institution may change its DTL netting approach for items subject to deduction, such as goodwill and other intangible assets.

If an FDIC-supervised institution elects to either net DTLs against DTAs or to net DTLs against other assets subject to deduction, the interim final rule requires that it must do so consistently. For example, an FDIC-

[91] The word ''net'' in the term ''net unrealized gains and losses'' refers to the netting of gains and losses before tax.

supervised institution that elects to deduct goodwill net of associated DTLs will be required to continue that practice for all future reporting periods. Under the interim final rule, an FDIC-supervised institution must obtain approval from the FDIC before changing its approach for netting DTLs against DTAs or assets subject to deduction under section 324.22(a), which would be permitted, for example, in situations where an FDIC-supervised institution merges with or acquires another FDIC-supervised institution, or upon a substantial change in an FDIC-supervised institution's business model.

Commenters also asked whether banking organizations would be permitted or required to exclude (from the amount of DTAs subject to the threshold deductions under section 22(d) of the proposal) deferred tax assets and liabilities relating to net unrealized gains and losses reported in AOCI that are subject to: (1) regulatory adjustments to common equity tier 1 capital (section 22(b) of the proposal), (2) deductions from regulatory capital related to investments in capital instruments (section 22(c) of the proposal), and (3) items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds (section 22(d) of the proposal).

Under the FDIC's general risk-based capital rules, before calculating the amount of DTAs subject to the DTA limitations for inclusion in tier 1 capital, an FDIC-supervised institution may eliminate the deferred tax effects of any net unrealized gains and losses on AFS debt securities. An FDIC-supervised institution that adopts a policy to eliminate such deferred tax effects must apply that approach consistently in all future calculations of the amount of disallowed DTAs.

For purposes of the interim final rule, the FDIC has decided to permit FDIC-supervised institutions to eliminate from the calculation of DTAs subject to threshold deductions under section 324.22(d) of the interim final rule the deferred tax effects associated with any items that are subject to regulatory adjustment to common equity tier 1 capital under section 324.22(b). An FDIC-supervised institution that elects to eliminate such deferred tax effects must continue that practice consistently from period to period. An FDIC-supervised institution must obtain approval from the FDIC before changing its election to exclude or not exclude these amounts from the calculation of DTAs. Additionally, the FDIC has decided to require DTAs associated with any net unrealized losses or differences between the tax basis and the accounting basis of an asset pertaining to items (other than those items subject to adjustment under section 324.22(b)) that are: (1) subject to deduction from common equity tier 1 capital under section 324.22(c) or (2) subject to the threshold deductions under section 324.22(d) to be subject to the threshold deductions under section 324.22(d) of the interim final rule.

Commenters also sought clarification as to whether banking organizations would be required to compute DTAs and DTLs quarterly for regulatory capital purposes. In this regard, commenters stated that GAAP requires annual computation of DTAs and DTLs, and that more frequent computation requirements for regulatory capital purposes would be burdensome.

Some DTA and DTL items must be adjusted at least quarterly, such as DTAs and DTLs associated with certain gains and losses included in AOCI. Therefore, the FDIC expects FDIC-supervised institutions to use the DTA and DTL amounts reported in the regulatory reports for balance sheet purposes to be used for regulatory capital calculations. The interim final rule does not require FDIC-supervised institutions to perform these calculations more often than would otherwise be required in order to meet quarterly regulatory reporting requirements.

A few commenters also asked whether the agencies would continue to allow banking organizations to use DTLs embedded in the carrying value of a leveraged lease to reduce the amount of DTAs subject to the 10 percent and 15 percent common equity tier 1 capital deduction thresholds contained in section 22(d) of the proposal. The valuation of a leveraged lease acquired in a business combination gives recognition to the estimated future tax effect of the remaining cash-flows of the lease. Therefore, any future tax liabilities related to an acquired leveraged lease are included in the valuation of the leveraged lease, and are not separately reported under GAAP as DTLs. This can artificially increase the amount of net DTAs reported by banking organizations that acquire a leveraged lease portfolio under purchase accounting. Accordingly, the agencies' currently allow banking organizations to treat future taxes payable included in the valuation of a leveraged lease portfolio as a reversing taxable temporary difference available to support the recognition of DTAs.[92] The interim final rule amends the proposal by explicitly permitting an FDIC-supervised institution to use the DTLs embedded in the carrying value of a leveraged lease to reduce the amount of DTAs consistent with section 22(e).

In addition, commenters asked the agencies to clarify whether a banking organization is required to deduct from the sum of its common equity tier 1 capital elements net DTAs arising from timing differences that the banking organization could realize through net operating loss carrybacks. The FDIC confirms that under the interim final rule, DTAs that arise from temporary differences that the FDIC-supervised institution may realize through net operating loss carrybacks are not subject to the 10 percent and 15 percent common equity tier 1 capital deduction thresholds (deduction thresholds). This is consistent with the FDIC's general risk-based capital rules, which do not limit DTAs that can potentially be realized from taxes paid in prior carryback years. However, consistent with the proposal, the interim final rule requires that FDIC-supervised institutions deduct from common equity tier 1 capital elements the amount of DTAs arising from temporary differences that the FDIC-supervised institution could not realize through net operating loss carrybacks that exceed the deduction thresholds under section 324.22(d) of the interim final rule.

Some commenters recommended that the agencies retain the provision in the agencies' general risk-based capital rules that permits a banking organization to measure the amount of DTAs subject to inclusion in tier 1 capital by the amount of DTAs that the banking organization could reasonably be expected to realize within one year, based on its estimate of future taxable income.[93] In addition, commenters argued that the full deduction of net operating loss and tax credit carryforwards from common equity tier 1 capital is an inappropriate reaction to concerns about DTAs as an element of capital, and that there are appropriate circumstances where an

[92] Temporary differences arise when financial events or transactions are recognized in one period for financial reporting purposes and in another period, or periods, for tax purposes. A reversing taxable temporary difference is a temporary difference that produces additional taxable income future periods.

[93] Under the FDIC's general risk-based capital rules, a banking organization generally must deduct from tier 1 capital DTAs that are dependent upon future taxable income, which exceed the lesser of either: (1) the amount of DTAs that the bank could reasonably expect to realize within one year of the quarter-end regulatory report, based on its estimate of future taxable income for that year, or (2) 10 percent of tier 1 capital, net of goodwill and all intangible assets other than purchased credit card relationships, and servicing assets. *See* 12 CFR part 325, appendix A section I.A.1.iii(a) (state nonmember banks), and 12 CFR 390.465(a)(2)(vii) (state savings associations).

institution should be allowed to include the value of its DTAs related to net operating loss carryforwards in regulatory capital.

The deduction thresholds for DTAs in the interim final rule are intended to address the concern that GAAP standards for DTAs could allow FDIC-supervised institutions to include in regulatory capital excessive amounts of DTAs that are dependent upon future taxable income. The concern is particularly acute when FDIC-supervised institutions begin to experience financial difficulty. In this regard, the FDIC observed that as the recent financial crisis began, many FDIC-supervised institutions that had included DTAs in regulatory capital based on future taxable income were no longer able to do so because they projected more than one year of losses for tax purposes.

The FDIC notes that under the proposal and interim final rule, DTAs that arise from temporary differences that the FDIC-supervised institution may realize through net operating loss carrybacks are not subject to the deduction thresholds and will be subject to a risk weight of 100 percent. Further, FDIC-supervised institutions will continue to be permitted to include some or all of their DTAs that are associated with timing differences that are not realizable through net operating loss carrybacks in regulatory capital. In this regard, the interim final rule strikes an appropriate balance between prudential concerns and practical considerations about the ability of FDIC-supervised institutions to realize DTAs.

The proposal stated: ''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 (emphasis added).'' [94] Commenters requested that the agencies clarify that the word ''net'' in this sentence was intended to refer to DTAs ''net of valuation allowances.'' The FDIC has amended section 22(e) of the interim final rule text to clarify that the word ''net'' in this instance was intended to refer to DTAs ''net of any related valuation allowances and net of DTLs.''

In addition, a commenter requested that the agencies remove the condition in section 324.22(e) of the interim final rule providing that only DTAs and DTLs that relate to taxes levied by the same taxing authority may be offset for purposes of the deduction of DTAs. This commenter notes that under a GAAP, a company generally calculates its DTAs and DTLs relating to state income tax in the aggregate by applying a blended state rate. Thus, FDIC-supervised institutions do not typically track DTAs and DTLs on a state-by-state basis for financial reporting purposes.

The FDIC recognizes that under GAAP, if the tax laws of the relevant state and local jurisdictions do not differ significantly from federal income tax laws, then the calculation of deferred tax expense can be made in the aggregate considering the combination of federal, state, and local income tax *rates.* The rate used should consider whether amounts paid in one jurisdiction are deductible in another jurisdiction. For example, since state and local taxes are deductible for federal purposes, the aggregate combined rate would generally be (1) the federal tax rate plus (2) the state and local tax rates, minus (3) the federal tax effect of the deductibility of the state and local taxes at the federal tax rate. Also, for financial reporting purposes, consistent with GAAP, the FDIC allows FDIC-supervised institutions to offset DTAs (net of valuation allowance) and DTLs related to a particular tax jurisdiction. Moreover, for regulatory reporting purposes, consistent with GAAP, the FDIC requires separate calculations of income taxes, both current and deferred amounts, for each tax jurisdiction. Accordingly, FDIC-supervised institutions must calculate DTAs and DTLs on a state-by-state basis for financial reporting purposes under GAAP and for regulatory reporting purposes.

3. Investments in Hedge Funds and Private Equity Funds Pursuant to Section 13 of the Bank Holding Company Act

Section 13 of the Bank Holding Company Act, which was added by section 619 of the Dodd-Frank Act, contains a number of restrictions and other prudential requirements applicable to any ''banking entity'' [95] that engages in proprietary trading or has certain interests in, or relationships with, a hedge fund or a private equity fund.[96]

Section 13(d)(3) of the Bank Holding Company Act provides that the relevant agencies ''shall . . . adopt rules imposing additional capital requirements and quantitative limitations, including diversification requirements, regarding activities permitted under [Section 13] if the appropriate Federal banking agencies, the SEC, and the Commodity Futures Trading Commission (CFTC) determine that additional capital and quantitative limitations are appropriate to protect the safety and soundness of banking entities engaged in such activities.'' The Dodd-Frank Act also added section 13(d)(4)(B)(iii) to the Bank Holding Company Act, which pertains to investments in a hedge fund or private equity fund organized and offered by a banking entity and provides for deductions from the assets and tangible equity of the banking entity for these investments in hedge funds or private equity funds.

On November 7, 2011, the agencies and the SEC issued a proposal to implement Section 13 of the Bank Holding Company Act.[97] The proposal 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.[98] The FDIC intends to address this capital requirement, as it applies to FDIC-supervised institutions, within the context of its entire regulatory capital framework, so that its potential interaction with all other regulatory capital requirements can be fully assessed.

VI. Denominator Changes Related to the Regulatory Capital Changes

Consistent with Basel III, the proposal provided a 250 percent risk weight for the portion of the following items that are not otherwise subject to deduction: (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 324.22(e)

[94] *See* footnote 14, 77 FR 52863 (August 30, 2012).

[95] *See* 12 U.S.C. 1851. The term ''banking entity'' is defined in section 13(h)(1) of the Bank Holding Company 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.

[96] Section 13 of the Bank Holding Company 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, but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the [relevant agencies] may, by rule . . . determine.'' *See* 12 U.S.C. 1851(h)(2).

[97] *See* 76 FR 68846 (November 7, 2011). On February 14, 2012, the CFTC published a substantively similar proposed rule implementing section 13 of the Bank Holding Company Act. *See* 77 FR 8332 (February 14, 2012).

[98] *See Id.,* § 324.12(d).

of the rule), 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.

Several commenters objected to the proposed 250 percent risk weight and stated that the agencies instead should apply a 100 percent risk weight to the amount of these assets below the deduction thresholds. Commenters stated that the relatively high risk weight would drive business, particularly mortgage servicing, out of the banking sector and into unregulated shadow banking entities.

After considering the comments, the FDIC continues to believe that the 250 percent risk weight is appropriate in light of the relatively greater risks inherent in these assets, as described above. These risks are sufficiently significant that concentrations in these assets warrant deductions from capital, and any exposure to these assets merits a higher-than 100 percent risk weight. Therefore, the interim final rule adopts the proposed treatment without change.

The interim final rule, consistent with the proposal, requires FDIC-supervised institutions to apply a 1,250 percent risk weight to certain exposures that were subject to deduction under the general risk-based capital rules. Therefore, for purposes of calculating total risk-weighted assets, the interim final rule requires an FDIC-supervised institution to 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.

VII. Transition Provisions

The proposal established transition provisions for: (i) minimum regulatory capital ratios; (ii) capital conservation and countercyclical capital buffers; (iii) regulatory capital adjustments and deductions; (iv) non-qualifying capital instruments; and (v) the supplementary leverage ratio. Most of the transition periods in the proposal began on January 1, 2013, and would have provided banking organizations between three and six years to comply with the requirements in the proposed rule. Among other provisions, the proposal would have provided a transition period for the phase-out of non-qualifying capital instruments from regulatory capital under either a three- or ten-year transition period based on the organization's consolidated total assets. The proposed transition provisions were designed to give banking organizations sufficient time to adjust to the revised capital framework while minimizing the potential impact that implementation could have on their ability to lend. The transition provisions also were designed to ensure compliance with the Dodd-Frank Act. As a result, they would have been, in certain circumstances, more stringent than the transition arrangements set forth in Basel III.

The agencies received multiple comments on the proposed transition framework. Most of the commenters characterized the proposed transition schedule for the minimum capital ratios as overly aggressive and expressed concern that banking organizations would not be able to meet the increased capital requirements (in accordance with the transition schedule) in the current economic environment. Commenters representing community banking organizations argued that such organizations generally have less access to the capital markets relative to larger banking organizations and, therefore, usually increase capital primarily by accumulating retained earnings. Accordingly, these commenters requested additional time to satisfy the minimum capital requirements under the proposed rule, and specifically asked the agencies to provide banking organizations until January 1, 2019 to comply with the proposed minimum capital requirements. Other commenters commenting on behalf of community banking organizations, however, considered the transition period reasonable. One commenter requested a shorter implementation timeframe for the largest banking organizations, asserting that these organizations already comply with the proposed standards. Another commenter suggested removing the transition period and delaying the effective date until the industry more fully recovers from the recent crisis. According to this commenter, the effective date should be delayed to ensure that implementation of the rule would not result in a contraction in aggregate U.S. lending capacity.

A number of commenters suggested an effective date based on the publication date of the interim final rule in the **Federal Register.** According to the commenters, such an approach would provide banking organizations with certainty regarding the effective date of the interim final rule that would allow them to plan for and implement any required system and process changes. One commenter requested simultaneous implementation of all three proposals because some elements of the Standardized Approach NPR affect the implementation of the Basel III NPR. A number of commenters also requested additional time to comply with the proposed capital conservation buffer. According to these commenters, implementation of the capital conservation buffer would make the equity instruments of banking organizations less attractive to potential investors and could even encourage divestment among existing shareholders. Therefore, the commenters maintained, the proposed rule would require banking organizations to raise capital by accumulating retained earnings, and doing so could take considerable time in the current economic climate. For these reasons, the commenters asked the agencies to delay implementation of the capital conservation buffer for an additional five years to provide banking organizations sufficient time to increase retained earnings without curtailing lending activity. Other commenters requested that the agencies fully exempt banks with total consolidated assets of $50 billion or less from the capital conservation buffer, further recommending that if the agencies declined to make this accommodation then the phase-in period for the capital conservation buffer should be extended by at least three years to January 1, 2022, to provide community banking organizations with enough time to meet the new regulatory minimums.

A number of commenters noted that Basel III phases in the deduction of goodwill from 2014 to 2018, and requested that the agencies adopt this transition for goodwill in the United States to prevent U.S. institutions from being disadvantaged relative to their global competitors.

Many commenters objected to the proposed schedule for the phase out of TruPS from tier 1 capital, particularly for banking organizations with less than $15 billion in total consolidated assets. As discussed in more detail in section V.A., the commenters requested that the agencies grandfather existing TruPS issued by depository institution holding companies with less than $15 billion and 2010 MHCs, as permitted by section 171 of the Dodd-Frank Act. In general, these commenters characterized TruPS as a relatively safe, low-cost form of capital issued in full compliance with regulatory requirements that would be difficult for smaller institutions to replace in the current economic environment. Some commenters requested that community banking organizations be exempt from the phase-out of TruPS and from the phase-out of cumulative preferred stock for these reasons. Another commenter requested that the agencies propose that institutions with under $5 billion in total consolidated assets be allowed to continue to include TruPS in regulatory

capital at full value until the call or maturity of the TruPS instrument.

Some commenters encouraged the agencies to adopt the ten-year transition schedule under Basel III for TruPS of banking organizations with total consolidated assets of more than $15 billion. These commenters asserted that the proposed transition framework for TruPS would disadvantage U.S. banking organizations relative to foreign competitors. One commenter expressed concern that the transition framework under the proposed rule also would disrupt payment schedules for TruPS CDOs.

Commenters proposed several additional alternative transition frameworks for TruPS. For example, one commenter recommended a 10 percent annual reduction in the amount of TruPS banking organizations with $15 billion or more of total consolidated assets may recognize in tier 1 capital beginning in 2013, followed by a phase-out of the remaining amount in 2015. According to the commenter, such a framework would comply with the Dodd-Frank Act and allow banking organizations more time to replace TruPS. Another commenter suggested that the interim final rule allow banking organizations to progressively reduce the amount of TruPS eligible for inclusion in tier 1 capital by 1.25 to 2.5 percent per year. One commenter encouraged the agencies to avoid penalizing banking organizations that elect to redeem TruPS during the transition period. Specifically, the commenter asked the agencies to revise the proposed transition framework so that any TruPS redeemed during the transition period would not reduce the total amount of TruPS eligible for inclusion in tier 1 capital. Under such an approach, the amount of TruPS eligible for inclusion in tier 1 capital during the transition period would equal the lesser of: (a) the remaining outstanding balance or (b) the percentage decline factor times the balance outstanding at the time the interim final rule is published in the **Federal Register**.

One commenter encouraged the agencies to allow a banking organization that grows to more than $15 billion in total assets as a result of merger and acquisition activity to remain subject to the proposed transition framework for non-qualifying capital instruments issued by organizations with less than $15 billion in total assets. According to the commenter, such an approach should apply to either the buyer or seller in the transaction. Other commenters asked the agencies to allow banking organizations whose total consolidated assets grew to over $15 billion just prior to May 19, 2010, and whose asset base subsequently declined below that amount to include all TruPS in their tier 1 capital during 2013 and 2014 on the same basis as institutions with less than $15 billion in total consolidated assets and, thereafter, be subject to the deductions required by section 171 of the Dodd-Frank Act.

Commenters representing advanced approaches banking organizations generally objected to the proposed transition framework for the supplementary leverage ratio, and requested a delay in its implementation. For example, one commenter recommended the agencies defer implementation of the supplementary leverage ratio until the agencies have had an opportunity to consider whether it is likely to result in regulatory arbitrage and international competitive inequality as a result of differences in national accounting frameworks and standards. Another commenter asked the agencies to delay implementation of the supplementary leverage ratio until no earlier than January 1, 2018, as provided in Basel III, or until the BCBS completes its assessment and reaches international agreement on any further adjustments. A few commenters, however, supported the proposed transition framework for the supplementary leverage ratio because it could be used as an important regulatory tool to ensure there is sufficient capital in the financial system.

After considering the comments and the potential challenges some banking organizations may face in complying with the interim final rule, the FDIC has agreed to delay the compliance date for FDIC-supervised institutions that are not advanced approaches FDIC-supervised institutions until January 1, 2015. Therefore, such entities are not required to calculate their regulatory capital requirements under the interim final rule until January 1, 2015. Thereafter, these FDIC-supervised institutions must calculate their regulatory capital requirements in accordance with the interim final rule, subject to the transition provisions set forth in subpart G of the interim final rule.

The interim final rule also establishes the effective date of the interim final rule for advanced approaches FDIC-supervised institutions as January 1, 2014. In accordance with Tables 5–17 below, the transition provisions for the regulatory capital adjustments and deductions in the interim final rule commence either one or two years later than in the proposal, depending on whether the FDIC-supervised institution is or is not an advanced approaches FDIC-supervised institution. The December 31, 2018, end-date for the transition period for regulatory capital adjustments and deductions is the same under the interim final rule as under the proposal.

A. Transitions Provisions for Minimum Regulatory Capital Ratios

In response to the commenters' concerns, the interim final rule modifies the proposed transition provisions for the minimum capital requirements. FDIC-supervised institutions that are not advanced approaches FDIC-supervised institutions are not required to comply with the minimum capital requirements until January 1, 2015. This is a delay of two years from the beginning of the proposed transition period. Because the FDIC is not requiring compliance with the interim final rule until January 1, 2015 for these entities, there is no additional transition period for the minimum regulatory capital ratios. This approach should give FDIC-supervised institutions sufficient time to raise or accumulate any additional capital needed to satisfy the new minimum requirements and upgrade internal systems without adversely affecting their lending capacity.

Under the interim final rule, an advanced approaches FDIC-supervised institution must comply with minimum common equity tier 1, tier 1, and total capital ratio requirements of 4.0 percent, 5.5 percent, and 8.0 percent during calendar year 2014, and 4.5 percent, 6.0 percent, 8.0 percent, respectively, beginning January 1, 2015. These transition provisions are consistent with those under Basel III for internationally-active FDIC-supervised institutions. During calendar year 2014, advanced approaches FDIC-supervised institutions must calculate their minimum common equity tier 1, tier 1, and total capital ratios using the definitions for the respective capital components in section 20 of the interim final rule (adjusted in accordance with the transition provisions for regulatory adjustments and deductions and for the non-qualifying capital instruments for advanced approaches FDIC-supervised institutions described in this section).

B. Transition Provisions for Capital Conservation and Countercyclical Capital Buffers

The FDIC has finalized transitions for the capital conservation and countercyclical capital buffers as proposed. The capital conservation buffer transition period begins in 2016,

a full year after FDIC-supervised institutions that are not advanced approaches FDIC-supervised institutions are required to comply with the interim final rule, and two years after advanced approaches FDIC-supervised institutions are required to comply with the interim final rule. The FDIC believes that this is an adequate time frame to meet the buffer level necessary to avoid restrictions on capital distributions. Table 5 shows the regulatory capital levels advanced approaches FDIC-supervised institutions generally must satisfy to avoid limitations on capital distributions and discretionary bonus payments during the applicable transition period, from January 1, 2016 until January 1, 2019.

TABLE 5—REGULATORY CAPITAL LEVELS FOR ADVANCED APPROACHES FDIC-SUPERVISED INSTITUTIONS

	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	4.0	4.5	5.125	5.75	6.375	7.0
Minimum tier 1 capital ratio + capital conservation buffer	5.5	6.0	6.625	7.25	7.875	8.5
Minimum total capital ratio + capital conservation buffer	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

Table 6 shows the regulatory capital levels FDIC-supervised institutions that are not advanced approaches FDIC-supervised institutions generally must satisfy to avoid limitations on capital distributions and discretionary bonus payments during the applicable transition period, from January 1, 2016 until January 1, 2019.

TABLE 6—REGULATORY CAPITAL LEVELS FOR NON-ADVANCED APPROACHES FDIC-SUPERVISED INSTITUTIONS

	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	4.5	5.125	5.75	6.375	7.0
Minimum tier 1 capital ratio + capital conservation buffer	6.0	6.625	7.25	7.875	8.5
Minimum total capital ratio + capital conservation buffer	8.0	8.625	9.25	9.875	10.5

As provided in Table 5 and Table 6, the transition period for the capital conservation and countercyclical capital buffers does not begin until January 1, 2016. During this transition period, from January 1, 2016 through December 31, 2018, all FDIC-supervised institutions are subject to transition arrangements with respect to the capital conservation buffer as outlined in more detail in Table 7. For advanced approaches FDIC-supervised institutions, the countercyclical capital buffer will be phased in according to the transition schedule set forth in Table 7 by proportionately expanding each of the quartiles of the capital conservation buffer.

TABLE 7—TRANSITION PROVISION FOR THE CAPITAL CONSERVATION AND COUNTERCYCLICAL CAPITAL BUFFER

Transition period	Capital conservation buffer	Maximum payout ratio (as a percentage of eligible retained income)
Calendar year 2016	Greater than 0.625 percent (plus 25 percent of any applicable countercyclical capital buffer amount).	No payout ratio limitation applies
	Less than or equal to 0.625 percent (plus 25 percent of any applicable countercyclical capital buffer amount), and greater than 0.469 percent (plus 18.75 percent of any applicable countercyclical capital buffer amount).	60 percent
	Less than or equal to 0.469 percent (plus 18.75 percent of any applicable countercyclical capital buffer amount), and greater than 0.313 percent (plus 12.5 percent of any applicable countercyclical capital buffer amount).	40 percent
	Less than or equal to 0.313 percent (plus 12.5 percent of any applicable countercyclical capital buffer amount), and greater than 0.156 percent (plus 6.25 percent of any applicable countercyclical capital buffer amount).	20 percent
	Less than or equal to 0.156 percent (plus 6.25 percent of any applicable countercyclical capital buffer amount).	0 percent
Calendar year 2017	Greater than 1.25 percent (plus 50 percent of any applicable countercyclical capital buffer amount).	No payout ratio limitation applies

TABLE 7—TRANSITION PROVISION FOR THE CAPITAL CONSERVATION AND COUNTERCYCLICAL CAPITAL BUFFER—Continued

Transition period	Capital conservation buffer	Maximum payout ratio (as a percentage of eligible retained income)
	Less than or equal to 1.25 percent (plus 50 percent of any applicable countercyclical capital buffer amount), and greater than 0.938 percent (plus 37.5 percent of any applicable countercyclical capital buffer amount).	60 percent
	Less than or equal to 0.938 percent (plus 37.5 percent of any applicable countercyclical capital buffer amount), and greater than 0.625 percent (plus 25 percent of any applicable countercyclical capital buffer amount).	40 percent
	Less than or equal to 0.625 percent (plus 25 percent of any applicable countercyclical capital buffer amount), and greater than 0.313 percent (plus 12.5 percent of any applicable countercyclical capital buffer amount).	20 percent
	Less than or equal to 0.313 percent (plus 12.5 percent of any applicable countercyclical capital buffer amount).	0 percent
Calendar year 2018	Greater than 1.875 percent (plus 75 percent of any applicable countercyclical capital buffer amount).	No payout ratio limitation applies
	Less than or equal to 1.875 percent (plus 75 percent of any applicable countercyclical capital buffer amount), and greater than 1.406 percent (plus 56.25 percent of any applicable countercyclical capital buffer amount).	60 percent
	Less than or equal to 1.406 percent (plus 56.25 percent of any applicable countercyclical capital buffer amount), and greater than 0.938 percent (plus 37.5 percent of any applicable countercyclical capital buffer amount).	40 percent
	Less than or equal to 0.938 percent (plus 37.5 percent of any applicable countercyclical capital buffer amount), and greater than 0.469 percent (plus 18.75 percent of any applicable countercyclical capital buffer amount).	20 percent
	Less than or equal to 0.469 percent (plus 18.75 percent of any applicable countercyclical capital buffer amount).	0 percent

C. Transition Provisions for Regulatory Capital Adjustments and Deductions

To give sufficient time to FDIC-supervised institutions to adapt to the new regulatory capital adjustments and deductions, the interim final rule incorporates transition provisions for such adjustments and deductions that commence at the time at which the FDIC-supervised institution becomes subject to the interim final rule. As explained above, the interim final rule maintains the proposed transition periods, except for non-qualifying capital instruments as described below.

FDIC-supervised institutions that are not advanced approaches FDIC-supervised institutions will begin the transitions for regulatory capital adjustments and deductions on January 1, 2015. From January 1, 2015, through December 31, 2017, these FDIC-supervised institutions will be required to make the regulatory capital adjustments to and deductions from regulatory capital in section 324.22 of the interim final rule in accordance with the proposed transition provisions for such adjustments and deductions outlined below. Starting on January 1, 2018, these FDIC-supervised institutions will apply all regulatory capital adjustments and deductions as set forth in section 324.22 of the interim final rule.

For an advanced approaches FDIC-supervised institution, the first year of transition for adjustments and deductions begins on January 1, 2014. From January 1, 2014, through December 31, 2017, such FDIC-supervised institutions will be required to make the regulatory capital adjustments to and deductions from regulatory capital in section 22 of the interim final rule in accordance with the proposed transition provisions for such adjustments and deductions outlined below. Starting on January 1, 2018, advanced approaches FDIC-supervised institutions will be subject to all regulatory capital adjustments and deductions as described in section 22 of the interim final rule.

1. Deductions for Certain Items Under Section 22(a) of the Interim Final Rule

The interim final rule provides that FDIC-supervised institutions will deduct from common equity tier 1 capital or tier 1 capital in accordance with Table 8 below: (1) goodwill (section 324.22(a)(1)), (2) DTAs that arise from operating loss and tax credit carryforwards (section 22(a)(3)), (3) gain-on-sale associated with a securitization exposure (section 324.22(a)(4)), (4) defined benefit pension fund assets (section 324.22(a)(5)), (5) for an advanced approaches FDIC-supervised institution that has completed the parallel run process and that has received notification from the FDIC pursuant to section 121(d) of subpart E of the interim final rule, expected credit loss that exceeds eligible credit reserves (section 324.22(a)(6)), and (6) financial subsidiaries (section 324.22(a)(7)). During the transition period, the percentage of these items that is not deducted from common equity tier 1 capital must be deducted from tier 1 capital.

TABLE 8—TRANSITION DEDUCTIONS UNDER SECTION 324.22(a)(1) AND SECTIONS 324.22(a)(3)–(a)(7) OF THE INTERIM FINAL RULE

Transition period	Transition deductions under section 324.22(a)(1) and (7)	Transition deductions under sections 324.22(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
January 1, 2014 to December 31, 2014 (advanced approaches FDIC-supervised institutions only)	100	20	80
January 1, 2015 to December 31, 2015	100	40	60
January 1, 2016 to December 31, 2016	100	60	40
January 1, 2017 to December 31, 2017	100	80	20
January 1, 2018 and thereafter	100	100	0

Beginning on January 1, 2014, advanced approaches FDIC-supervised institutions will be required to deduct the full amount of goodwill (which may be 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. All other FDIC-supervised institutions will begin deducting goodwill (which may be 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, on January 1, 2015. This approach is stricter than the Basel III approach, which transitions the goodwill deduction from common equity tier 1 capital through 2017. However, as discussed in section V.B of this preamble, under U.S. law, goodwill cannot be included in an FDIC-supervised institution's regulatory capital and has not been included in FDIC-supervised institutions' regulatory capital under the general risk-based capital rules.[99] Additionally, the FDIC believes that fully deducting goodwill from common equity tier 1 capital from the date an FDIC-supervised institution must comply with the interim final rule will result in a more appropriate measure of common equity tier 1 capital.

Beginning on January 1, 2014, a national bank or insured state bank subject to the advanced approaches rule will be required to deduct 100 percent of the aggregate amount of its outstanding equity investment, including the retained earnings, in any financial subsidiary from common equity tier 1 capital. All other national and insured state banks will begin deducting 100 percent of the aggregate amount of their outstanding equity investment, including the retained earnings, in a financial subsidiary from common equity tier 1 capital on January 1, 2015. The deduction from common equity tier 1 capital represents a change from the general risk-based capital rules, which require the deduction to be made from total capital. As explained in section V.B of this preamble, similar to goodwill, this deduction is required by statute and is consistent with the general risk-based capital rules. Accordingly, the deduction is not subject to a transition period.

The interim final rule also retains the existing deduction for state savings associations' investments in, and extensions of credit to, non-includable subsidiaries at 12 CFR 324.22(a)(8).[100] This deduction is required by statute[101] and is consistent with the general risk-based capital rules. Accordingly, the deduction is not subject to a transition period and must be fully deducted in the first year that the state savings association becomes subject to the interim final rule.

2. Deductions for Intangibles Other Than Goodwill and Mortgage Servicing Assets

For deductions of intangibles other than goodwill and MSAs, including purchased credit-card relationships (PCCRs) (see section 324.22(a)(2) of the interim final rule), the applicable transition period in the interim final rule is set forth in Table 9. During the transition period, any of these items that are not deducted will be subject to a risk weight of 100 percent. Advanced approaches FDIC-supervised institutions will begin the transition on January 1, 2014, and other FDIC-supervised institutions will begin the transition on January 1, 2015.

TABLE 9—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
January 1, 2014 to December 31, 2014 (advanced approaches FDIC-supervised institutions only)	20
January 1, 2015 to December 31, 2015	40
January 1, 2016 to December 31, 2016	60
January 1, 2017 to December 31, 2017	80
January 1, 2018 and thereafter	100

[99] *See* 12 U.S.C. 1464(t)(9)(A) and 12 U.S.C. 1828(n).

[100] For additional information on this deduction, *see* section V.B ''Activities by savings association subsidiaries that are impermissible for national banks'' of this preamble.

[101] *See* 12 U.S.C. 1464(t)(5).

3. Regulatory Adjustments Under Section 22(b)(1) of the Interim Final Rule

During the transition period, any of the adjustments required under section 324.22(b)(1) that are not applied to common equity tier 1 capital must be applied to tier 1 capital instead, in accordance with Table 10. Advanced approaches FDIC-supervised institutions will begin the transition on January 1, 2014, and other FDIC-supervised institutions will begin the transition on January 1, 2015.

TABLE 10—TRANSITION ADJUSTMENTS UNDER SECTION 324.22(b)(1)

Transition period	Transition adjustments under section 324.22(b)(1)	
	Percentage of the adjustment applied to common equity tier 1 capital	Percentage of the adjustment applied to tier 1 capital
January 1, 2014, to December 31, 2014 (advanced approaches FDIC-supervised institutions only)	20	80
January 1, 2015, to December 31, 2015	40	60
January 1, 2016, to December 31, 2016	60	40
January 1, 2017, to December 31, 2017	80	20
January 1, 2018 and thereafter	100	0

4. Phase-Out of Current Accumulated Other Comprehensive Income Regulatory Capital Adjustments

Under the interim final rule, the transition period for the inclusion of the aggregate amount of: (1) Unrealized gains on available-for-sale equity securities; (2) net unrealized gains or losses on available-for-sale debt securities; (3) any amounts recorded in AOCI attributed to defined benefit postretirement plans resulting from the initial and subsequent application of the relevant GAAP standards that pertain to such plans (excluding, at the FDIC-supervised institution's option, the portion relating to pension assets deducted under section 324.22(a)(5)); (4) accumulated net gains or losses on cash-flow hedges related to items that are reported on the balance sheet at fair value included in AOCI; and (5) net unrealized gains or losses on held-to-maturity securities that are included in AOCI (transition AOCI adjustment amount) only applies to advanced approaches FDIC-supervised institutions and other FDIC-supervised institutions that have not made an AOCI opt-out election under section 324.22(b)(2) of the rule and described in section V.B of this preamble. Advanced approaches FDIC-supervised institutions will begin the phase out of the current AOCI regulatory capital adjustments on January 1, 2014; other FDIC-supervised institutions that have not made the AOCI opt-out election will begin making these adjustments on January 1, 2015. Specifically, if an FDIC-supervised institution's transition AOCI adjustment amount is positive, it will adjust its common equity tier 1 capital by deducting the appropriate percentage of such aggregate amount in accordance with Table 11 below. If such amount is negative, it will adjust its common equity tier 1 capital by adding back the appropriate percentage of such aggregate amount in accordance with Table 11 below. The agencies did not include net unrealized gains or losses on held-to-maturity securities that are included in AOCI as part of the transition AOCI adjustment amount in the proposal. However, the FDIC has decided to add such an adjustment as it reflects the FDIC's approach towards AOCI adjustments in the general risk-based capital rules.

TABLE 11—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
January 1, 2014, to December 31, 2014 (advanced approaches FDIC-supervised institutions only)	80
January 1, 2015, to December 31, 2015 (advanced approaches FDIC-supervised institutions and FDIC-supervised institutions that have not made an opt-out election)	60
January 1, 2016, to December 31, 2016 (advanced approaches FDIC-supervised institutions and FDIC-supervised institutions that have not made an opt-out election)	40
January 1, 2017, to December 31, 2017 (advanced approaches FDIC-supervised institutions and FDIC-supervised institutions that have not made an opt-out election)	20
January 1, 2018 and thereafter (advanced approaches FDIC-supervised institutions and FDIC-supervised institutions that have not made an opt-out election)	0

Beginning on January 1, 2018, advanced approaches FDIC-supervised institutions and other FDIC-supervised institutions that have not made an AOCI opt-out election must include AOCI in common equity tier 1 capital, with the exception of accumulated net gains and losses on cash-flow hedges related to items that are not measured at fair value on the balance sheet, which must be excluded from common equity tier 1 capital.

5. Phase-Out of Unrealized Gains on Available for Sale Equity Securities in Tier 2 Capital

Advanced approaches FDIC-supervised institutions and FDIC-supervised institutions not subject to the advanced approaches rule that have

not made an AOCI opt-out election will decrease the amount of unrealized gains on AFS preferred stock classified as an equity security under GAAP and AFS equity exposures currently held in tier 2 capital during the transition period in accordance with Table 12. An advanced approaches FDIC-supervised institution will begin the adjustments on January 1, 2014; all other FDIC-supervised institutions that have not made an AOCI opt-out election will begin the adjustments on January 1, 2015.

TABLE 12—PERCENTAGE OF UNREALIZED GAINS ON AFS PREFERRED STOCK CLASSIFIED AS AN EQUITY SECURITY UNDER GAAP AND AFS EQUITY EXPOSURES THAT MAY BE INCLUDED IN TIER 2 CAPITAL

Transition period	Percentage of unrealized gains on AFS preferred stock classified as an equity security under GAAP and AFS equity exposures that may be included in tier 2 capital
January 1, 2014, to December 31, 2014 (advanced approaches FDIC-supervised institutions only)	36
January 1, 2015, to December 31, 2015 (advanced approaches FDIC-supervised institutions and FDIC-supervised institutions that have not made an opt-out election)	27
January 1, 2016, to December 31, 2016 (advanced approaches FDIC-supervised institutions and FDIC-supervised institutions that have not made an opt-out election)	18
January 1, 2017, to December 31, 2017 (advanced approaches FDIC-supervised institutions and FDIC-supervised institutions that have not made an opt-out election)	9
January 1, 2018 and thereafter (advanced approaches FDIC-supervised institutions and FDIC-supervised institutions that have not made an opt-out election)	0

6. Phase-in of Deductions Related to Investments in Capital Instruments and to the Items Subject to the 10 and 15 Percent Common Equity Tier 1 Capital Deduction Thresholds (Sections 22(c) and 22(d)) of the Interim final rule

Under the interim final rule, an FDIC-supervised institution must calculate the appropriate deductions under sections 324.22(c) and 324.22(d) of the rule related to investments in the capital of unconsolidated financial institutions 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 FDIC-supervised institution 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 13. Advanced approaches FDIC-supervised institutions will apply the transition framework beginning January 1, 2014. All other FDIC-supervised institutions will begin applying the transition framework on January 1, 2015. During the transition period, an FDIC-supervised institution will make the aggregate common equity tier 1 capital deductions related to these items in accordance with the percentages outlined in Table 13 and must apply a 100 percent risk-weight to the aggregate amount of such items that is not deducted. On January 1, 2018, and thereafter, each FDIC-supervised institution will 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 13—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
January 1, 2014, to December 31, 2014 (advanced approaches FDIC-supervised institutions only)	20
January 1, 2015, to December 31, 2015	40
January 1, 2016, to December 31, 2016	60
January 1, 2017, to December 31, 2017	80
January 1, 2018 and thereafter	100

During the transition period, FDIC-supervised institutions will phase in the deduction requirement for the amounts of DTAs arising from temporary differences that could not be realized through net operating loss carryback, MSAs, and significant investments in the capital of unconsolidated financial institutions in the form of common stock that exceed the 10 percent threshold in section 22(d) according to Table 13.

During the transition period, FDIC-supervised institutions will not be subject to the methodology to calculate the 15 percent common equity deduction threshold for 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 described in section 324.22(d) of the interim final rule. During the transition period, an FDIC-supervised institution will be required to deduct from its common equity tier 1 capital the percentage as set forth in Table 13 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 FDIC-supervised institution's common equity tier 1 capital after making the deductions and adjustments required under sections 324.22(a) through (c).

D. Transition Provisions for Non-Qualifying Capital Instruments

Under the interim final rule, beginning on January 1, 2014, an advanced approaches depository institution and beginning on January 1, 2015, a depository institution that is not a depository institution subject to the advanced approaches rule may include

in regulatory capital debt or equity instruments issued prior to September 12, 2010 that do not meet the criteria for additional tier 1 or tier 2 capital instruments in section 324.20 of the interim final rule, but that were included in tier 1 or tier 2 capital, respectively, as of September 12, 2010 (non-qualifying capital instruments issued prior to September 12, 2010). These instruments may be included up to the percentage of the outstanding principal amount of such non-qualifying capital instruments as of the effective date of the interim final rule in accordance with the phase-out schedule in Table 14.

As of January 1, 2014 for advanced approaches FDIC-supervised institutions, and January 1, 2015 for all other FDIC-supervised institutions, debt or equity instruments issued after September 12, 2010, that do not meet the criteria for additional tier 1 or tier 2 capital instruments in section 20 of the interim final rule may not be included in additional tier 1 or tier 2 capital.

TABLE 14—PERCENTAGE OF NON-QUALIFYING CAPITAL INSTRUMENTS ISSUED PRIOR TO SEPTEMBER 12, 2010 INCLUDABLE IN ADDITIONAL TIER 1 OR TIER 2 CAPITAL

Transition period (calendar year)	Percentage of non-qualifying capital instruments issued prior to September 2010 includable in additional tier 1 or tier 2 capital for FDIC-supervised institutions
Calendar year 2014 (advanced approaches FDIC-supervised institutions only)	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

Under the transition provisions in the interim final rule, an FDIC-supervised institution is allowed to include in regulatory capital a portion of the common equity tier 1, tier 1, or total capital minority interest that is disqualified from regulatory capital as a result of the requirements and limitations outlined in section 21 (surplus minority interest). If an FDIC-supervised institution has surplus minority interest outstanding when the interim final rule becomes effective, that surplus minority interest will be subject to the phase-out schedule outlined in Table 16. Advanced approaches FDIC-supervised institutions must begin to phase out surplus minority interest in accordance with Table 16 beginning on January 1, 2014. All other FDIC-supervised institutions will begin the phase out for surplus minority interest on January 1, 2015.

During the transition period, an FDIC-supervised institution will also 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 FDIC-supervised institution on the date the rule becomes effective, but that do not qualify as tier 1 or total capital under section 324.20 of the interim final rule (non-qualifying minority interest) in accordance with Table 16.

TABLE 16—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
January 1, 2014, to December 31, 2014 (advanced approaches FDIC-supervised institutions only)	80
January 1, 2015, to December 31, 2015	60
January 1, 2016, to December 31, 2016	40
January 1, 2017, to December 31, 2017	20
January 1, 2018 and thereafter	0

VIII. Standardized Approach for Risk-Weighted Assets

In the Standardized Approach NPR, the agencies proposed to revise methodologies for calculating risk-weighted assets. As discussed above and in the proposal, these revisions were intended to harmonize the agencies' rules for calculating risk-weighted assets and to enhance risk sensitivity and remediate weaknesses identified over recent years.[102] The proposed revisions incorporated elements of the Basel II standardized approach[103] as modified by the 2009 Enhancements, certain aspects of Basel III, and other proposals in recent consultative papers published by the BCBS.[104] Consistent with section 939A of the Dodd-Frank Act, the agencies also proposed alternatives to credit ratings for calculating risk weights for certain assets.

[102] 77 FR 52888 (August 30, 2012).

[103] *See* BCBS, ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework,'' (June 2006), available at *http://www.bis.org/publ/bcbs128.htm*.

[104] *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*; ''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*.

The proposal also included potential revisions for the recognition of credit risk mitigation that would allow for greater recognition of financial collateral and a wider range of eligible guarantors. In addition, the proposal set forth more risk-sensitive treatments for residential mortgages, equity exposures and past due loans, derivatives and repo-style transactions cleared through CCPs, and certain commercial real estate exposures that typically have higher credit risk, as well as operational requirements for securitization exposures. The agencies also proposed to apply disclosure requirements to banking organizations with $50 billion or more in total assets that are not subject to the advanced approaches rule.

The agencies received a significant number of comments regarding the proposed standardized approach for risk-weighted assets. Although a few commenters observed that the proposals would provide a sound framework for determining risk-weighted assets for all banking organizations that would generally benefit U.S. banking organizations, a significant number of other commenters asserted that the proposals were too complex and burdensome, especially for smaller banking organizations, and some argued that it was inappropriate to apply the proposed requirements to such banking organizations because such institutions did not cause the recent financial crisis. Other commenters expressed concern that the new calculation for risk-weighted assets would adversely affect banking organizations' regulatory capital ratios and that smaller banking organizations would have difficulties obtaining the data and performing the calculations required by the proposals. A number of commenters also expressed concern about the burden of the proposals in the context of multiple new regulations, including new standards for mortgages and increased regulatory capital requirements generally. One commenter urged the agencies to maintain key aspects of the proposed risk-weighted asset treatment for community banking organizations, but generally requested that the agencies reduce the perceived complexity. The FDIC has considered these comments and, where applicable, have focused on simplicity, comparability, and broad applicability of methodologies for U.S. banking organizations under the standardized approach.

Some commenters asked that the proposed requirements be optional for community banking organizations until the effects of the proposals have been studied, or that the proposed standardized approach be withdrawn entirely. A number of the commenters requested specific modifications to the proposals. For example, some requested an exemption for community banking organizations from the proposed due diligence requirements for securitization exposures. Other commenters requested that the agencies grandfather the risk weighting of existing loans, arguing that doing so would lessen the proposed rule's implementation burden.

To address commenters' concerns about the standardized approach's burden and the accessibility of credit, the FDIC has revised elements of the proposed rule, as described in further detail below. In particular, the FDIC has modified the proposed approach to risk weighting residential mortgage loans to reflect the approach in the FDIC's general risk-based capital rules. The FDIC believes the standardized approach more accurately captures the risk of banking organizations' assets and, therefore, is applying this aspect of the interim final rule to all banking organizations subject to the rule.

This section of the preamble describes in detail the specific proposals for the standardized treatment of risk-weighted assets, comments received on those proposals, and the provisions of the interim final rule in subpart D as adopted by the FDIC. These sections of the preamble discuss how subpart D of the interim final rule differs from the general risk-based capital rules, and provides examples for how an FDIC-supervised institution must calculate risk-weighted asset amounts under the interim final rule.

Beginning on January 1, 2015, all FDIC-supervised institutions will be required to calculate risk-weighted assets under subpart D of the interim final rule. Until then, FDIC-supervised institutions must calculate risk-weighted assets using the methodologies set forth in the general risk-based capital rules. Advanced approaches FDIC-supervised institutions are subject to additional requirements, as described in section III. D of this preamble, regarding the timeframe for implementation.

A. Calculation of Standardized Total Risk-Weighted Assets

Consistent with the Standardized Approach NPR, the interim final rule requires an FDIC-supervised institution to calculate its risk-weighted asset amounts for its on- and off-balance sheet exposures and, for market risk banks only, standardized market risk-weighted assets as determined under subpart F.[105] Risk-weighted asset amounts generally are 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 are 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.

An FDIC-supervised institution must 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* (2) market risk-weighted assets, if applicable, *minus* (3) the amount of the FDIC-supervised institution's ALLL that is not included in tier 2 capital, and any amounts of allocated transfer risk reserves.

B. Risk-Weighted Assets for General Credit Risk

Consistent with the proposal, under the interim final rule total risk-weighted assets for general credit risk equals the sum of the risk-weighted asset amounts as calculated under section 324.31(a) of the interim final rule. General credit risk exposures include an FDIC-supervised institution's on-balance sheet exposures (other than cleared transactions, default fund contributions to CCPs, securitization exposures, and equity exposures, each as defined in section 2 of the interim final rule), exposures to 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.

Under the interim final rule, the exposure amount for the on-balance sheet component of an exposure is generally the FDIC-supervised institution's carrying value for the exposure as determined under GAAP. The FDIC believes that using GAAP to determine the amount and nature of an exposure provides a consistent framework that can be easily applied across all FDIC-supervised institutions. Generally, FDIC-supervised institutions already use GAAP to prepare their financial statements and regulatory reports, and this treatment reduces potential burden that could otherwise result from requiring FDIC-supervised institutions to comply with a separate

[105] This interim final rule incorporates the market risk rule into the integrated regulatory framework as subpart F of part 324.

set of accounting and measurement standards for risk-based capital calculation purposes under non-GAAP standards, such as regulatory accounting practices or legal classification standards.

For purposes of the definition of exposure amount for AFS or held-to-maturity debt securities and AFS preferred stock not classified as equity under GAAP that are held by an FDIC-supervised institution that has made an AOCI opt-out election, the exposure amount is the FDIC-supervised institution's carrying value (including net accrued but unpaid interest and fees) for the exposure, less any net unrealized gains, and plus any net unrealized losses. For purposes of the definition of exposure amount for AFS preferred stock classified as an equity security under GAAP that is held by a banking organization that has made an AOCI opt-out election, the exposure amount is the banking organization's carrying value (including net accrued but unpaid interest and fees) for the exposure, less any net unrealized gains that are reflected in such carrying value but excluded from the banking organization's regulatory capital.

In most cases, the exposure amount for an off-balance sheet component of an exposure is determined by multiplying the notional amount of the off-balance sheet component by the appropriate CCF as determined under section 324.33 of the interim final rule. The exposure amount for an OTC derivative contract or cleared transaction is determined under sections 34 and 35, respectively, of the interim final rule, whereas exposure amounts for collateralized OTC derivative contracts, collateralized cleared transactions, repo-style transactions, and eligible margin loans are determined under section 324.37 of the interim final rule.

1. Exposures to Sovereigns

Consistent with the proposal, the interim final rule defines a sovereign as a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government. In the Standardized Approach NPR, the agencies proposed to retain the general risk-based capital rules' risk weights for exposures to and claims directly and unconditionally guaranteed by the U.S. government or its agencies. The interim final rule adopts the proposed treatment and provides that 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 receive a zero percent risk weight.[106] Consistent with the general risk-based capital rules, the portion of a deposit or other exposure insured or otherwise unconditionally guaranteed by the FDIC or the National Credit Union Administration also is assigned a zero percent risk weight. An exposure conditionally guaranteed by the U.S. government, its central bank, or a U.S. government agency receives a 20 percent risk weight.[107] This includes an exposure that is conditionally guaranteed by the FDIC or the National Credit Union Administration.

The agencies proposed in the Standardized Approach NPR to revise the risk weights for exposures to foreign sovereigns. 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.[108]

Under the proposed rule, the risk weight for a foreign sovereign exposure would have been determined using OECD Country Risk Classifications (CRCs) (the CRC methodology).[109] The CRCs reflect an assessment of country risk, used to set interest rate charges for transactions covered by the OECD arrangement on export credits. The CRC methodology classifies countries 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. Using CRCs to risk weight sovereign exposures is an option that is included in the Basel II standardized framework. The agencies proposed to map risk weights ranging from 0 percent to 150 percent 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 agencies also proposed to assign a 150 percent risk weight to foreign 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. The proposal defined sovereign default as 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 or interest fully and on a timely basis, arrearages, or restructuring. Restructuring 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 received several comments on the proposed risk weights for foreign sovereign exposures. Some commenters criticized the proposal, arguing that CRCs are not sufficiently risk sensitive and basing risk weights on CRCs unduly benefits certain jurisdictions with unstable fiscal positions. A few commenters asserted that the increased burden associated with tracking CRCs to determine risk weights outweighs any increased risk sensitivity gained by using CRCs relative to the general risk-based capital rules. Some commenters also requested that the CRC methodology be disclosed so that banking organizations could perform their own due diligence. One commenter also indicated that community banking organizations should be permitted to maintain the treatment under the general risk-based capital rules.

Following the publication of the proposed rule, the OECD determined that certain high-income countries that received a CRC of 0 in 2012 will no longer receive any CRC.[110]

[106] Similar to the 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, for example, asset servicing requirements. *See* 12 CFR part 325, appendix A, section II.C. (footnote 35) (state nonmember banks) and 12 CFR 390.466 (state savings associations).

[107] 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, FDIC-supervised institutions should consult with the FDIC to determine the appropriate risk-based capital treatment for specific loss-sharing agreements.

[108] 12 CFR part 325, appendix A, section II.C (state nonmember banks) and 12 CFR 390.466 (state savings associations).

[109] 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.*

[110] *See http://www.oecd.org/tad/xcred/cat0.htm;* Participants to the Arrangement on Officially Supported Export Credits agreed that the automatic classification of High Income OECD and High Income Euro Area countries in Country Risk Category Zero should be terminated. In the future, these countries will no longer be classified but will

Continued

Despite the limitations associated with risk weighting foreign sovereign exposures using CRCs, the FDIC has decided to retain this methodology, modified as described below to take into account that some countries will no longer receive a CRC. Although the FDIC recognizes that the risk sensitivity provided by the CRCs is limited, it considers CRCs to be a reasonable alternative to credit ratings for sovereign exposures and the CRC methodology to be more granular and risk sensitive than the current risk-weighting methodology based solely on OECD membership. Furthermore, the OECD regularly updates CRCs and makes the assessments publicly available on its Web site.[111] Accordingly, the FDIC believes that risk weighting foreign sovereign exposures with reference to CRCs (as applicable) should not unduly burden FDIC-supervised institutions. Additionally, the 150 percent risk weight assigned to defaulted sovereign exposures should mitigate the concerns raised by some commenters that the use of CRCs assigns inappropriate risk weights to exposures to countries experiencing fiscal stress.

The interim final rule assigns risk weights to foreign sovereign exposures as set forth in Table 17 below. The FDIC modified the interim final rule to reflect a change in OECD practice for assigning CRCs for certain member countries so that those member countries that no longer receive a CRC are assigned a zero percent risk weight. Applying a zero percent risk weight to exposures to these countries is appropriate because they will remain subject to the same market credit risk pricing formulas of the OECD's rating methodologies that are applied to all OECD countries with a CRC of 0. In other words, OECD member countries that are no longer assigned a CRC exhibit a similar degree of country risk as that of a jurisdiction with a CRC of zero. The interim final rule, therefore, provides a zero percent risk weight in these cases. Additionally, a zero percent risk weight for these countries is generally consistent with the risk weight they would receive under the FDIC's general risk-based capital rules.

TABLE 17—RISK WEIGHTS FOR SOVEREIGN EXPOSURES

		Risk weight (in percent)
CRC	0–1	0
	2	20
	3	50
	4–6	100
	7	150
OECD Member with No CRC		0
Non-OECD Member with No CRC		100
Sovereign Default		150

Consistent with the proposal, the interim final rule provides that if a banking supervisor in a sovereign jurisdiction allows banking organizations in that jurisdiction to apply a lower risk weight to an exposure to the sovereign than Table 17 provides, a U.S. FDIC-supervised institution may assign the lower risk weight to an exposure to the sovereign, provided the exposure is denominated in the sovereign's currency and the U.S. FDIC-supervised institution has at least an equivalent amount of liabilities in that foreign currency.

2. Exposures to Certain Supranational Entities and Multilateral Development Banks

Under the general risk-based capital rules, exposures to certain supranational entities and MDBs receive a 20 percent risk weight. Consistent with the Basel II standardized framework, the agencies proposed 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. The agencies also proposed to apply a zero percent risk weight to exposures to an MDB in accordance with the Basel framework. The proposal defined 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.

As explained in the proposal, 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. The FDIC has adopted this aspect of the proposal without change. Exposures to regional development banks and multilateral lending institutions that are not covered under the definition of MDB generally are treated as corporate exposures assigned to the 100 percent risk weight category.

3. Exposures to Government-Sponsored Enterprises

The general risk-based capital rules assign a 20 percent risk weight to exposures to GSEs that are not equity exposures and a 100 percent risk weight to GSE preferred stock in the case of the Federal Reserve and the FDIC (the OCC has assigned a 20 percent risk weight to GSE preferred stock).

The agencies proposed to continue to assign a 20 percent risk weight to exposures to GSEs that are not equity exposures and to also assign a 100 percent risk weight to preferred stock issued by a GSE. As explained in the proposal, the agencies believe these risk weights remain appropriate for the GSEs under their current circumstances, including those in the conservatorship of the Federal Housing Finance Agency and receiving capital support from the U.S. Treasury. The FDIC maintains that the obligations of the GSEs, as private corporations whose obligations are not explicitly guaranteed by the full faith and credit of the United States, should not receive the same treatment as obligations that have such an explicit guarantee.

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. Under the general risk-based capital rules, 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 proposed rule would assign a 20 percent risk weight to exposures to U.S. depository institutions and credit

remain subject to the same market credit risk pricing disciplines that are applied to all Category Zero countries. This means that the change will have no practical impact on the rules that apply to the provision of official export credits.

[111] 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.*

unions.[112] Consistent with the Basel II standardized framework, under the proposed rule, 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 foreign bank's home country, based on the assignment of risk weights by CRC, as discussed above.[113] 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 foreign 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.

A few commenters asserted that the proposed 20 percent risk weight for exposures to U.S. banking organizations—when compared to corporate exposures that are assigned a 100 percent risk weight—would continue to encourage banking organizations to become overly concentrated in the financial sector. The FDIC has concluded that the proposed 20 percent risk weight is an appropriate reflection of risk for this exposure type when taking into consideration the extensive regulatory and supervisory frameworks under which these institutions operate. In addition, the FDIC notes that exposures to the capital of other financial institutions, including depository institutions and credit unions, are subject to deduction from capital if they exceed certain limits as set forth in section 324.22 of the interim final rule (discussed above in section V.B of this preamble). Therefore, the interim final rule retains, as proposed, the 20 percent risk weight for exposures to U.S. FDIC-supervised institutions.

The FDIC has adopted the proposal with modifications to take into account the OECD's decision to withdraw CRCs for certain OECD member countries. Accordingly, exposures to a foreign bank in a country that does not have a CRC, but that is a member of the OECD, are assigned a 20 percent risk weight and exposures to a foreign bank in a non-OECD member country that does not have a CRC continue to receive a 100 percent risk weight.

Additionally, the FDIC has adopted the proposed requirement that exposures to a financial institution that are included in the regulatory capital of such financial institution receive a risk weight of 100 percent, unless the exposure is (1) an equity exposure, (2) a significant investment in the capital of an unconsolidated financial institution in the form of common stock under section 22 of the interim final rule, (3) an exposure that is deducted from regulatory capital under section 324.22 of the interim final rule, or (4) an exposure that is subject to the 150 percent risk weight under Table 2 of section 324.32 of the interim final rule.

As described in the Standardized Approach NPR, 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.[114] In particular, the framework was revised to remove the sovereign floor for trade finance-related claims on banking organizations under the Basel II standardized approach.[115] The proposal incorporated this revision and would have permitted 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.[116] Consistent with the proposal, the interim final rule permits an FDIC-supervised institution 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.

As discussed in the proposal, although the Basel capital framework permits exposures to securities firms that meet certain requirements to be assigned the same risk weight as exposures to depository institutions, the agencies do not believe that the risk profile of securities firms is sufficiently similar to depository institutions to justify assigning the same risk weight to both exposure types. Therefore, the agencies proposed that banking organizations assign a 100 percent risk weight to exposures to securities firms, which is the same risk weight applied to BHCs, SLHCs, and other financial institutions that are not insured depository institutions or credit unions, as described in section VIII.B of this preamble.

Several commenters asserted that the interim final rule should be consistent with the Basel framework and permit lower risk weights for exposures to securities firms, particularly for securities firms in a sovereign jurisdiction with a CRC of 0 or 1. The FDIC considered these comments and has concluded that that exposures to securities firms exhibit a similar degree of risk as exposures to other financial institutions that are assigned a 100 percent risk weight, because of the nature and risk profile of their activities, which are more expansive and exhibit more varied risk profiles than the activities permissible for depository institutions and credit unions. Accordingly, the FDIC has adopted the 100 percent risk weight for securities firms without change.

5. Exposures to Public-Sector Entities

The proposal defined a PSE as a state, local authority, or other governmental subdivision below the level of a sovereign, which includes U.S. states and municipalities. The proposed definition did 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. The agencies proposed to define a general obligation as a bond or similar obligation that is backed by the full faith and credit of a PSE, whereas a revenue obligation would be defined as a bond or similar obligation that is an obligation of a PSE, but which the PSE has committed to repay with revenues from a specific project rather than general tax funds. In the interim final rule, the FDIC is adopting these definitions as proposed.

The agencies proposed to 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. These are the risk weights assigned to U.S. states and municipalities under the general risk-based capital rules.

[112] A depository institution is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(1)). Under this interim final rule, a credit union refers to an insured credit union as defined under the Federal Credit Union Act (12 U.S.C. 1752(7)).

[113] 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 the proposal, home country meant the country where an entity is incorporated, chartered, or similarly established.

[114] *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, ''How We Classify Countries,'' available at *http://data.worldbank.org/about/country-classifications*).

[115] 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.

[116] One commenter requested that the agencies confirm whether short-term self-liquidating trade finance instruments are considered exempt from the one-year maturity floor in the advances approaches rule. Section 324.131(d)(7) of the interim final rule provides that a trade-related letter of credit is exempt from the one-year maturity floor.

Some commenters asserted that available default data does not support a differentiated treatment between revenue obligations and general obligations. In addition, some commenters contended that higher risk weights for revenue obligation bonds would needlessly and adversely affect state and local agencies' ability to meet the needs of underprivileged constituents. One commenter specifically recommended assigning a 20 percent risk weight to investment-grade revenue obligations. Another commenter recommended that exposures to U.S. PSEs should receive the same treatment as exposures to the U.S. government.

The FDIC considered these comments, including with respect to burden on state and local programs, but concluded that the higher regulatory capital requirement for revenue obligations is appropriate because those obligations are dependent on revenue from specific projects and generally a PSE is not legally obligated to repay these obligations from other revenue sources. Although some evidence may suggest that there are not substantial differences in credit quality between general and revenue obligation exposures, the FDIC believes that such dependence on project revenue presents more credit risk relative to a general repayment obligation of a state or political subdivision of a sovereign. Therefore, the proposed differentiation of risk weights between general obligation and revenue exposures is retained in the interim final rule. The FDIC also continues to believe that PSEs collectively pose a greater credit risk than U.S. sovereign debt and, therefore, are appropriately assigned a higher risk weight under the interim final rule.

Consistent with the Basel II standardized framework, the agencies proposed to require banking organizations to risk weight exposures to a non-U.S. PSE based on (1) the CRC assigned to the PSE's home country and (2) whether the exposure is a general obligation or a revenue obligation. The risk weights assigned to revenue obligations were proposed to be higher than the risk weights assigned to a general obligation issued by the same PSE.

For purposes of the interim final rule, the FDIC has adopted the proposed risk weights for non-U.S. PSEs with modifications to take into account the OECD's decision to withdraw CRCs for certain OECD member countries (discussed above), as set forth in Table 18 below. Under the interim final rule, exposures to a non-U.S. PSE in a country that does not have a CRC and is not an OECD member 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 receive a 150 percent risk weight.

TABLE 18—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
CRC	0–1	20	50
	2	50	100
	3	100	100
	4–7	150	150
OECD Member with No CRC		20	50
Non-OECD member with No CRC		100	100
Sovereign Default		150	150

Consistent with the general risk-based capital rules as well as the proposed rule, an FDIC-supervised institution may apply a different risk weight to an exposure to a non-U.S. PSE if the banking organization supervisor in that PSE's home country allows supervised institutions to assign the alternative risk weight to exposures to that PSE. 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 the sovereign of that PSE's home country.

6. Corporate Exposures

Generally consistent with the general risk-based capital rules, the agencies proposed to require banking organizations to assign a 100 percent risk weight to all corporate exposures, including bonds and loans. The proposal defined 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, a credit union, a PSE, a GSE, a residential mortgage exposure, a pre-sold construction loan, a statutory multifamily mortgage, a high-volatility commercial real estate (HVCRE) exposure, a cleared transaction, a default fund contribution, a securitization exposure, an equity exposure, or an unsettled transaction. The definition also captured all exposures that are not otherwise included in another specific exposure category.

Several commenters recommended differentiating the proposed risk weights for corporate bonds based on a bond's credit quality. Other commenters requested the agencies align the interim final rule with the Basel international standard that aligns risk weights with credit ratings. Another commenter contended that corporate bonds should receive a 50 percent risk weight, arguing that other exposures included in the corporate exposure category (such as commercial and industrial bank loans) are empirically of greater risk than corporate bonds.

One commenter requested that the standardized approach provide a distinct capital treatment of a 75 percent risk weight for retail exposures, consistent with the international standard under Basel II. The FDIC has concluded that the proposed 100 percent risk weight assigned to retail exposures is appropriate given their risk profile in the United States and has retained the proposed treatment in the interim final rule. Consistent with the proposal, the interim final rule neither defines nor provides a separate

treatment for retail exposures in the standardized approach.

As described in the proposal, the agencies removed the use of ratings from the regulatory capital framework, consistent with section 939A of the Dodd-Frank Act. The agencies therefore evaluated a number of alternatives to credit ratings to provide a more granular risk weight treatment for corporate exposures.[117] For example, the agencies considered market-based alternatives, such as the use of credit default and bond spreads, and use of particular indicators or parameters to differentiate between relative levels of credit risk. However, the agencies viewed each of the possible alternatives as having significant drawbacks, including their operational complexity, or insufficient development. For instance, the agencies were concerned that bond markets may sometimes misprice risk and bond spreads may reflect factors other than credit risk. The agencies also were concerned that such approaches could introduce undue volatility into the risk-based capital requirements.

The FDIC considered suggestions offered by commenters and understands that a 100 percent risk weight may overstate the credit risk associated with some high-quality bonds. However, the FDIC believes that a single risk weight of less than 100 percent would understate the risk of many corporate exposures and, as explained, has not yet identified an alternative methodology to credit ratings that would provide a sufficiently rigorous basis for differentiating the risk of various corporate exposures. In addition, the FDIC believes that, on balance, a 100 percent risk weight is generally representative of a well-diversified corporate exposure portfolio. The interim final rule retains without change the 100 percent risk weight for all corporate exposures as well as the proposed definition of corporate exposure.

A few commenters requested clarification on the treatment for general-account insurance products. Under the final rule, consistent with the proposal, if a general-account exposure is to an organization that is not a banking organization, such as an insurance company, the exposure must receive a risk weight of 100 percent. Exposures to securities firms are subject to the corporate exposure treatment under the final rule, as described in section VIII.B of this preamble.

[117] *See*, for example, 76 FR 73526 (Nov. 29, 2011) and 76 FR 73777 (Nov. 29, 2011).

7. Residential Mortgage Exposures

Under the general risk-based capital requirements, first-lien residential mortgages made in accordance with prudent underwriting standards on properties that are owner-occupied or rented typically are assigned to the 50 percent risk-weight category. Otherwise, residential mortgage exposures are assigned to the 100 percent risk weight category.

The proposal would have substantially modified the risk-weight framework applicable to residential mortgage exposures and differed materially from both the general risk-based capital rules and the Basel capital framework. The agencies proposed to divide residential mortgage exposures into two categories. The proposal applied relatively low risk weights to residential mortgage exposures that did not have product features associated with higher credit risk, or ''category 1'' residential mortgages as defined in the proposal. The proposal defined all other residential mortgage exposures as ''category 2'' mortgages, which would receive relatively high risk weights. For both category 1 and category 2 mortgages, the proposed risk weight assigned also would have depended on the mortgage exposure's LTV ratio. Under the proposal, a banking organization would not be able to recognize private mortgage insurance (PMI) when calculating the LTV ratio of a residential mortgage exposure. Due to the varying degree of financial strength of mortgage insurance providers, the agencies stated that they did not believe that it would be prudent to consider PMI in the determination of LTV ratios under the proposal.

The agencies received a significant number of comments in opposition to the proposed risk weights for residential mortgages and in favor of retaining the risk-weight framework for residential mortgages in the general risk-based capital rules. Many commenters asserted that the increased risk weights for certain mortgages would inhibit lending to creditworthy borrowers, particularly when combined with the other proposed statutory and regulatory requirements being implemented under the authority of the Dodd-Frank Act, and could ultimately jeopardize the recovery of a still-fragile residential real estate market. Various commenters asserted that the agencies did not provide sufficient empirical support for the proposal and stated the proposal was overly complex and would not contribute meaningfully to the risk sensitivity of the regulatory capital requirements. They also asserted that the proposal would require some banking organizations to raise revenue through other, more risky activities to compensate for the potential increased costs.

Commenters also indicated that the distinction between category 1 and category 2 residential mortgages would adversely impact certain loan products that performed relatively well even during the recent crisis, such as balloon loans originated by community banking organizations. Other commenters criticized the proposed increased capital requirements for various loan products, including balloon and interest-only mortgages. Community banking organization commenters in particular asserted that such mortgage products are offered to hedge interest-rate risk and are frequently the only option for a significant segment of potential borrowers in their regions.

A number of commenters argued that the proposal would place U.S. banking organizations at a competitive disadvantage relative to foreign banking organizations subject to the Basel II standardized framework, which generally assigns a 35 percent risk weight to residential mortgage exposures. Several commenters indicated that the proposed treatment would potentially undermine government programs encouraging residential mortgage lending to lower-income individuals and underserved regions. Commenters also asserted that PMI should receive explicit recognition in the interim final rule through a reduction in risk weights, given the potential negative impact on mortgage availability (particularly to first-time borrowers) of the proposed risk weights.

In addition to comments on the specific elements of the proposal, a significant number of commenters alleged that the agencies did not sufficiently consider the potential impact of other regulatory actions on the mortgage industry. For instance, commenters expressed considerable concern regarding the new requirements associated with the Dodd-Frank Act's qualified mortgage definition under the Truth in Lending Act.[118] Many of these commenters asserted that when combined with this proposal, the cumulative effect of the new regulatory requirements could adversely impact the residential mortgage industry.

The agencies also received specific comments concerning potential logistical difficulties they would face

[118] The proposal was issued prior to publication of the Consumer Financial Protection Bureau's final rule regarding qualified mortgage standards. *See* 78 FR 6407 (January 30, 2013).

implementing the proposal. Many commenters argued that tracking loans by LTV and category would be administratively burdensome, requiring the development or purchase of new systems. These commenters requested that, at a minimum, existing mortgages continue to be assigned the risk weights they would receive under the general risk-based capital rules and exempted from the proposed rules. Many commenters also requested clarification regarding the method for calculating the LTV for first and subordinate liens, as well as how and whether a loan could be reclassified between the two residential mortgage categories. For instance, commenters raised various technical questions on how to calculate the LTV of a restructured mortgage and under what conditions a restructured loan could qualify as a category 1 residential mortgage exposure.

The FDIC considered the comments pertaining to the residential mortgage proposal, particularly comments regarding the issuance of new regulations designed to improve the quality of mortgage underwriting and to generally reduce the associated credit risk, including the final definition of ''qualified mortgage'' as implemented by the Consumer Financial Protection Bureau (CFPB) pursuant to the Dodd-Frank Act.[119] Additionally, the FDIC is mindful of the uncertain implications that the proposal, along with other mortgage-related rulemakings, could have had on the residential mortgage market, particularly regarding underwriting and credit availability. The FDIC also considered the commenters' observations about the burden of calculating the risk weights for FDIC-supervised institutions' existing mortgage portfolios, and have taken into account the commenters' concerns about the availability of different mortgage products across different types of markets.

In light of these considerations, the FDIC has decided to retain in the interim final rule the treatment for residential mortgage exposures that is currently set forth in its general risk-based capital rules. The FDIC may develop and propose changes in the treatment of residential mortgage exposures in the future, and in that process, it intends to take into consideration structural and product market developments, other relevant regulations, and potential issues with implementation across various product types.

Accordingly, as under the general risk-based capital rules, the interim final rule assigns 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 an owner-occupied or rented one-to-four family residential property that meet prudential underwriting standards, including standards relating to the loan amount as a percentage of the appraised value of the property, are not 90 days or more past due or carried on non-accrual status, and that are not restructured or modified receive a 50 percent risk weight. If an FDIC-supervised institution holds the first and junior lien(s) on a residential property and no other party holds an intervening lien, the FDIC-supervised institution must treat the combined exposure as a single loan secured by a first lien for purposes of determining the loan-to-value ratio and assigning a risk weight. An FDIC-supervised institution must assign a 100 percent risk weight to all other residential mortgage exposures. Under the interim final rule, a residential mortgage guaranteed by the federal government through the Federal Housing Administration (FHA) or the Department of Veterans Affairs (VA) generally will be risk-weighted at 20 percent.

Consistent with the general risk-based capital rules, under the interim final rule, a residential mortgage exposure may be assigned to the 50 percent risk-weight category only if it is not restructured or modified. Under the interim final rule, consistent with the proposal, 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) is not considered to be restructured or modified. Several commenters from community banking organizations encouraged the agencies to broaden this exemption and not penalize banking organizations for participating in other successful loan modification programs. As described in greater detail in the proposal, the FDIC believes 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.

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 provisions of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRI Act).[120] The proposal maintained the same general treatment as the general risk-based capital rules and clarified and updated the manner in which the general risk-based capital rules define these exposures. Under the proposal, a pre-sold construction loan would be subject to a 50 percent risk weight unless the purchase contract is cancelled.

The FDIC is adopting this aspect of the proposal without change. The interim final rule defines a pre-sold construction loan, in part, 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 also harmonizes the FDIC's prior regulations. Under the interim final rule, a multifamily mortgage that does not meet the definition of a statutory multifamily mortgage is treated as a corporate exposure.

9. High-Volatility Commercial Real Estate

Supervisory experience has demonstrated that certain acquisition, development, and construction loans (which are a subset of commercial real estate exposures) present particular risks for which the FDIC believes FDIC-supervised institutions should hold additional capital. Accordingly, the agencies proposed to require banking organizations to assign a 150 percent risk weight to any HVCRE exposure, which is higher than the 100 percent risk weight applied to such loans under the general risk-based capital rules. The proposal defined an HVCRE exposure to include any credit facility that finances or has financed the acquisition, development, or construction of real property, unless the facility finances one- to four-family residential mortgage

[119] *See id.*

[120] 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.

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.

Commenters criticized the proposed HVCRE definition as overly broad and suggested an exclusion for certain acquisition, development, or construction (ADC) loans, including: (1) ADC loans that are less than a specific dollar amount or have a debt service coverage ratio of 100 percent (rather than 80 percent, under the agencies' lending standards); (2) community development projects or projects financed by low-income housing tax credits; and (3) certain loans secured by agricultural property for the sole purpose of acquiring land. Several commenters asserted that the proposed 150 percent risk weight was too high for secured loans and would hamper local commercial development. Another commenter recommended the agencies increase the number of HVCRE risk-weight categories to reflect LTV ratios.

The FDIC has considered the comments and has decided to retain the 150 percent risk weight for HVCRE exposures (modified as described below), given the increased risk of these activities when compared to other commercial real estate loans.[121] The FDIC believes that segmenting HVCRE by LTV ratio would introduce undue complexity without providing a sufficient improvement in risk sensitivity. The FDIC has also determined not to exclude from the HVCRE definition ADC loans that are characterized by a specified dollar amount or loans with a debt service coverage ratio greater than 80 percent because an arbitrary threshold would likely not capture certain ADC loans with elevated risks. Consistent with the proposal, a commercial real estate loan that is not an HVCRE exposure is treated as a corporate exposure.

Many commenters requested clarification as to whether all commercial real estate or ADC loans are considered HVCRE exposures. Consistent with the proposal, the interim final rule's HVCRE definition only applies to a specific subset of ADC loans and is, therefore, not applicable to all commercial real estate loans. Specifically, some commenters sought clarification on whether a facility would remain an HVCRE exposure for the life of the loan and whether owner-occupied commercial real estate loans are included in the HVCRE definition. The FDIC notes that when the life of the ADC project concludes and the credit facility is converted to permanent financing in accordance with the FDIC-supervised institution's normal lending terms, the permanent financing is not an HVCRE exposure. Thus, a loan permanently financing owner-occupied commercial real estate is not an HVCRE exposure. Given these clarifications, the FDIC believes that many concerns regarding the potential adverse impact on commercial development were, in part, driven by a lack of clarity regarding the definition of the HVCRE, and believes that the treatment of HVCRE exposures in the interim final rule appropriately reflects their risk relative to other commercial real estate exposures.

Commenters also sought clarification as to whether cash or securities used to purchase land counts as borrower-contributed capital. In addition, a few commenters requested further clarification on what constitutes contributed capital for purposes of the interim final rule. Consistent with existing guidance, cash used to purchase land is a form of borrower contributed capital under the HVCRE definition.

In response to the comments, the interim final rule amends the proposed HVCRE definition to exclude loans that finance the acquisition, development, or construction of real property that would qualify as community development investments. The interim final rule does not require an FDIC-supervised institution to have an investment in the real property for it to qualify for the exemption: Rather, if the real property is such that an investment in that property would qualify as a community development investment, then a facility financing acquisition, development, or construction of that property would meet the terms of the exemption. The FDIC has, however, determined not to give an automatic exemption from the HVCRE definition to all ADC loans to businesses or farms that have gross annual revenues of $1 million or less, although they could qualify for another exemption from the definition. For example, an ADC loan to a small business with annual revenues of under $1 million that meets the LTV ratio and contribution requirements set forth in paragraph (3) of the definition would qualify for that exemption from the definition as would a loan that finances real property that: Provides affordable housing (including multi-family rental housing) for low to moderate income individuals; is used in the provision of community services for low to moderate income individuals; or revitalizes or stabilizes low to moderate income geographies, designated disaster areas, or underserved areas specifically determined by the federal banking agencies based on the needs of low- and moderate-income individuals in those areas. The final definition also exempts ADC loans for the purchase or development of agricultural land, which is defined as all land known to be used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not consider any potential use of the land for non-agricultural commercial development or residential development.

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 exposures, except sovereign exposures and residential mortgage exposures, that are more than 90 days past due to reflect the increased risk of loss. Accordingly, to reflect the impaired credit quality of such exposures, the agencies proposed to require a banking organization to assign a 150 percent risk weight 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 number of commenters maintained that the proposed 150 percent risk weight is too high for various reasons. Specifically, several commenters asserted that ALLL is already reflected in the risk-based capital numerator, and therefore an increased risk weight double-counts the risk of a past-due exposure. Other commenters characterized the increased risk weight as procyclical and burdensome (particularly for community banking organizations), and maintained that it would unnecessarily discourage lending and loan modifications or workouts.

The FDIC has considered the comments and have decided to retain the proposed 150 percent risk weight for past-due exposures in the interim final rule. The FDIC notes that the ALLL is intended to cover estimated, incurred losses as of the balance sheet date, rather than unexpected losses. The higher risk weight on past due exposures ensures sufficient regulatory capital for the increased probability of unexpected losses on these exposures.

[121] *See* the definition of ''high-volatility commercial real estate exposure'' in section 2 of the interim final rule.

The FDIC believes that any increased capital burden, potential rise in procyclicality, or impact on lending associated with the 150 percent risk weight is justified given the overall objective of better capturing the risk associated with the impaired credit quality of these exposures.

One commenter requested clarification as to whether a banking organization could reduce the risk weight for past-due exposures from 150 percent when the carrying value is charged down to the amount expected to be recovered. For the purposes of the interim final rule, an FDIC-supervised institution must apply a 150 percent risk weight to all past-due exposures, including any amount remaining on the balance sheet following a charge-off, to reflect the increased uncertainty as to the recovery of the remaining carrying value.

11. Other Assets

Generally consistent with the general risk-based capital rules, the FDIC has decided to adopt, as proposed, the risk weights described below for exposures not otherwise assigned to a specific risk weight category. Specifically, an FDIC-supervised institution must assign:

(1) A zero percent risk weight to cash owned and held in all of an FDIC-supervised institution's offices or in transit; gold bullion held in the FDIC-supervised institution'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 CCP where there is no assumption of ongoing counterparty credit risk by the CCP 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 the interim final rule (other than exposures that would be deducted from tier 1 or tier 2 capital), including deferred acquisition costs (DAC) and value of business acquired (VOBA).

In addition, subject to the proposed transition arrangements under section 300 of the interim final rule, an FDIC-supervised institution must assign:

(1) A 100 percent risk weight to DTAs arising from temporary differences that the FDIC-supervised institution could realize through net operating loss carrybacks; and

(2) A 250 percent risk weight to the portion of MSAs and DTAs arising from temporary differences that the FDIC-supervised institution could not realize through net operating loss carrybacks that are not deducted from common equity tier 1 capital pursuant to section 324.22(d).

The agencies received a few comments on the treatment of DAC and VOBA. DAC represents certain costs incurred in the acquisition of a new contract or renewal insurance contract that are capitalized pursuant to GAAP. VOBA refers to assets that reflect revenue streams from insurance policies purchased by an insurance company. One commenter asked for clarification on risk weights for other types of exposures that are not assigned a specific risk weight under the proposal. Consistent with the proposal, under the interim final rule these assets receive a 100 percent risk weight, together with other assets not specifically assigned a different risk weight under the NPR.

Consistent with the general risk-based capital rules, the interim final rule retains the limited flexibility to address situations where exposures of an FDIC-supervised institution that are not exposures typically held by depository institutions do not fit wholly within the terms of another risk-weight category. Under the interim final rule, an FDIC-supervised institution may assign such exposures to the risk-weight category applicable under the capital rules for BHCs or covered SLHCs, provided that (1) the FDIC-supervised institution 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 interim final rule.

C. Off-Balance Sheet Items

1. Credit Conversion Factors

Under the proposed rule, 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 contractual amount, by the applicable CCF. This treatment would apply to all off-balance sheet items, such as commitments, contingent items, guarantees, certain repo-style transactions, financial standby letters of credit, and forward agreements. The proposed rule, however, introduced new CCFs applicable to certain exposures, such as a higher CCF for commitments with an original maturity of one year or less that are not unconditionally cancelable.

Commenters offered a number of suggestions for revising the proposed CCFs that would be applied to off-balance sheet exposures. Commenters generally asked for lower CCFs that, according to the commenters, are more directly aligned with a particular off-balance sheet exposure's loss history. In addition, some commenters asked the agencies to conduct a calibration study to show that the proposed CCFs were appropriate.

The FDIC has decided to retain the proposed CCFs for off-balance sheet exposures without change for purposes of the interim final rule. The FDIC believes that the proposed CCFs meet its goals of improving risk sensitivity and implementing higher capital requirements for certain exposures through a simple methodology. Furthermore, alternatives proposed by commenters, such as exposure measures tied directly to a particular exposure's loss history, would create significant operational burdens for many small- and mid-sized banking organizations, by requiring them to keep accurate historical records of losses and continuously adjust their capital requirements for certain exposures to account for new loss data. Such a system would be difficult for the FDIC to monitor, as the FDIC would need to verify the accuracy of historical loss data and ensure that capital requirements are properly applied across institutions. Incorporation of additional factors, such as loss history or increasing the number of CCF categories, would detract from the FDIC's stated goal of simplicity in its capital treatment of off-balance sheet exposures. Additionally, the FDIC believes that the CCFs, as proposed, were properly calibrated to reflect the risk profiles of the exposures to which they are applied and do not believe a calibration study is required.

Accordingly, under the interim final rule, as proposed, an FDIC-supervised institution may apply a zero percent CCF to the unused portion of commitments that are unconditionally cancelable by the FDIC-supervised institution. For purposes of the interim final rule, a commitment means any legally binding arrangement that obligates an FDIC-supervised institution to extend credit or to purchase assets. Unconditionally cancelable means a commitment for which an FDIC-supervised institution may, at any time, with or without cause, refuse to extend credit (to the extent permitted under applicable law). In the case of a

residential mortgage exposure that is a line of credit, an FDIC-supervised institution can unconditionally cancel the commitment if it, at its option, may prohibit additional extensions of credit, reduce the credit line, and terminate the commitment to the full extent permitted by applicable law. If an FDIC-supervised institution provides a commitment that is structured as a syndication, the FDIC-supervised institution is only required to calculate the exposure amount for its pro rata share of the commitment.

The proposed rule provided a 20 percent CCF for commitments with an original maturity of one year or less that are not unconditionally cancelable by a banking organization, and for self-liquidating, trade-related contingent items that arise from the movement of goods with an original maturity of one year or less.

Some commenters argued that the proposed designation of a 20 percent CCF for certain exposures was too high. For example, they requested that the interim final rule continue the current practice of applying a zero percent CCF to all unfunded lines of credit with less than one year maturity, regardless of the lender's ability to unconditionally cancel the line of credit. They also requested a CCF lower than 20 percent for the unused portions of letters of credit extended to a small, mid-market, or trade finance company with durations of less than one year or less. These commenters asserted that current market practice for these lines have covenants based on financial ratios, and any increase in riskiness that violates the contractual minimum ratios would prevent the borrower from drawing down the unused portion.

For purposes of the interim final rule, the FDIC is retaining the 20 percent CCF, as it accounts for the elevated level of risk FDIC-supervised institutions face when extending short-term commitments that are not unconditionally cancelable. Although the FDIC understands certain contractual provisions are common in the market, these practices are not static, and it is more appropriate from a regulatory standpoint to base a CCF on whether a commitment is unconditionally cancellable. An FDIC-supervised institution must apply a 20 percent CCF to a commitment with an original maturity of one year or less that is not unconditionally cancellable by the FDIC-supervised institution. The interim final rule also maintains 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. The interim final rule also requires an FDIC-supervised institution to apply a 50 percent CCF to commitments with an original maturity of more than one year that are not unconditionally cancelable by the FDIC-supervised institution, and to transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit.

Some commenters requested clarification regarding the treatment of commitments to extend letters of credit. They argued that these commitments are no more risky than commitments to extend loans and should receive similar treatment (20 percent or 50 percent CCF). For purposes of the interim final rule, the FDIC notes that section 33(a)(2) allows FDIC-supervised institutions to apply the lower of the two applicable CCFs to the exposures related to commitments to extend letters of credit. FDIC-supervised institutions will need to make this determination based upon the individual characteristics of each letter of credit.

Under the interim final rule, an FDIC-supervised institution must apply a 100 percent CCF to off-balance sheet guarantees, repurchase agreements, credit-enhancing representations and warranties that are not securitization exposures, securities lending or borrowing transactions, financial standby letters of credit, and forward agreements, and other similar exposures. The off-balance sheet component of a repurchase agreement equals the sum of the current fair values of all positions the FDIC-supervised institution has sold subject to repurchase. The off-balance sheet component of a securities lending transaction is the sum of the current fair values of all positions the FDIC-supervised institution has lent under the transaction. For securities borrowing transactions, the off-balance sheet component is the sum of the current fair values of all non-cash positions the FDIC-supervised institution has posted as collateral under the transaction. In certain circumstances, an FDIC-supervised institution may instead determine the exposure amount of the transaction as described in section 37 of the interim final rule.

In contrast to the general risk-based capital rules, which require capital for securities lending and borrowing transactions and repurchase agreements that generate an on-balance sheet exposure, the interim final rule requires an FDIC-supervised institution to hold risk-based capital against all repo-style transactions, regardless of whether they generate on-balance sheet exposures, as described in section 324.37 of the interim final rule. One commenter disagreed with this treatment and requested an exemption from the capital treatment for off-balance sheet repo-style exposures. However, the FDIC adopted this approach because banking organizations face counterparty credit risk when engaging in repo-style transactions, even if those transactions do not generate on-balance sheet exposures, and thus should not be exempt from risk-based capital requirements.

2. Credit-Enhancing Representations and Warranties

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.[122] 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 (1) contain early default clauses or similar warranties that permit the return of, or premium refund clauses covering, one-to-four family first-lien residential mortgage loans for a period not to exceed 120 days from the date of transfer; and (2) contain 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, provided the premium refund clauses are for a period not to exceed 120 days; or (3) permit the return of assets in instances of fraud, misrepresentation, or incomplete documentation.[123]

In contrast, under the proposal, if a banking organization provides a credit-enhancing representation or warranty on assets it sold or otherwise transferred to third parties, including early default clauses that permit the return of, or premium refund clauses covering, one-to-four family residential first mortgage loans, the banking organization would treat such an arrangement as an off-balance sheet guarantee and apply a 100 percent CCF to determine the exposure amount, provided the exposure does not meet the definition of a securitization exposure. The agencies proposed a different treatment than the one under the general risk-based capital rules because of the risk to which banking organizations are exposed while credit-enhancing representations and

[122] 12 CFR part 325, appendix A, section II.B.5(a) (state nonmember banks) and 12 CFR 390.466(b) (state savings associations).

[123] 12 CFR part 325, appendix A, section II.B.5(a) (state nonmember banks) and 12 CFR 390.466(b) (state savings associations).

warranties are in effect. Some commenters asked for clarification on what qualifies as a credit-enhancing representation and warranty, and commenters made numerous suggestions for revising the proposed definition. In particular, they disagreed with the agencies' proposal to remove the exemptions related to early default clauses and premium refund clauses since these representations and warranties generally are considered to be low risk exposures and banking organizations are not currently required to hold capital against these representations and warranties.

Some commenters encouraged the agencies to retain the 120-day safe harbor from the general risk-based capital rules, which would not require holding capital against assets sold with certain early default clauses of 120 days or less. These commenters argued that the proposal to remove the 120-day safe harbor would impede the ability of banking organizations to make loans and would increase the cost of credit to borrowers. Furthermore, certain commenters asserted that removal of the 120-day safe harbor was not necessary for loan portfolios that are well underwritten, those for which put-backs are rare, and where the banking organization maintains robust buyback reserves.

After reviewing the comments, the FDIC decided to retain in the interim final rule the 120-day safe harbor in the definition of credit-enhancing representations and warranties for early default and premium refund clauses on one-to-four family residential mortgages that qualify for the 50 percent risk weight as well as for 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. The FDIC determined that retaining the safe harbor would help to address commenters' confusion about what qualifies as a credit-enhancing representation and warranty. Therefore, consistent with the general risk-based capital rules, under the interim final rule, credit-enhancing representations and warranties will not include (1) early default clauses and similar warranties that permit the return of, or premium refund clauses covering, one-to-four family first-lien residential mortgage loans that qualify for a 50 percent risk weight for a period not to exceed 120 days from the date of transfer; [124] (2) premium refund clauses that cover assets guaranteed by the U.S. government, a U.S. Government agency, or a GSE, provided the premium refund clauses are for a period not to exceed 120 days from the date of transfer; or (3) warranties that permit the return of underlying exposures in instances of misrepresentation, fraud, or incomplete documentation.

Some commenters requested clarification from the agencies regarding representations made about the value of the underlying collateral of a sold loan. For example, many purchasers of mortgage loans originated by banking organizations require that the banking organization repurchase the loan if the value of the collateral is other than as stated in the documentation provided to the purchaser or if there were any material misrepresentations in the appraisal process. The FDIC confirms that such representations meets the ''misrepresentation, fraud, or incomplete documentation'' exclusion in the definition of credit-enhancing representations and warranties and is not subject to capital treatment.

A few commenters also requested clarification regarding how the definition of credit-enhancing representations and warranties in the proposal interacts with Federal Home Loan Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), and Government National Mortgage Association (GNMA) sales conventions. These same commenters also requested verification in the interim final rule that mortgages sold with representations and warranties would all receive a 100 percent risk weight, regardless of the characteristics of the mortgage exposure. First, the definition of credit-enhancing representations and warranties described in this interim final rule is separate from the sales conventions required by FLHMA, FNMA, and GNMA. Those entities will continue to set their own requirements for secondary sales, including representation and warranty requirements. Second, the risk weights applied to mortgage exposures themselves are not affected by the inclusion of representations and warranties. Mortgage exposures will continue to receive either a 50 or 100 percent risk weight, as outlined in section 32(g) of this interim final rule, regardless of the inclusion of representations and warranties when they are sold in the secondary market. If such representations and warranties meet the rule's definition of credit-enhancing representations and warranties, then the institution must maintain regulatory capital against the associated credit risk.

Some commenters disagreed with the proposed methodology for determining the capital requirement for representations and warranties, and offered alternatives that they argued would conform to existing market practices and better incentivize high-quality underwriting. Some commenters indicated that many originators already hold robust buyback reserves and argued that the agencies should require originators to hold adequate liquidity in their buyback reserves, instead of requiring a duplicative capital requirement. Other commenters asked that any capital requirement be directly aligned to that originator's history of honoring representation and warranty claims. These commenters stated that originators who underwrite high-quality loans should not be required to hold as much capital against their representations and warranties as originators who exhibit what the commenters referred to as ''poor underwriting standards.'' Finally, a few commenters requested that the agencies completely remove, or significantly reduce, capital requirements for representations and warranties. They argue that the market is able to regulate itself, as a banking organization will not be able to sell its loans in the secondary market if they are frequently put back by the buyers.

The FDIC considered these alternatives and has decided to finalize the proposed methodology for determining the capital requirement applied to representations and warranties without change. The FDIC is concerned that buyback reserves could be inadequate, especially if the housing market enters another prolonged downturn. Robust and clear capital requirements, in addition to separate buyback reserves held by originators, better ensure that representation and warranty claims will be fulfilled in times of stress. Furthermore, capital requirements based upon originators' historical representation and warranty claims are not only operationally difficult to implement and monitor, but they can also be misleading. Underwriting standards at firms are not static and can change over time. The FDIC believes that capital requirements based on past performance of a particular underwriter do not always adequately capture the current risks faced by that firm. The FDIC believes that the incorporation of the 120-day safe harbor in the interim final rule as discussed above addresses many of the commenters' concerns.

Some commenters requested clarification on the duration of the capital treatment for credit-enhancing

[124] These warranties may cover only those loans that were originated within 1 year of the date of transfer.

representations and warranties. For instance, some commenters questioned whether capital is required for credit-enhancing representations and warranties after the contractual life of the representations and warranties has expired or whether capital has to be held for the life of the asset. Banking organizations are not required to hold capital for any credit-enhancing representation and warranty after the expiration of the representation or warranty, regardless of the maturity of the underlying loan.

Additionally, commenters indicated that market practice for some representations and warranties for sold mortgages stipulates that originators only need to refund the buyer any servicing premiums and other earned fees in cases of early default, rather than requiring putback of the underlying loan to the seller. These commenters sought clarification as to whether the proposal would have required them to hold capital against the value of the underlying loan or only for the premium or fees that could be subject to a refund, as agreed upon in their contract with the buyer. For purposes of the interim final rule, an FDIC-supervised institution must hold capital only for the maximum contractual amount of the FDIC-supervised institution's exposure under the representations and warranties. In the case described by the commenters, the FDIC-supervised institution would hold capital against the value of the servicing premium and other earned fees, rather than the value of the underlying loan, for the duration specified in the representations and warranties agreement.

Some commenters also requested exemptions from the proposed treatment of representations and warranties for particular originators, types of transactions, or asset categories. In particular, many commenters asked for an exemption for community banking organizations, claiming that the proposed treatment would lessen credit availability and increase the costs of lending. One commenter argued that bona fide mortgage sale agreements should be exempt from capital requirements. Other commenters requested an exemption for the portion of any off-balance sheet asset that is subject to a risk retention requirement under section 941 of the Dodd-Frank Act and any regulations promulgated thereunder.[125] Some commenters also requested that the agencies delay action on the proposal until the risk retention rule is finalized. Other commenters also requested exemptions for qualified mortgages (QM) and ''prime'' mortgage loans.

The FDIC has decided not to adopt any of the specific exemptions suggested by the commenters. Although community banking organizations are critical to ensure the flow of credit to small businesses and individual borrowers, providing them with an exemption from the proposed treatment of credit-enhancing representations and warranties would be inconsistent with safety and soundness because the risks from these exposures to community banking organizations are no different than those to other banking organizations. The FDIC also has not provided exemptions in this rulemaking to portions of off-balance sheet assets subject to risk retention, QM, and ''prime loans.'' The relevant agencies have not yet adopted a final rule implementing the risk retention provisions of section 941 of the Dodd-Frank Act, and the FDIC, therefore, does not believe it is appropriate to provide an exemption relating to risk retention in this interim final rule. In addition, while the QM rulemaking is now final,[126] the FDIC believes it is appropriate to first evaluate how the QM designation affects the mortgage market before requiring less capital to be held against off-balance sheet assets that cover these loans. As noted above, the incorporation in the interim final rule of the 120-day safe harbor addresses many of the concerns about burden.

The risk-based capital treatment for off-balance sheet items in this interim final rule is consistent with section 165(k) of the Dodd-Frank Act which provides that, in the case of a BHC 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.[127] The interim final rule complies with the requirements of section 165(k) of the Dodd-Frank Act by requiring a BHC to hold risk-based capital for its off-balance sheet exposures, as described in sections 324.31, 324.33, 324.34 and 324.35 of the interim final rule.

D. Over-the-Counter Derivative Contracts

In the Standardized Approach NPR, the agencies proposed generally to retain the treatment of OTC derivatives provided under the general risk-based capital rules, which is similar to the current exposure method (CEM) for determining the exposure amount for OTC derivative contracts contained in the Basel II standardized framework.[128] Proposed revisions to the treatment of the OTC derivative contracts included an updated definition of an OTC derivative contract, a revised conversion factor matrix for calculating the 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 cap for OTC derivative contracts.

The agencies received a number of comments on the proposed CEM relating to OTC derivatives. These comments generally focused on the revised conversion factor matrix, the proposed removal of the 50 percent cap on risk weights for OTC derivative transactions in the general risk-based capital rules, and commenters' view that there is a lack of risk sensitivity in the calculation of the exposure amount of OTC derivatives and netting benefits. A specific discussion of the comments on particular aspects of the proposal follows.

One commenter asserted that the proposed conversion factors for common interest rate and foreign exchange contracts, and risk participation agreements (a simplified form of credit default swaps) (set forth in Table 19 below), combined with the removal of the 50 percent risk weight cap, would drive up banking organizations' capital requirements associated with these routine transactions and result in much higher transaction costs for small businesses. Another commenter asserted that the zero percent conversion factor assigned to interest rate derivatives with a remaining maturity of one year or less is not appropriate as the PFE incorrectly assumes all interest rate derivatives

[125] *See* 15 U.S.C. 78o–11, *et seq.*

[126] *See* 12 CFR Part 1026.

[127] 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.

[128] The general risk-based capital rules for state savings associations regarding the calculation of credit equivalent amounts for derivative contracts differ from the rules for other banking organizations. (*See* 12 CFR 390.466(a)(2)). The state 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 to state banks.

always can be covered by taking a position in a liquid market.

The FDIC acknowledges that the standardized matrix of conversion factors may be too simplified for some FDIC-supervised institutions. The FDIC believes, however, that the matrix approach appropriately balances the policy goals of simplicity and risk-sensitivity, and that the conversion factors themselves have been appropriately calibrated for the products to which they relate.

Some commenters supported retention of the 50 percent risk weight cap for derivative exposures under the general risk-based capital rules. Specifically, one commenter argued that the methodology for calculating the exposure amount without the 50 percent risk weight cap would result in inappropriately high capital charge unless the methodology were amended to recognize the use of netting and collateral. Accordingly, the commenter encouraged the agencies to retain the 50 percent risk weight cap until the BCBS enhances the CEM to improve risk-sensitivity.

The FDIC believes 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. In addition, the FDIC is aware of the ongoing work of the BCBS to improve the current exposure method and expect to consider any necessary changes to update the exposure amount calculation when the BCBS work is completed.

Some commenters suggested that the agencies allow the use of internal models approved by the primary Federal supervisor as an alternative to the proposal, consistent with Basel III. The FDIC chose not to incorporate all of the methodologies included in the Basel II standardized framework in the interim final rule. The FDIC believes that, given the range of FDIC-supervised institutions that are subject to the interim final rule in the United States, it is more appropriate to permit only the proposed non-models based methodology for calculating OTC derivatives exposure amounts under the standardized approach. For larger and more complex FDIC-supervised institutions, the use of the internal model methodology and other models-based methodologies is permitted under the advanced approaches rule. One commenter asked the agencies to provide a definition for ''netting,'' as the meaning of this term differs widely under various master netting agreements used in industry practice. Another commenter asserted that net exposures are likely to understate actual exposures and the risk of early close-out posed to banking organizations facing financial difficulties, that the conversion factors for PFE are inappropriate, and that a better measure of risk tied to gross exposure is needed. With respect to the definition of netting, the FDIC notes that the definition of ''qualifying master netting agreement'' provides a functional definition of netting. With respect to the use of net exposure for purposes of determining PFE, the FDIC believes that, in light of the existing international framework to enforce netting arrangements together with the conditions for recognizing netting that are included in this interim final rule, the use of net exposure is appropriate in the context of a risk-based counterparty credit risk charge that is specifically intended to address default risk. The interim final rule also continues to limit full recognition of netting for purposes of calculating PFE for counterparty credit risk under the standardized approach.[129]

Other commenters suggested adopting broader recognition of netting under the PFE calculation for netting sets, using a factor of 85 percent rather than 60 percent in the formula for recognizing netting effects to be consistent with the BCBS CCP interim framework (which is defined and discussed in section VIII.E of this preamble, below). Another commenter suggested implementing a 15 percent haircut on the calculated exposure amount for failure to recognize risk mitigants and portfolio diversification. With respect to the commenters' request for greater recognition of netting in the calculation of PFE, the FDIC notes that the BCBS CCP interim framework's use of 85 percent recognition of netting was limited to the calculation of the hypothetical capital requirement of the QCCP for purposes of determining a clearing member banking organization's risk-weighted asset amount for its default fund contribution. As such, the interim final rule retains the proposed formula for recognizing netting effects for OTC derivative contracts that was set out in the proposal. The FDIC expects to consider whether it would be necessary to propose any changes to the CEM once BCBS discussions on this topic are complete.

The proposed rule placed a cap on the PFE of sold credit protection, equal to the net present value of the amount of unpaid premiums. One commenter questioned the appropriateness of the proposed cap, and suggested that a seller's exposure be measured as the gross exposure amount of the credit protection provided on the name referenced in the credit derivative contract. The FDIC believes that the proposed approach is appropriate for measuring counterparty credit risk because it reflects the amount an FDIC-supervised institution may lose on its exposure to the counterparty that purchased protection. The exposure amount on a sold credit derivative would be calculated separately under section 34(a).

Another commenter asserted that current credit exposure (netted and unnetted) understates or ignores the risk that the mark is inaccurate. Generally, the FDIC expects an FDIC-supervised institution to have in place policies and procedures regarding the valuation of positions, and that those processes would be reviewed in connection with routine and periodic supervisory examinations of an FDIC-supervised institution.

The interim final rule generally adopts the proposed treatment for OTC derivatives without change. Under the interim final rule, as under the general risk-based capital rules, an FDIC-supervised institution is required to hold risk-based capital for counterparty credit risk for an OTC derivative contract. As defined in the rule, 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 includes an interest rate, exchange rate, equity, or a commodity derivative contract, a credit derivative, 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. This applies, for example, to mortgage-backed securities (MBS) transactions that the GSEs conduct in the To-Be-Announced market.

Under the interim final rule, an OTC derivative contract does not include a derivative contract that is a cleared transaction, which is subject to a specific treatment as described in section VIII.E of this preamble. However, an OTC derivative contract includes an exposure of a banking organization that is a clearing member banking organization to its clearing member client where the clearing member banking organization is either acting as a financial intermediary and

[129] *See* section 324.34(a)(2) of the interim final rule.

enters into an offsetting transaction with a CCP or where the clearing member banking organization provides a guarantee to the CCP on the performance of the client. The rationale for this treatment is the banking organization's continued exposure directly to the risk of the clearing member client. In recognition of the shorter close-out period for these transactions, however, the interim final rule permits an FDIC-supervised institution to apply a scaling factor to recognize the shorter holding period as discussed in section VIII.E of this preamble.

To determine the risk-weighted asset amount for an OTC derivative contract under the interim final rule, an FDIC-supervised institution must 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 rule requires the exposure amount to be the sum of (1) the FDIC-supervised institution's current credit exposure, which is the greater of the fair value or zero, and (2) PFE, which is calculated by multiplying the notional principal amount of the OTC derivative contract by the appropriate conversion factor, in accordance with Table 19 below.

Under the interim final rule, the conversion factor matrix includes the additional categories of OTC derivative contracts as illustrated in Table 19. For an OTC derivative contract that does not fall within one of the specified categories in Table 19, the interim final rule requires PFE to be calculated using the ''other'' conversion factor.

TABLE 19—CONVERSION FACTOR MATRIX FOR OTC DERIVATIVE CONTRACTS [130]

Remaining maturity [131]	Interest rate	Foreign exchange rate and gold	Credit (investment-grade reference asset) [132]	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, an FDIC-supervised institution must calculate the exposure amount 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. Under the interim final rule, the net current credit exposure is the greater of zero and the net sum of all positive and negative fair values of the individual OTC derivative contracts subject to the qualifying master netting agreement. The adjusted sum of the PFE amounts must be calculated as described in section 34(a)(2)(ii) of the interim final rule.

Under the interim final rule, to recognize the netting benefit of multiple OTC derivative contracts, the contracts must be subject to a qualifying master netting agreement; however, unlike under the general risk-based capital rules, under the interim final rule for most transactions, an FDIC-supervised institution may rely on sufficient legal review instead of an opinion on the enforceability of the netting agreement as described below.[133] The interim final rule defines a qualifying master netting agreement as any written, legally enforceable netting agreement that 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) provided that certain conditions set forth in section 3 of the interim final rule are met.[134] These conditions include requirements with respect to the FDIC-supervised institution's right to terminate the contract and liquidate collateral and meeting certain standards with respect to legal review of the agreement to ensure its meets the criteria in the definition.

The legal review must be sufficient so that the FDIC-supervised institution 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 an FDIC-supervised institution has little experience, the FDIC-supervised institution would be expected to obtain an explicit, written legal opinion from external or internal legal counsel addressing the particular situation.

Under the interim final rule, if an OTC derivative contract is collateralized by financial collateral, an FDIC-supervised institution must first

[130] For a derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

[131] 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.

[132] A FDIC-supervised institution 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 FDIC-supervised institution must use the column labeled ''Credit (non-investment-grade reference asset)'' for all other credit derivatives.

[133] Under the general risk-based capital rules, to recognize netting benefits an FDIC-supervised institution 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.

[134] The interim final rule adds a new section 3: Operational requirements for counterparty credit risk. This section organizes substantive requirements related to cleared transactions, eligible margin loans, qualifying cross-product master netting agreements, qualifying master netting agreements, and repo-style transactions in a central place to assist FDIC-supervised institutions in determining their legal responsibilities. These substantive requirements are consistent with those included in the proposal.

determine the exposure amount of the OTC derivative contract as described in this section of the preamble. Next, to recognize the credit risk mitigation benefits of the financial collateral, an FDIC-supervised institution could use the simple approach for collateralized transactions as described in section 324.37(b) of the interim final rule. Alternatively, if the financial collateral is marked-to-market on a daily basis and subject to a daily margin maintenance requirement, an FDIC-supervised institution could adjust the exposure amount of the contract using the collateral haircut approach described in section 324.37(c) of the interim final rule.

Similarly, if an FDIC-supervised institution purchases a credit derivative that is recognized under section 324.36 of the interim final rule as a credit risk mitigant for an exposure that is not a covered position under subpart F, it is not 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 FDIC-supervised institution must 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.

Under the interim final rule, an FDIC-supervised institution must treat an equity derivative contract as an equity exposure and compute its risk-weighted asset amount according to the simple risk-weight approach (SRWA) described in section 324.52 (unless the contract is a covered position under the market risk rule). If the FDIC-supervised institution risk weights a contract under the SRWA described in section 324.52, 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, an FDIC-supervised institution either includes or excludes all of the contracts from any measure used to determine counterparty credit risk exposures. If the FDIC-supervised institution is treating an OTC equity derivative contract as a covered position under subpart F, it also must calculate a risk-based capital requirement for counterparty credit risk of the contract under this section.

In addition, if an FDIC-supervised institution provides protection through a credit derivative that is not a covered position under subpart F of the interim final rule, it must 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 324.32 of the interim final rule. The FDIC-supervised institution is not required to compute a counterparty credit risk capital requirement for the credit derivative, as long as it does so consistently for all such OTC credit derivative contracts. Further, where these credit derivative contracts are subject to a qualifying master netting agreement, the FDIC-supervised institution must either include all or exclude all such credit derivatives from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

Where the FDIC-supervised institution provides protection through a credit derivative treated as a covered position under subpart F, it must compute a supplemental counterparty credit risk capital requirement using an amount determined under section 324.34 for OTC credit derivative contracts 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 interim final rule, the risk weight for OTC derivative transactions is not subject to any specific ceiling, consistent with the Basel capital framework.

Although the FDIC generally adopted the proposal without change, the interim final rule has been revised to add a provision regarding the treatment of a clearing member FDIC-supervised institution's exposure to a clearing member client (as described below under ''Cleared Transactions,'' a transaction between a clearing member FDIC-supervised institution and a client is treated as an OTC derivative exposure). However, the interim final rule recognizes the shorter close-out period for cleared transactions that are derivative contracts, such that a clearing member FDIC-supervised institution can reduce its exposure amount to its client by multiplying the exposure amount by a scaling factor of no less than 0.71. See section VIII.E of this preamble, below, for additional discussion.

E. Cleared Transactions

The BCBS and the FDIC support incentives designed to encourage clearing of derivative and repo-style transactions [135] through a CCP wherever possible in order to promote transparency, multilateral netting, and robust risk-management practices.

Although there are some risks associated with CCPs, as discussed below, the FDIC believes that CCPs generally help improve the safety and soundness of the derivatives and repo-style transactions markets through the multilateral netting of exposures, establishment and enforcement of collateral requirements, and the promotion of market transparency.

As discussed in the proposal, 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, in the period preceding the proposal, the BCBS sought comment on a more risk-sensitive approach for determining capital requirements for banking organizations' exposures to CCPs.[136] In addition, to encourage CCPs to maintain strong risk-management procedures, the BCBS sought comment on a proposal for 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).[137] Exposures to such entities, termed QCCPs in the interim final rule, would be subject to lower risk weights than exposures to CCPs that did not meet those criteria.

Consistent with the BCBS proposals and the CPSS–IOSCO standards, the agencies sought comment on specific risk-based capital requirements for cleared derivative and repo-style transactions that are 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 proposal would have required a banking organization to hold risk-based capital for an outstanding derivative contract or a repo-style

[135] *See* section 324.2 of the interim final rule for the definition of a repo-style transaction.

[136] *See* ''Capitalisation of Banking Organization Exposures to Central Counterparties'' (November 2011) (CCP consultative release), available at *http://www.bis.org/publ/bcbs206.pdf.*

[137] *See* CPSS–IOSCO, ''Recommendations for Central Counterparties'' (November 2004), available at *http://www.bis.org/publ/cpss64.pdf?noframes=1.*

transaction that has been cleared through a CCP, including an exchange.

The proposal also included a capital requirement for default fund contributions to CCPs. In the case of non-qualifying CCPs (that is, CCPs that do not meet the risk-management, supervision, and other standards for QCCPs outlined in the proposal), the risk-weighted asset amount for default fund contributions to such CCPs would be equal to the sum of the banking organization's default fund contributions to the CCPs multiplied by 1,250 percent. In the case of QCCPs, the risk-weighted asset amount would be calculated according to a formula based on the hypothetical capital requirement for a QCCP, consistent with the Basel capital framework. The proposal included a formula with inputs including the exposure amount of transactions cleared through the QCCP, collateral amounts, the number of members of the QCCP, and default fund contributions.

Following issuance of the proposal, the BCBS issued an interim framework for the capital treatment of bank exposures to CCPs (BCBS CCP interim framework).[138] The BCBS CCP interim framework reflects several key changes from the CCP consultative release, including: (1) A provision to allow a clearing member banking organization to apply a scalar when using the CEM (as described below) in the calculation of its exposure amount to a client (or use a reduced margin period of risk when using the internal models methodology (IMM) to calculate exposure at default (EAD) under the advanced approaches rule); (2) revisions to the risk weights applicable to a clearing member banking organization's exposures when such clearing member banking organization guarantees QCCP performance; (3) a provision to permit clearing member banking organizations to choose from one of two formulaic methodologies for determining the capital requirement for default fund contributions; and (4) revisions to the CEM formula to recognize netting to a greater extent for purposes of calculating the capital requirement for default fund contributions.

The agencies received a number of comments on the proposal relating to cleared transactions. Commenters also encouraged the agencies to revise certain aspects of the proposal in a manner consistent with the BCBS CCP interim framework.

Some commenters asserted that the definition of QCCP should be revised, specifically by including a definitive list of QCCPs rather than requiring each banking organization to demonstrate that a CCP meets certain qualifying criteria. The FDIC believes that a static list of QCCPs would not reflect the potentially dynamic nature of a CCP, and that FDIC-supervised institutions are situated to make this determination on an ongoing basis.

Some commenters recommended explicitly including derivatives clearing organizations (DCOs) and securities-based swap clearing agencies in the definition of a QCCP. Commenters also suggested including in the definition of QCCP any CCP that the CFTC or SEC exempts from registration because it is deemed by the CFTC or SEC to be subject to ''comparable, comprehensive supervision'' by another regulator. The FDIC notes that such registration (or exemption from registration based on being subject to ''comparable, comprehensive supervision'') does not necessarily mean that the CCP is subject to, or in compliance with, the standards established by the CPSS and IOSCO. In contrast, a designated FMU, which is included in the definition of QCCP, is subject to regulation that corresponds to such standards.

Another commenter asserted that, consistent with the BCBS CCP interim framework, the interim final rule should provide for the designation of a QCCP by the agencies in the absence of a national regime for authorization and licensing of CCPs. The interim final rule has not been amended to include this aspect of the BCBS CCP interim framework because the FDIC believes a national regime for authorizing and licensing CCPs is a critical mechanism to ensure the compliance and ongoing monitoring of a CCP's adherence to internationally recognized risk-management standards. Another commenter requested that a three-month grace period apply for CCPs that cease to be QCCPs. The FDIC notes that such a grace period was included in the proposed rule, and the interim final rule retains the proposed definition without substantive change.[139]

With respect to the proposed definition of cleared transaction, some commenters asserted that the definition should recognize omnibus accounts because their collateral is bankruptcy-remote. The FDIC agrees with these commenters and has revised the operational requirements for cleared transactions to include an explicit reference to such accounts.

The BCBS CCP interim framework requires trade portability to be ''highly likely,'' as a condition of whether a trade satisfies the definition of cleared transaction. One commenter who encouraged the agencies to adopt the standards set forth in the BCBS CCP interim framework sought clarification of the meaning of ''highly likely'' in this context. The FDIC clarifies that, consistent with the BCBS CCP interim framework, if there is clear precedent for transactions to be transferred to a non-defaulting clearing member upon the default of another clearing member (commonly referred to as ''portability'') and there are no indications that such practice will not continue, then these factors should be considered, when assessing whether client positions are portable. The definition of ''cleared transaction'' in the interim final rule is discussed in further detail below.

Another commenter sought clarification on whether reasonable reliance on a commissioned legal opinion for foreign financial jurisdictions could satisfy the ''sufficient legal review'' requirement for bankruptcy remoteness of client positions. The FDIC believes that reasonable reliance on a commissioned legal opinion could satisfy this requirement. Another commenter expressed concern that the proposed framework for cleared transactions would capture securities clearinghouses, and encouraged the agencies to clarify their intent with respect to such entities for purposes of the interim final rule. The FDIC notes that the definition of ''cleared transaction'' refers only to OTC derivatives and repo-style transactions. As a result, securities clearinghouses are not within the scope of the cleared transactions framework.

One commenter asserted that the agencies should recognize varying close-out period conventions for specific cleared products, specifically exchange-traded derivatives. This commenter also asserted that the agencies should adjust the holding period assumptions or allow CCPs to use alternative methods to compute the appropriate haircut for cleared transactions. For purposes of this interim final rule, the FDIC retained a standard close-out period in the interest of avoiding unnecessary complexity, and note that cleared transactions with QCCPs attract extremely low risk weights (generally, 2 or 4 percent), which, in part, is in recognition of the shorter close-out period involved in cleared transactions.

[138] *See* ''Capital requirements for bank exposures to central counterparties'' (July 2012), available at *http://www.bis.org/publ/bcbs227.pdf.*

[139] This provision is located in sections 324.35 and 324.133 of the interim final rule.

Another commenter requested confirmation that the risk weight applicable to the trade exposure amount for a cleared credit default swap (CDS) could be substituted for the risk weight assigned to an exposure that was hedged by the cleared CDS, that is, the substitution treatment described in sections 324.36 and 324.134 would apply. The FDIC confirms that under the interim final rule, an FDIC-supervised institution may apply the substitution treatment of sections 324.36 or 324.134 to recognize the credit risk mitigation benefits of a cleared CDS as long as the CDS is an eligible credit derivative and meets the other criteria for recognition. Thus, if an FDIC-supervised institution purchases an eligible credit derivative as a hedge of an exposure and the eligible credit derivative qualifies as a cleared transaction, the FDIC-supervised institution may substitute the risk weight applicable to the cleared transaction under sections 324.35 or 324.133 of the interim final rule (instead of using the risk weight associated with the protection provider).[140] Furthermore, the FDIC has modified the definition of eligible guarantor to include a QCCP.

Another commenter asserted that the interim final rule should decouple the risk weights applied to collateral exposure and those assigned to other components of trade exposure to recognize the separate components of risk. The FDIC notes that, if collateral is bankruptcy remote, then it would not be included in the trade exposure amount calculation (see sections 324.35(b)(2) and 324.133(b)(2) of the interim final rule). The FDIC also notes that such collateral must be risk weighted in accordance with other sections of the interim final rule as appropriate, to the extent that the posted collateral remains an asset on an FDIC-supervised institution's balance sheet.

A number of commenters addressed the use of the CEM for purposes of calculating a capital requirement for a default fund contribution to a CCP (K_{ccp}).[141] Some commenters asserted that the CEM is not appropriate for determining the hypothetical capital requirement for a QCCP (K_{ccp}) under the proposed formula because it lacks risk sensitivity and sophistication, and was not developed for centrally-cleared transactions. Another commenter asserted that the use of CEM should be clarified in the clearing context, specifically, whether the modified CEM approach would permit the netting of offsetting positions booked under different ''desk IDs'' or ''hub accounts'' for a given clearing member banking organization. Another commenter encouraged the agencies to allow banking organizations to use the IMM to calculate K_{ccp}. Another commenter encouraged the agencies to continue to work with the BCBS to harmonize international and domestic capital rules for cleared transactions.

Although the FDIC recognizes that the CEM has certain limitations, it considers the CEM, as modified for cleared transactions, to be a reasonable approach that would produce consistent results across banking organizations. Regarding the commenter's request for clarification of netting positions across ''desk IDs'' or ''hub accounts,'' the CEM would recognize netting across such transactions if such netting is legally enforceable upon a CCP's default. Moreover, the FDIC believes that the use of models either by the CCP, whose model would not be subject to review and approval by the FDIC, or by the banking organizations, whose models may vary significantly, likely would produce inconsistent results that would not serve as a basis for comparison across banking organizations. The FDIC recognizes that additional work is being performed by the BCBS to revise the CCP capital framework and the CEM. The FDIC expects to modify the interim final rule to incorporate the BCBS improvements to the CCP capital framework and CEM through the normal rulemaking process.

Other commenters suggested that the agencies not allow preferential treatment for clearinghouses, which they asserted are systemically critical institutions. In addition, some of these commenters argued that the agency clearing model should receive a more favorable capital requirement because the agency relationship facilitates protection and portability of client positions in the event of a clearing member default, compared to the back-to-back principal model. As noted above, the FDIC acknowledges that as more transactions move to central clearing, the potential for risk concentration and systemic risk increases. As noted in the proposal, the risk weights applicable to cleared transactions with QCCPs (generally 2 or 4 percent) represent an increase for many cleared transactions as compared to the general risk-based capital rules (which exclude from the risk-based ratio calculations exchange rate contracts with an original maturity of fourteen or fewer calendar days and derivative contracts traded on exchanges that require daily receipt and payment of cash variation margin),[142] in part to reflect the increased concentration and systemic risk inherent in such transactions. In regards to the agency clearing model, the FDIC notes that a clearing member banking organization that acts as an agent for a client and that guarantees the client's performance to the QCCP would have no exposure to the QCCP to risk weight. The exposure arising from the guarantee would be treated as an OTC derivative with a reduced holding period, as discussed below.

Another commenter suggested that the interim final rule address the treatment of unfunded default fund contribution amounts and potential future contributions to QCCPs, noting that the treatment of these potential exposures is not addressed in the BCBS CCP interim framework. The FDIC has clarified in the interim final rule that if an FDIC-supervised institution's unfunded default fund contribution to a CCP is unlimited, the FDIC will determine the risk-weighted asset amount for such default fund contribution based on factors such as the size, structure, and membership of the CCP and the riskiness of its transactions. The interim final rule does not contemplate unlimited default fund contributions to QCCPs because defined default fund contribution amounts are a prerequisite to being a QCCP.

Another commenter asserted that it is unworkable to require securities lending transactions to be conducted through a CCP, and that it would be easier and more sensible to make the appropriate adjustments in the interim final rule to ensure a capital treatment for securities lending transactions that is proportional to their actual risks. The FDIC notes that the proposed rule would not have required securities lending transactions to be cleared. The FDIC also acknowledges that clearing may not be widely available for securities lending transactions, and believes that the collateral haircut approach (sections 324.37(c) and 324.132(b) of the interim final rule) and for advanced approaches FDIC-supervised institutions, the simple value-at-risk (VaR) and internal models methodologies (sections 324.132(b)(3) and (d) of the interim final rule) are an appropriately risk-sensitive exposure measure for non-cleared securities lending exposures.

One commenter asserted that end users and client-cleared trades would be

[140] *See* ''Basel III counterparty credit risk and exposures to central counterparties—Frequently asked questions'' (December 2012 (update of FAQs published in November 2012)), available at *http://www.bis.org/publ/bcbs237.pdf*.

[141] *See* section VIII.D of this preamble for a description of the CEM.

[142] *See* 12 CFR part 325, appendix A, section II.E.2.

disadvantaged by the proposal. Although there may be increased transaction costs associated with the introduction of the CCP framework, the FDIC believes that the overall risk mitigation that should result from the capital requirements generated by the framework will help promote financial stability, and that the measures the FDIC has taken in the interim final rule to incentivize client clearing are aimed at addressing the commenters' concerns. Several commenters suggested that the proposed rule created a disincentive for client clearing because of the clearing member banking organization's exposure to the client. The FDIC agrees with the need to mitigate disincentives for client clearing in the methodology, and has amended the interim final rule to reflect a lower margin period of risk, or holding period, as applicable, as discussed further below.

Commenters suggested delaying implementation of a cleared transactions framework in the interim final rule until the BCBS CCP interim framework is finalized, implementing the BCBS CCP interim framework in the interim final rule pending finalization of the BCBS interim framework, or providing a transition period for banking organizations to be able to comply with some of the requirements. A number of commenters urged the agencies to incorporate all substantive changes of the BCBS CCP interim framework, ranging from minor adjustments to more material modifications.

After considering the comments and reviewing the standards in the BCBS CCP interim framework, the FDIC believes that the modifications to capital standards for cleared transactions in the BCBS CCP interim framework are appropriate and believes that they would result in modifications that address many commenters' concerns. Furthermore, the FDIC believes that it is prudent to implement the BCBS CCP interim framework, rather than wait for the final framework, because the changes in the BCBS CCP interim framework represent a sound approach to mitigating the risks associated with cleared transactions. Accordingly, the FDIC has incorporated the material elements of the BCBS CCP interim framework into the interim final rule. In addition, given the delayed effective date of the interim final rule, the FDIC believes that an additional transition period, as suggested by some commenters, is not necessary.

The material changes to the proposed rule to incorporate the CCP interim rule are described below. Other than these changes, the interim final rule retains the capital requirements for cleared transaction exposures generally as proposed by the agencies. As noted in the proposal, the international discussions are ongoing on these issues, and the FDIC will revisit this issue once the Basel capital framework is revised.

1. Definition of Cleared Transaction

The interim final rule defines a cleared transaction as an exposure associated with an outstanding derivative contract or repo-style transaction that an FDIC-supervised institution or clearing member has entered into with a CCP (that is, a transaction that a CCP has accepted).[143] Cleared transactions include the following: (1) A transaction between a CCP and a clearing member FDIC-supervised institution for the FDIC-supervised institution's own account; (2) a transaction between a CCP and a clearing member FDIC-supervised institution acting as a financial intermediary on behalf of its clearing member client; (3) a transaction between a client FDIC-supervised institution and a clearing member where the clearing member acts on behalf of the client FDIC-supervised institution and enters into an offsetting transaction with a CCP; and (4) a transaction between a clearing member client and a CCP where a clearing member FDIC-supervised institution guarantees the performance of the clearing member client to the CCP. Such transactions must also satisfy additional criteria provided in section 3 of the interim final rule, including bankruptcy remoteness of collateral, transferability criteria, and portability of the clearing member client's position. As explained above, the FDIC has modified the definition in the interim final rule to specify that regulated omnibus accounts meet the requirement for bankruptcy remoteness.

An FDIC-supervised institution is required to calculate risk-weighted assets for all of its cleared transactions, whether the FDIC-supervised institution 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 because they do not meet all the criteria are OTC derivative transactions. For example, if a transaction submitted to the CCP is not accepted by the CCP because the terms of the transaction submitted by the clearing members do not match or because other operational issues are identified by the CCP, the transaction does not meet the definition of a cleared transaction and is an OTC derivative transaction. If the counterparties to the transaction resolve the issues and resubmit the transaction and it is accepted, the transaction would then be a cleared transaction. A cleared transaction does not include an exposure of an FDIC-supervised institution that is a clearing member to its clearing member client where the FDIC-supervised institution is either acting as a financial intermediary and enters into an offsetting transaction with a CCP or where the FDIC-supervised institution provides a guarantee to the CCP on the performance of the client. Under the standardized approach, as discussed below, such a transaction is an OTC derivative transaction with the exposure amount calculated according to section 324.34(e) of the interim final rule or a repo-style transaction with the exposure amount calculated according to section 324.37(c) of the interim final rule. Under the advanced approaches rule, such a transaction is treated as either an OTC derivative transaction with the exposure amount calculated according to sections 324.132(c)(8) or (d)(5)(iii)(C) of the interim final rule or a repo-style transaction with the exposure amount calculated according to sections 324.132(b) or (d) of the interim final rule.

2. Exposure Amount Scalar for Calculating for Client Exposures

Under the proposal, a transaction between a clearing member FDIC-supervised institution and a client was treated as an OTC derivative exposure, with the exposure amount calculated according to sections 324.34 or 324.132 of the proposal. The agencies acknowledged in the proposal that this treatment could have created disincentives for banking organizations to facilitate client clearing. Commenters' feedback and the BCBS CCP interim framework's treatment on this subject

[143] For example, the FDIC expects that a transaction with a derivatives clearing organization (DCO) would meet the 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.

provided alternatives to address the incentive concern.

Consistent with comments and the BCBS CCP interim framework, under the interim final rule, a clearing member FDIC-supervised institution must treat its counterparty credit risk exposure to clients as an OTC derivative contract, irrespective of whether the clearing member FDIC-supervised institution guarantees the transaction or acts as an intermediary between the client and the QCCP. Consistent with the BCBS CCP interim framework, to recognize the shorter close-out period for cleared transactions, under the standardized approach a clearing member FDIC-supervised institution may calculate its exposure amount to a client by multiplying the exposure amount, calculated using the CEM, by a scaling factor of no less than 0.71, which represents a five-day holding period. A clearing member FDIC-supervised institution must use a longer holding period and apply a larger scaling factor to its exposure amount in accordance with Table 20 if it determines that a holding period longer than five days is appropriate. The FDIC may require a clearing member FDIC-supervised institution to set a longer holding period if it determines that a longer period is commensurate with the risks associated with the transaction. The FDIC believes that the recognition of a shorter close-out period appropriately captures the risk associated with such transactions while furthering the policy goal of promoting central clearing.

TABLE 20—HOLDING PERIODS AND SCALING FACTORS

Holding period (days)	Scaling factor
5	0.71
6	0.77
7	0.84
8	0.89
9	0.95
10	1.00

3. Risk Weighting for Cleared Transactions

Under the interim final rule, to determine the risk-weighted asset amount for a cleared transaction, a clearing member client FDIC-supervised institution or a clearing member FDIC-supervised institution must multiply the trade exposure amount for the cleared transaction by the appropriate risk weight, determined as described below. The trade exposure amount is calculated as follows:

(1) For a cleared transaction that is a derivative contract or a netting set of derivatives contracts, the trade exposure amount is equal to the exposure amount for the derivative contract or netting set of derivative contracts, calculated using the CEM for OTC derivative contracts (described in sections 324.34 or 324.132(c) of the interim final rule) or for advanced approaches FDIC-supervised institutions that use the IMM, under section 324.132(d) of the interim final rule), plus the fair value of the collateral posted by the clearing member client FDIC-supervised institution and held by the CCP or clearing member in a manner that is not bankruptcy remote; and

(2) For a cleared transaction that is a repo-style transaction or a netting set of repo-style transactions, the trade exposure amount is equal to the exposure amount calculated under the collateral haircut approach used for financial collateral (described in sections 324.37(c) and 324.132(b) of the interim final rule) (or for advanced approaches FDIC-supervised institutions the IMM under section 324.132(d) of the interim final rule) plus the fair value of the collateral posted by the clearing member client FDIC-supervised institution that is held by the CCP or clearing member in a manner that is not bankruptcy remote.

The trade exposure amount does not include any collateral posted by a clearing member client FDIC-supervised institution or clearing member FDIC-supervised institution that is held by a custodian in a manner that is bankruptcy remote [144] from the CCP, clearing member, other counterparties of the clearing member, and the custodian itself. In addition to the capital requirement for the cleared transaction, the FDIC-supervised institution remains 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 324.32 or 324.131 of the interim final rule. Consistent with the BCBS CCP interim framework, the risk weight for a cleared transaction depends on whether the CCP is a QCCP. Central counterparties that are designated FMUs and foreign entities regulated and supervised in a manner equivalent to designated FMUs are QCCPs. In addition, a CCP could be a QCCP under the interim final rule if it is in sound financial condition and meets certain standards that are consistent with BCBS expectations for QCCPs, as set forth in the QCCP definition.

[144] Under the interim final rule, bankruptcy remote, with respect to an entity or asset, means that the entity or asset would be excluded from an insolvent entity's estate in a receivership, insolvency or similar proceeding.

A clearing member FDIC-supervised institution must apply a 2 percent risk weight to its trade exposure amount to a QCCP. An FDIC-supervised institution that is a clearing member client may apply a 2 percent risk weight to the trade exposure amount only if:

(1) The collateral posted by the clearing member client FDIC-supervised institution 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

(2) The clearing member client FDIC-supervised institution 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.

If the criteria above are not met, a clearing member client FDIC-supervised institution must apply a risk weight of 4 percent to the trade exposure amount.

Under the interim final rule, as under the proposal, for a cleared transaction with a CCP that is not a QCCP, a clearing member FDIC-supervised institution and a clearing member client FDIC-supervised institution must risk weight the trade exposure amount to the CCP according to the risk weight applicable to the CCP under section 324.32 of the interim final rule (generally, 100 percent). Collateral posted by a clearing member FDIC-supervised institution that is held by a custodian in a manner that is bankruptcy remote from the CCP is not subject to a capital requirement for counterparty credit risk. Similarly, 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 is not be subject to a capital requirement for counterparty credit risk.

The proposed rule was silent on the risk weight that would apply where a clearing member banking organization acts for its own account or guarantees a QCCP's performance to a client. Consistent with the BCBS CCP interim framework, the interim final rule provides additional specificity regarding the risk-weighting methodologies for certain exposures of clearing member

banking organizations. The interim final rule provides that a clearing member FDIC-supervised institution that (i) acts for its own account, (ii) is acting as a financial intermediary (with an offsetting transaction or a guarantee of the client's performance to a QCCP), or (iii) guarantees a QCCP's performance to a client would apply a two percent risk weight to the FDIC-supervised institution's exposure to the QCCP. The diagrams below demonstrate the various potential transactions and exposure treatment in the interim final rule. Table 21 sets out how the transactions illustrated in the diagrams below are risk-weighted under the interim final rule.

In the diagram, ''T'' refers to a transaction, and the arrow indicates the direction of the exposure. The diagram describes the appropriate risk weight treatment for exposures from the perspective of a clearing member FDIC-supervised institution entering into cleared transactions for its own account (T_1), a clearing member FDIC-supervised institution entering into cleared transactions on behalf of a client (T_2 through T_7), and an FDIC-supervised institution entering into cleared transactions as a client of a clearing member (T_8 and T_9). Table 21 shows for each trade whom the exposure is to, a description of the type of trade, and the risk weight that would apply based on the risk of the counterparty.

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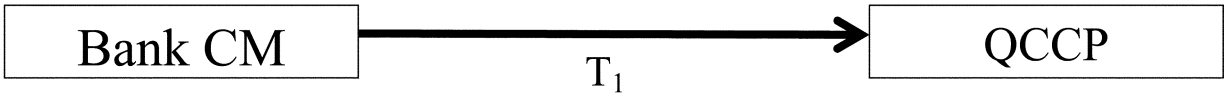
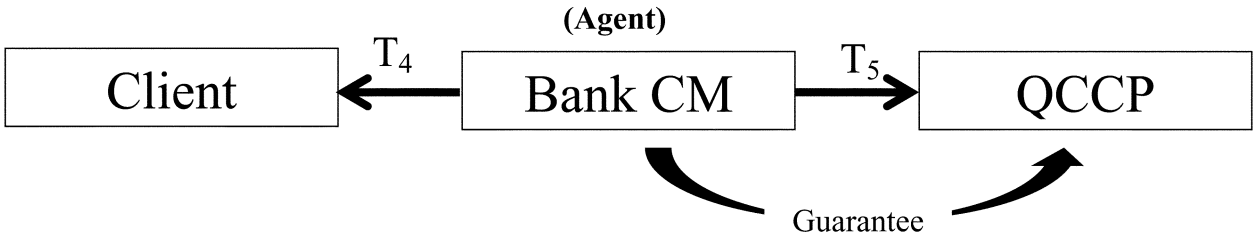
FDIC-Supervised Institution Clearing Member (Bank CM) – Own Account



Bank CM – Client Trade

- Financial intermediary with offsetting transaction to QCCP

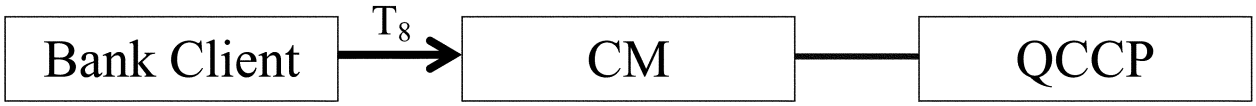
- Agency with guarantee of client performance



- Guarantee of QCCP performance

Bank Client – CM Trade

- Financial Intermediary with offsetting transaction to QCCP



- Agency with guarantee of client performance

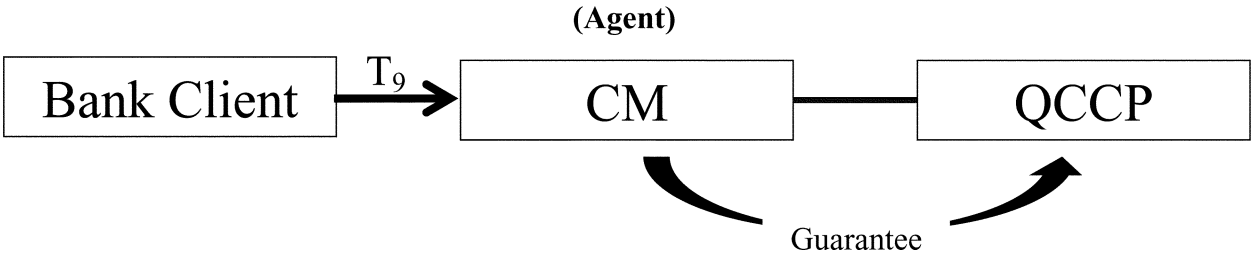


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TABLE 21—RISK WEIGHTS FOR VARIOUS CLEARED TRANSACTIONS

	Exposure to	Description	Risk-weighting treatment under the interim final rule
T_1	QCCP	Own account	2% risk weight on trade exposure amount.
T_2	Client	Financial intermediary with offsetting trade to QCCP	OTC derivative with CEM scalar.**
T_3	QCCP	Financial intermediary with offsetting trade to QCCP	2% risk weight on trade exposure amount.
T_4	Client	Agent with guarantee of client performance	OTC derivative with CEM scalar.**
T_5	QCCP	Agent with guarantee of client performance	No exposure.
T_6	Client	Guarantee of QCCP performance	OTC derivative with CEM scalar.**
T_7	QCCP	Guarantee of QCCP performance	2% risk weight on trade exposure amount.
T_8	CM	CM financial intermediary with offsetting trade to QCCP.	2% or 4%* risk weight on trade exposure amount.
T_9	QCCP	CM agent with guarantee of client performance	2% or 4%* risk weight on trade exposure amount.

4. Default Fund Contribution Exposures

There are several risk mitigants available when a party clears a transaction through a CCP rather than on a bilateral basis: The protection provided to the CCP clearing members by the margin requirements imposed by the CCP; the CCP members' default fund contributions; and the CCP's own capital and contribution to the default fund, which are an important source of collateral in case of counterparty default.[145] CCPs independently determine default fund contributions that are required from members. The BCBS therefore established, and the interim final rule adopts, a risk-sensitive approach for risk weighting an FDIC-supervised institution's exposure to a default fund.

Under the proposed rule, there was only one method that a clearing member banking organization could use to calculate its risk-weighted asset amount for default fund contributions. The BCBS CCP interim framework added a second method to better reflect the lower risks associated with exposures to those clearinghouses that have relatively large default funds with a significant amount unfunded. Commenters requested that the interim final rule adopt both methods contained in the BCBS CCP interim framework.

Accordingly, under the interim final rule, an FDIC-supervised institution that is a clearing member of a CCP must 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 FDIC-supervised institution or FDIC, in the financial condition of the CCP. A default fund contribution means the funds contributed or commitments made by a clearing member to a CCP's mutualized loss-sharing arrangement. If the CCP is not a QCCP, the FDIC-supervised institution's risk-weighted asset amount for its default fund contribution is either the sum of the default fund contributions multiplied by 1,250 percent, or in cases where the default fund contributions may be unlimited, an amount as determined by the FDIC based on factors described above.

Consistent with the BCBS CCP interim framework, the interim final rule requires an FDIC-supervised institution to calculate a risk-weighted asset amount for its default fund contribution using one of two methods. Method one requires a clearing member FDIC-supervised institution to use a three-step process. The first step is for the clearing member FDIC-supervised institution to calculate the QCCP's hypothetical capital requirement (K_{CCP}), unless the QCCP has already disclosed it, in which case the FDIC-supervised institution must rely on that disclosed figure, unless the FDIC-supervised institution determines that a higher figure is appropriate based on the nature, structure, or characteristics of the QCCP. K_{CCP} is defined as the capital that a QCCP is required to hold if it were an FDIC-supervised institution, and is calculated using the CEM for OTC derivatives or the collateral haircut approach for repo-style transactions, recognizing the risk-mitigating effects of collateral posted by and default fund contributions received from the QCCP clearing members.

The interim final rule provides several modifications to the calculation of K_{CCP} to adjust for certain features that are unique to QCCPs. Namely, the modifications permit: (1) A clearing member to offset its exposure to a QCCP with actual default fund contributions, and (2) greater recognition of netting when using the CEM to calculate K_{CCP} described below. Additionally, the risk weight of all clearing members is set at 20 percent, except when the FDIC has determined that a higher risk weight is appropriate based on the specific characteristics of the QCCP and its clearing members. Finally, for derivative contracts that are options, the PFE amount calculation is 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

[145] Default funds are also known as clearing deposits or guaranty funds.

corresponding change in the price of the underlying asset).

In the second step of method one, the interim final rule requires an FDIC-supervised institution to compare K_{CCP} to the funded portion of the default fund of a QCCP, and to calculate the total of all the clearing members' capital requirements (K^*_{cm}). If the total funded default fund of a QCCP is less than K_{CCP}, the interim final rule requires additional capital to 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} are risk-weighted at 100 percent and a decreasing capital factor, between 1.6 percent and 0.16 percent, is 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 is applied to the clearing members' default fund contributions.

In the third step of method one, the interim final rule requires (K^*_{cm}) to be 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 exposures among clearing members. A clearing member FDIC-supervised institution multiplies its allocated capital requirement by 12.5 to determine its risk-weighted asset amount for its default fund contribution to the QCCP.

As the alternative, an FDIC-supervised institution is permitted to use method two, which is a simplified method under which the risk-weighted asset amount for its default fund contribution to a QCCP equals 1,250 percent multiplied by the default fund contribution, subject to an overall cap. The cap is based on an FDIC-supervised institution's trade exposure amount for all of its transactions with a QCCP. An FDIC-supervised institution's risk-weighted asset amount for its default fund contribution to a QCCP is either a 1,250 percent risk weight applied to its default fund contribution to that QCCP or 18 percent of its trade exposure amount to that QCCP. Method two subjects an FDIC-supervised institution to an overall cap on the risk-weighted assets from all its exposures to the CCP equal to 20 percent times the trade exposures to the CCP. This 20 percent cap is arrived at as the sum of the 2 percent capital requirement for trade exposure plus 18 percent for the default fund portion of an FDIC-supervised institution's exposure to a QCCP.

To address commenter concerns that the CEM underestimates the multilateral netting benefits arising from a QCCP, the interim final rule recognizes the larger diversification benefits inherent in a multilateral netting arrangement for purposes of measuring the QCCP's potential future exposure associated with derivative contracts. Consistent with the BCBS CCP interim framework, and as mentioned above, the interim final rule replaces the proposed factors (0.3 and 0.7) in the formula to calculate Anet with 0.15 and 0.85, in sections 324.35(d)(3)(i)(A)(*1*) and 324.133(d)(3)(i)(A)(*1*) of the interim final rule, respectively.

F. Credit Risk Mitigation

Banking organizations use a number of techniques to mitigate credit risks. For example, a banking organization may collateralize exposures with cash or securities; a third party may guarantee an 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 of the preamble describes how the interim final rule allows FDIC-supervised institutions to recognize the risk-mitigation effects of guarantees, credit derivatives, and collateral for risk-based capital purposes. In general, the interim final rule provides for a greater variety of credit risk mitigation techniques than the general risk-based capital rules.

Similar to the general risk-based capital rules, under the interim final rule an FDIC-supervised institution generally may 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 FDIC-supervised institutions must 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. An FDIC-supervised institution 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, an FDIC-supervised institution should employ robust procedures and processes to control risks, including roll-off and concentration risks, and monitor and manage the implications of using credit risk mitigants for the FDIC-supervised institution's overall credit risk profile.

1. Guarantees and Credit Derivatives

a. Eligibility Requirements

Consistent with the Basel capital framework, the agencies proposed to recognize a wider range of eligible guarantors than permitted under the general risk-based capital rules, including sovereigns, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, Federal Home Loan Banks (FHLB), Federal Agricultural Mortgage Corporation (Farmer Mac), MDBs, depository institutions, BHCs, SLHCs, 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.[146]

Some commenters suggested modifying the proposed definition of eligible guarantor to remove the investment-grade requirement. Commenters also suggested that the agencies potentially include as eligible guarantors other entities, such as financial guaranty and private mortgage insurers. The FDIC believes that guarantees issued by these types of entities can exhibit significant wrong-way risk and modifying the definition of eligible guarantor to accommodate these entities or entities that are not investment grade would be contrary to one of the key objectives of the capital framework, which is to mitigate interconnectedness and systemic vulnerabilities within the financial

[146] Under the proposed and interim final rule, an exposure is ''investment grade'' if the entity to which the FDIC-supervised institution 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.

system. Therefore, the FDIC has not included the recommended entities in the interim final rule's definition of ''eligible guarantor.'' The FDIC has, however, amended the definition of eligible guarantor in the interim final rule to include QCCPs to accommodate use of the substitution approach for credit derivatives that are cleared transactions. The FDIC believes that QCCPs, as supervised entities subject to specific risk-management standards, are appropriately included as eligible guarantors under the interim final rule.[147] In addition, the FDIC clarifies one commenter's concern and confirms that re-insurers that are engaged predominantly in the business of providing credit protection do not qualify as an eligible guarantor under the interim final rule.

Under the interim final rule, guarantees and credit derivatives are required to meet specific eligibility requirements to be recognized for credit risk mitigation purposes. Consistent with the proposal, under the interim final rule, an eligible guarantee is defined as a guarantee from an eligible guarantor that is written and meets certain standards and conditions, including with respect to its enforceability. An eligible credit derivative is defined as a credit derivative in the form of a CDS, nth-to-default swap, total return swap, or any other form of credit derivative approved by the FDIC, provided that the instrument meets the standards and conditions set forth in the definition. See the definitions of ''eligible guarantee'' and ''eligible credit derivative'' in section 324.2 of the interim final rule.

Under the proposal, a banking organization would have been 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; (2) the reference exposure and the hedged exposure are to the same legal entity; and (3) 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.

In addition to these two exceptions, one commenter encouraged the agencies to revise the interim final rule to recognize a proxy hedge as an eligible credit derivative even though such a transaction hedges an exposure that differs from the credit derivative's reference exposure. A proxy hedge was characterized by the commenter as a hedge of an exposure supported by a sovereign using a credit derivative on that sovereign. The FDIC does not believe there is sufficient justification to include proxy hedges in the definition of eligible credit derivative because it has concerns regarding the ability of the hedge to sufficiently mitigate the risk of the underlying exposure. The FDIC has, therefore, adopted the definition of eligible credit derivative as proposed.

In addition, under the interim final rule, consistent with the proposal, when an FDIC-supervised institution has a group of hedged exposures with different residual maturities that are covered by a single eligible guarantee or eligible credit derivative, it must treat each hedged exposure as if it were fully covered by a separate eligible guarantee or eligible credit derivative.

b. Substitution Approach

The FDIC is adopting the substitution approach for eligible guarantees and eligible credit derivatives in the interim final rule without change. Under the 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, an FDIC-supervised institution substitutes the risk weight applicable to the guarantor or credit derivative protection provider for the risk weight applicable 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, an FDIC-supervised institution must 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, an FDIC-supervised institution calculates the risk-weighted asset amount for the protected exposure under section 36 of the interim final rule (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 FDIC-supervised institution calculates its risk-weighted asset amount for the unprotected exposure under section 32 of the interim final rule (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).

Under the interim final rule, the protection amount of an eligible guarantee or eligible credit derivative means the effective notional amount of the guarantee or credit derivative reduced to reflect any, maturity mismatch, lack of restructuring coverage, or currency mismatch as described below. The effective notional amount for an eligible guarantee or eligible credit derivative is 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 is $40.

c. Maturity Mismatch Haircut

The FDIC is adopting the proposed haircut for maturity mismatch in the interim final rule without change. Under the interim final rule, the FDIC has adopted the requirement that an FDIC-supervised institution that recognizes an eligible guarantee or eligible credit derivative 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. A maturity mismatch occurs when the residual maturity of a credit risk mitigant is less than that of the hedged exposure(s).[148]

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. An FDIC-supervised institution is 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 is 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 is at the first call date. If the call is at the discretion of the

[147] *See* the definition of ''eligible guarantor'' in section 2 of the interim final rule.

[148] As noted above, when an FDIC-supervised institution has a group of hedged exposures with different residual maturities that are covered by a single eligible guarantee or eligible credit derivative, an FDIC-supervised institution treats 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 FDIC-supervised institution assesses whether the residual maturity of the eligible guarantee or eligible credit derivative is less than that of the hedged exposure.

FDIC-supervised institution purchasing the protection, but the terms of the arrangement at origination of the credit risk mitigant contain a positive incentive for the FDIC-supervised institution to call the transaction before contractual maturity, the remaining time to the first call date is the residual maturity of the credit risk mitigant. An FDIC-supervised institution is permitted, under the interim final rule, 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, an FDIC-supervised institution is required to apply the following adjustment to reduce the effective notional amount of the credit risk mitigant to recognize the maturity mismatch: $Pm = E \times [(t - 0.25)/(T - 0.25)]$, where:

(1) Pm equals effective notional amount of the credit risk mitigant, adjusted for maturity mismatch;

(2) E equals effective notional amount of the credit risk mitigant;

(3) t equals the lesser of T or residual maturity of the credit risk mitigant, expressed in years; and

(4) T equals 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

The FDIC is adopting in the interim final rule the proposed adjustment for credit derivatives without restructuring as a credit event. Consistent with the proposal, under the interim final rule, an FDIC-supervised institution 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 must reduce the effective notional amount of the credit derivative recognized for credit risk mitigation purposes by 40 percent. For purposes of the credit risk mitigation framework, a restructuring may 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 FDIC-supervised institution is required to apply the following adjustment to reduce the effective notional amount of the credit derivative: Pr equals Pm x 0.60, where:

(1) Pr equals effective notional amount of the credit risk mitigant, adjusted for lack of a restructuring event (and maturity mismatch, if applicable); and

(2) Pm equals effective notional amount of the credit risk mitigant (adjusted for maturity mismatch, if applicable).

e. Currency Mismatch Adjustment

Consistent with the proposal, under the interim final rule, if an FDIC-supervised institution 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 FDIC-supervised institution must apply the following formula to the effective notional amount of the guarantee or credit derivative: P_C equals $Pr \times (1 - H_{FX})$, where:

(1) P_C equals effective notional amount of the credit risk mitigant, adjusted for currency mismatch (and maturity mismatch and lack of restructuring event, if applicable);

(2) Pr equals effective notional amount of the credit risk mitigant (adjusted for maturity mismatch and lack of restructuring event, if applicable); and

(3) H_{FX} equals haircut appropriate for the currency mismatch between the credit risk mitigant and the hedged exposure.

An FDIC-supervised institution is 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, an FDIC-supervised institution has the option to use internally estimated haircuts of H_{FX} based on a ten-business-day holding period and daily marking-to-market if the FDIC-supervised institution qualifies to use the own-estimates of haircuts in section 324.37(c)(4) of the interim final rule. In either case, the FDIC-supervised institution is required to scale the haircuts up using the square root of time formula if the FDIC-supervised institution 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

Consistent with the proposal, under the interim final rule, if multiple credit risk mitigants cover a single exposure, an FDIC-supervised institution may 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 a single credit risk mitigant covers multiple exposures, an FDIC-supervised institution must treat each hedged exposure as covered by a single credit risk mitigant and must calculate separate risk-weighted asset amounts for each exposure using the substitution approach described in section 324.36(c) of the interim final rule.

2. Collateralized Transactions

a. Eligible Collateral

Under the proposal, the agencies would recognize an expanded range of financial collateral as credit risk mitigants that may reduce the risk-based capital requirements associated with a collateralized transaction, consistent with the Basel capital framework. The agencies proposed that a banking organization could recognize the risk-mitigating effects of financial collateral using the ''simple approach'' for any exposure provided that the collateral meets certain requirements. 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. The proposal required a banking organization to use the same approach for similar exposures or transactions.

The commenters generally agreed with this aspect of the proposal; however, a few commenters encouraged the agencies to expand the definition of financial collateral to include precious metals and certain residential mortgages that collateralize warehouse lines of credit. Several commenters asserted that the interim final rule should recognize as financial collateral conforming residential mortgages (or at least those collateralizing warehouse lines of credit) and/or those insured by the FHA or VA. They noted that by not including conforming residential mortgages in the definition of financial collateral, the proposed rule would require banking organizations providing warehouse lines to treat warehouse facilities as commercial loan exposures, thus preventing such entities from looking through to the underlying collateral in calculating the appropriate risk weighting. Others argued that a ''look through'' approach for a repo-style structure to the financial collateral held therein should be allowed. Another commenter argued that the interim final

rule should allow recognition of intangible assets as financial collateral because they have real value. The FDIC believes that the collateral types suggested by the commenters are not appropriate forms of financial collateral because they exhibit increased variation and credit risk, and are relatively more speculative than the recognized forms of financial collateral under the proposal. For example, residential mortgages can be highly idiosyncratic in regards to payment features, interest rate provisions, lien seniority, and maturities. The FDIC believes that the proposed definition of financial collateral, which is broader than the collateral recognized under the general risk-based capital rules, included those collateral types of sufficient liquidity and asset quality to recognize as credit risk mitigants for risk-based capital purposes. As a result, the FDIC has retained the definition of financial collateral as proposed. Therefore, consistent with the proposal, the interim final rule defines financial collateral as collateral in the form of: (1) Cash on deposit with the FDIC-supervised institution (including cash held for the FDIC-supervised institution 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 FDIC-supervised institution is also 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. Even if an FDIC-supervised institution has the legal right, it still must ensure it monitors or has a freeze on the account to prevent a customer from withdrawing cash on deposit prior to defaulting. An FDIC-supervised institution is permitted to recognize partial collateralization of an exposure.

Under the interim final rule, the FDIC requires that an FDIC-supervised institution to recognize the risk-mitigating effects of financial collateral using the simple approach described below, where: the collateral is subject to a collateral agreement for at least the life of the exposure; the collateral is revalued at least every six months; and the collateral (other than gold) and the exposure is denominated in the same currency. For repo-style transactions, eligible margin loans, collateralized derivative contracts, and single-product netting sets of such transactions, an FDIC-supervised institution could alternatively use the collateral haircut approach described below. The interim final rule, like the proposal, requires an FDIC-supervised institution to use the same approach for similar exposures or transactions.

b. Risk-Management Guidance for Recognizing Collateral

Before an FDIC-supervised institution 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 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.

An FDIC-supervised institution also should ensure that the legal mechanism under which the collateral is pledged or transferred ensures that the FDIC-supervised institution 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, an FDIC-supervised institution 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 satisfaction of any legal conditions required for declaring the default of the borrower and prompt 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

The FDIC is adopting the simple approach without change for purposes of the interim final rule. Under the interim final rule, the collateralized portion of the exposure receives the risk weight applicable to the collateral. The collateral is required to meet the definition of financial collateral. For repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions, the collateral would be the instruments, gold, and cash that an FDIC-supervised institution has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction. As noted above, in all cases, (1) the collateral must be subject to a collateral agreement for at least the life of the exposure; (2) the FDIC-supervised institution must revalue the collateral at least every six months; and (3) the collateral (other than gold) and the exposure must be denominated in the same currency.

Generally, the risk weight assigned to the collateralized portion of the exposure must be no less than 20 percent. However, the collateralized portion of an exposure may be assigned a risk weight of less than 20 percent for the following exposures. OTC derivative contracts that are marked to fair value on a daily basis and subject to a daily margin maintenance agreement, may receive (1) a zero percent risk weight to the extent that contracts 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 that qualifies for a zero percent risk weight under section 32 of the interim final rule. In addition, an FDIC-supervised institution 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 interim final rule, and the FDIC-supervised institution has discounted the fair value of the collateral by 20 percent.

d. Collateral Haircut Approach

Consistent with the proposal, in the interim final rule, an FDIC-supervised institution may use the collateral haircut approach to 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. In addition, the FDIC-supervised institution may use the

collateral haircut approach with respect to any collateral that secures a repo-style transaction that is included in the FDIC-supervised institution's VaR-based measure under subpart F of the interim final rule, even if the collateral does not meet the definition of financial collateral.

To apply the collateral haircut approach, an FDIC-supervised institution must determine the exposure amount and the relevant risk weight for the counterparty or guarantor.

The exposure amount for an eligible margin loan, repo-style transaction, collateralized derivative contract, or a netting set of such transactions is 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 FDIC-supervised institution 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 interim final rule. The value of the collateral equals the sum of the current market values of all instruments, gold and cash the FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC-supervised institution 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 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 FDIC-supervised institution 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 FDIC-supervised institution 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 includes, 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

When determining the exposure amount, the FDIC-supervised institution must apply a haircut for price market volatility and foreign exchange rates, determined either using standard supervisory market price volatility haircuts and a standard haircut for exchange rates or, with prior approval of the agency, an FDIC-supervised institution's own estimates of volatilities of market prices and foreign exchange rates.

The standard supervisory market price volatility haircuts set a specified market price volatility haircut for various categories of financial collateral. These standard haircuts are based on the ten-business-day holding period for eligible margin loans and derivative contracts. For repo-style transactions, an FDIC-supervised institution may multiply the standard supervisory haircuts by the square root of ½ to scale them for a holding period of five business days. Several commenters argued that the proposed haircuts were too conservative and insufficiently risk-sensitive, and that FDIC-supervised institutions should be allowed to compute their own haircuts. Some commenters proposed limiting the maximum haircut for non-sovereign issuers that receive a 100 percent risk weight to 12 percent and, more specifically, assigning a lower haircut than 25 percent for financial collateral in the form of an investment-grade corporate debt security that has a shorter residual maturity. The commenters asserted that these haircuts conservatively correspond to the existing rating categories and result in greater alignment with the Basel framework.

In the interim final rule, the FDIC has revised from 25.0 percent the standard supervisory market price volatility haircuts for financial collateral issued by non-sovereign issuers with a risk weight of 100 percent to 4.0 percent for maturities of less than one year, 8.0 percent for maturities greater than one year but less than or equal to five years, and 16.0 percent for maturities greater than five years, consistent with Table 22 below. The FDIC believes that the revised haircuts better reflect the collateral's credit quality and an appropriate differentiation based on the collateral's residual maturity.

An FDIC-supervised institution using the standard currency mismatch haircut is required to use an 8 percent haircut for each currency mismatch for transactions subject to a 10 day holding period, as adjusted for different required holding periods. One commenter asserted that the proposed adjustment for currency mismatch was unwarranted because in securities lending transactions, the parties typically require a higher collateral margin than in transactions where there is no mismatch. In the alternative, the commenter argued that the agencies should align the currency mismatch haircut more closely with a given currency combination and suggested those currencies of countries with a more favorable CRC from the OECD should receive a smaller haircut. The FDIC has decided to adopt this aspect of the proposal without change in the interim final rule. The FDIC believes that the own internal estimates for haircuts methodology described below allows FDIC-supervised institutions appropriate flexibility to more granularly reflect individual currency combinations, provided they meet certain criteria.

TABLE 22—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS [1]

Residual maturity	Haircut (in percent) assigned based on:						Investment-grade securitization exposures (in percent)
	Sovereign issuers risk weight under § 324.32 [2]			Non-sovereign issuers risk weight under § 324.32			
	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	4.0	4.0
Greater than 1 year and less than or equal to 5 years	2.0	3.0	15.0	4.0	6.0	8.0	12.0
Greater than 5 years	4.0	6.0	15.0	8.0	12.0	16.0	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						
Other exposure types	25.0						

[1] The market price volatility haircuts in Table 22 are based on a 10 business-day holding period.
[2] Includes a foreign PSE that receives a zero percent risk weight.

The interim final rule requires that an FDIC-supervised institution increase the standard supervisory haircut for transactions involving large netting sets. As noted in the proposed rule, during the recent 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.

Thus, consistent with the proposed rule, 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, the interim final rule requires an FDIC-supervised institution to assume a holding period of 20 business days for the collateral under the collateral haircut approach. The formula and methodology for increasing the haircut to reflect the longer holding period is described in section 37(c) of the interim final rule. Consistent with the Basel capital framework, an FDIC-supervised institution is not required to adjust the holding period upward for cleared transactions. When determining whether collateral is illiquid or whether an OTC derivative cannot be easily replaced for these purposes, an FDIC-supervised institution 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).

One commenter requested the agencies clarify whether the 5,000-trade threshold applies on a counterparty-by-counterparty (rather than aggregate) basis, and only will be triggered in the event there are 5,000 open trades with a single counterparty within a single netting set in a given quarter. Commenters also asked whether the threshold would be calculated on an average basis or whether a de minimis number of breaches could be permitted without triggering the increased holding period or margin period of risk. One commenter suggested eliminating the threshold because it is ineffective as a measure of risk, and combined with other features of the proposals (for example, collateral haircuts, margin disputes), could create a disincentive for FDIC-supervised institutions to apply sound practices such as risk diversification.

The FDIC notes that the 5,000-trade threshold applies to a netting set, which by definition means a group of transactions with a single counterparty that are subject to a qualifying master netting agreement. The 5,000 trade calculation threshold was proposed as an indicator that a set of transactions may be more complex, or require a lengthy period, to close out in the event of a default of a counterparty. The FDIC continues to believe that the threshold of 5,000 is a reasonable indicator of the complexity of a close-out. Therefore, the interim final rule retains the 5,000 trade threshold as proposed, without any de minimis exception.

One commenter asked the agencies to clarify how trades would be counted in the context of an indemnified agency securities lending relationship. In such transactions, an agent banking organization acts as an intermediary for, potentially, multiple borrowers and lenders. The banking organization is acting as an agent with no exposure to either the securities lenders or borrowers except for an indemnification to the securities lenders in the event of a borrower default. The indemnification creates an exposure to the securities borrower, as the agent banking organization could suffer a loss upon the default of a borrower. In these cases, each transaction between the agent and a borrower would count as a trade. The FDIC notes that a trade in this instance consists of an order by the borrower, and not the number of securities lenders providing shares to fulfil the order or the number of shares underlying such order.[149]

The commenters also addressed the longer holding period for trades involving illiquid collateral posted by the counterparty. Some commenters asserted that one illiquid exposure or one illiquid piece of collateral should not taint the entire netting set. Other commenters recommended applying a materiality threshold (for example, 1 percent) below which one or more illiquid exposures would not trigger the longer holding period, or allowing banking organizations to define ''materiality'' based on experience.

Regarding the potential for an illiquid exposure to ''taint'' an entire netting set, the interim final rule does not require

[149] In the event that the agent FDIC-supervised institution reinvests the cash collateral proceeds on behalf of the lender and provides an explicit or implicit guarantee of the value of the collateral in such pool, the FDIC-supervised institution should hold capital, as appropriate, against the risk of loss of value of the collateral pool.

an FDIC-supervised institution to recognize any piece of collateral as a risk mitigant. Accordingly, if an FDIC-supervised institution elects to exclude the illiquid collateral from the netting set for purposes of calculating risk-weighted assets, then such illiquid collateral does not result in an increased holding period for the netting set. With respect to a derivative that may not be easily replaced, an FDIC-supervised institution could create a separate netting set that would preserve the holding period for the original netting set of easily replaced transactions. Accordingly, the interim final rule adopts this aspect of the proposal without change.

One commenter asserted that the interim final rule should not require a banking organization to determine whether an instrument is liquid on a daily basis, but rather should base the timing of such determination by product category and on long-term liquidity data. According to the commenter, such an approach would avoid potential confusion, volatility and destabilization of the funding markets. For purposes of determining whether collateral is illiquid or an OTC derivative contract is easily replaceable under the interim final rule, an FDIC-supervised institution may 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). An FDIC-supervised institution is not required to make a daily determination of liquidity under the interim final rule; rather, FDIC-supervised institutions should have policies and procedures in place to evaluate the liquidity of their collateral as frequently as warranted.

Under the proposed rule, a banking organization would increase the holding period for a netting set if over the two previous quarters more than two margin disputes on a netting set have occurred that lasted longer than the holding period. However, consistent with the Basel capital framework, a banking organization would not be required to adjust the holding period upward for cleared transactions. Several commenters requested further clarification on the meaning of ''margin disputes.'' Some of these commenters suggested restricting ''margin disputes'' to formal legal action. Commenters also suggested restricting ''margin disputes'' to disputes resulting in the creation of an exposure that exceeded any available overcollateralization, or establishing a materiality threshold. One commenter suggested that margin disputes were not an indicator of an increased risk and, therefore, should not trigger a longer holding period.

The FDIC continues to believe that an increased holding period is appropriate regardless of whether the dispute exceeds applicable collateral requirements and regardless of whether the disputes exceed a materiality threshold. The FDIC expects that the determination as to whether a dispute constitutes a margin dispute for purposes of the interim final rule will depend solely on the timing of the resolution. That is to say, if collateral is not delivered within the time period required under an agreement, and such failure to deliver is not resolved in a timely manner, then such failure would count toward the two-margin-dispute limit. For the purpose of the interim final rule, where a dispute is subject to a recognized industry dispute resolution protocol, the FDIC expects to consider the dispute period to begin after a third-party dispute resolution mechanism has failed.

For comments and concerns that are specific to the parallel provisions in the advanced approaches rule, reference section XII.A of this preamble.

f. Own Estimates of Haircuts

Under the interim final rule, consistent with the proposal, FDIC-supervised institutions may calculate market price volatility and foreign exchange volatility using own internal estimates with prior written approval of the FDIC. To receive approval to calculate haircuts using its own internal estimates, an FDIC-supervised institution must meet certain minimum qualitative and quantitative standards set forth in the interim final rule, including the requirements that an FDIC-supervised institution: (1) uses 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) adjusts holding periods upward where and as appropriate to take into account the illiquidity of an instrument; (3) selects a historical observation period that reflects a continuous 12-month period of significant financial stress appropriate to the FDIC-supervised institution's current portfolio; and (4) updates its data sets and compute haircuts no less frequently than quarterly, as well as any time market prices change materially. An FDIC-supervised institution estimates the volatilities of exposures, the collateral, and foreign exchange rates and should not take into account the correlations between them.

The interim final rule provides a formula for converting own-estimates of haircuts based on a holding period different from the minimum holding period under the rule to haircuts consistent with the rule's minimum holding periods. The minimum holding periods for netting sets with more than 5,000 trades, netting sets involving illiquid collateral or an OTC derivative that cannot easily be replaced, and netting sets involving more than two margin disputes over the previous two quarters described above also apply for own-estimates of haircuts.

Under the interim final rule, an FDIC-supervised institution is required to have policies and procedures that describe how it determines the period of significant financial stress used to calculate the FDIC-supervised institution's own internal estimates, and to be able to provide empirical support for the period used. These policies and procedures must address (1) how the FDIC-supervised institution links the period of significant financial stress used to calculate the own internal estimates to the composition and directional bias of the FDIC-supervised institution's current portfolio; and (2) the FDIC-supervised institution'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 FDIC-supervised institution's current portfolio. The FDIC-supervised institution is required to obtain the prior approval of the FDIC for these policies and procedures and notify the FDIC if it makes any material changes to them. The FDIC may require it to use a different period of significant financial stress in the calculation of its own internal estimates.

Under the interim final rule, an FDIC-supervised institution is allowed to calculate internally estimated haircuts for categories of debt securities that are investment-grade exposures. The haircut for a category of securities must be representative of the internal volatility estimates for securities in that category that the FDIC-supervised institution has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. In determining relevant categories, the FDIC-supervised institution 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.

An FDIC-supervised institution must calculate a separate internally estimated haircut for each individual non-investment-grade debt security and for each individual equity security. In addition, an FDIC-supervised institution must 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 and Internal Models Methodology

In the NPR, the agencies did not propose a simple VaR approach to calculate exposure amounts for eligible margin loans and repo-style transactions or IMM to calculate the exposure amount for the counterparty credit exposure for OTC derivatives, eligible margin loans, and repo-style transactions. These methodologies are included in the advanced approaches rule. The agencies sought comment on whether to implement the simple VaR approach and IMM in the standardized approach. Several commenters asserted that the IMM and simple VaR approach should be implemented in the interim final rule to better capture the risk of counterparty credit exposures. The FDIC has considered these comments and has concluded that the increased complexity and limited applicability of these models-based approaches is inconsistent with the FDIC's overall focus in the standardized approach on simplicity, comparability, and broad applicability of methodologies for U.S. FDIC-supervised institutions. Therefore, consistent with the proposal, the interim final rule does not include the simple VaR approach or the IMM in the standardized approach.

G. Unsettled Transactions

Under the proposed rule, a banking organization would be required to hold capital against the risk of certain unsettled transactions. One commenter expressed opposition to assigning a risk weight to unsettled transactions where previously none existed, because it would require a significant and burdensome tracking process without commensurate benefit. The FDIC believes that it is important for an FDIC-supervised institution to have procedures to identify and track a delayed or unsettled transaction of the types specified in the rule. Such procedures capture the resulting risks associated with such delay. As a result, the FDIC is adopting the risk-weighting requirements as proposed.

Consistent with the proposal, the interim final rule 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. Under the interim final rule, the capital requirement does 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 defined as the lesser of the market standard for the particular instrument or five business days).[150] In the case of a system-wide failure of a settlement, clearing system, or central counterparty, the FDIC may waive risk-based capital requirements for unsettled and failed transactions until the situation is rectified.

The interim final rule provides 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 refers 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 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. A transaction is 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.

Consistent with the proposal, under the interim final rule, an FDIC-supervised institution is required to hold risk-based capital against a DvP or PvP transaction with a normal settlement period if the FDIC-supervised institution's counterparty has not made delivery or payment within five business days after the settlement date. The FDIC-supervised institution determines its risk-weighted asset amount for such a transaction by multiplying the positive current exposure of the transaction for the FDIC-supervised institution by the appropriate risk weight in Table 23. The positive current exposure from an unsettled transaction of an FDIC-supervised institution 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 FDIC-supervised institution to the counterparty.

TABLE 23—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

An FDIC-supervised institution must hold risk-based capital against any non-DvP/non-PvP transaction with a normal settlement period if the FDIC-supervised institution 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 FDIC-supervised institution must continue to hold risk-based capital against the transaction until it has received the corresponding deliverables. From the business day after the FDIC-supervised institution has made its delivery until five business days after the counterparty delivery is due, the FDIC-supervised institution must calculate the risk-weighted asset amount for the transaction by risk weighting the current fair value of the deliverables owed to the FDIC-supervised institution, using the risk weight appropriate for an exposure to the counterparty in accordance with section 32. If an FDIC-supervised institution has not received its deliverables by the fifth business day after the counterparty delivery due date, the FDIC-supervised institution must assign a 1,250 percent risk weight to the current market value of the deliverables owed.

[150] Such transactions are treated as derivative contracts as provided in section 34 or section 35 of the interim final rule.

H. Risk-Weighted Assets for Securitization Exposures

In the proposal, the agencies proposed to significantly revise the risk-based capital framework for securitization exposures. These proposed revisions included removing references to and reliance on credit ratings to determine risk weights for these exposures and using alternative standards of creditworthiness, as required by section 939A of the Dodd-Frank Act. These alternative standards were designed to produce capital requirements that generally would be consistent with those under the BCBS securitization framework and were consistent with those incorporated into the agencies' market risk rule.[151] They would have replaced both the ratings-based approach and an approach that permits banking organizations to use supervisor-approved internal systems to replicate external ratings processes for certain unrated exposures in the general risk-based capital rules.

In addition, the agencies proposed to update the terminology for the securitization framework, include a definition of securitization exposure that encompasses a wider range of exposures with similar risk characteristics, and implement new due diligence requirements for securitization exposures.

1. Overview of the Securitization Framework and Definitions

The proposed securitization framework was designed to address the credit risk of exposures that involve the tranching of credit risk of one or more underlying financial exposures. Consistent with the proposal, the interim final rule defines a securitization exposure as an 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. Commenters expressed concerns that the proposed scope of the securitization framework was overly broad and requested that the definition of securitizations be narrowed to exposures that tranche the credit risk associated with a pool of assets. However, the FDIC believes that limiting the securitization framework to exposures backed by a pool of assets would exclude tranched credit risk exposures that are appropriately captured under the securitization framework, such as certain first loss or other tranched guarantees provided to a single underlying exposure.

In the proposal a traditional securitization was defined, in part, as a transaction in which credit risk of one or more underlying exposures has been transferred to one or more third parties (other than through the use of credit derivatives or guarantees), where the credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority. The definition included certain other conditions, such as requiring all or substantially all of the underlying exposures to be financial exposures. The FDIC has decided to finalize the definition of traditional securitization largely as proposed, with some revisions (as discussed below), that reflect certain comments regarding exclusions under the framework and other modifications to the interim final rule.

Both the designation of exposures as securitization exposures (or resecuritization exposures, as described below) and the calculation of risk-based capital requirements for securitization exposures under the interim final rule are guided by the economic substance of a transaction rather than its legal form. Provided there is tranching of credit risk, securitization exposures could include, among other things, ABS and MBS, 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 credit-enhancing interest-only strips (CEIOs). Securitization exposures also include assets sold with retained tranches.

The FDIC believes that requiring all or substantially all of the underlying exposures of a securitization to 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, the FDIC also considers asset classes such as lease residuals and entertainment royalties to be financial assets. The securitization framework is not designed, however, to apply to tranched credit exposures to commercial or industrial companies or nonfinancial assets or to amounts deducted from capital under section 22 of the interim final rule. Accordingly, 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).

Consistent with the proposal, under the interim final rule, an operating company does not fall under the definition of a traditional securitization (even if substantially all of its assets are financial exposures). Operating companies generally refer to companies that are established 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 generally would be an equity exposure. Under the interim final rule, FDIC-supervised institutions are operating companies and do not fall under the definition of a traditional securitization. However, 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 under the interim final rule and would not qualify for this general exclusion from the definition of traditional securitization.

Under the proposed rule, paragraph (10) of the definition of traditional securitization specifically excluded 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 served 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 registered with the SEC under the Investment Company Act of 1940 and their foreign equivalents would be exempted from the definition because these entities and transactions are regulated and subject to strict leverage requirements. The proposal defined an investment fund as 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 explained in the proposal that the capital requirements for an extension of credit to, or an equity holding in, these

[151] 77 FR 53060 (August 30, 2012).

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.

Commenters generally agreed with the proposed exemptions from the definition of traditional securitization and requested that the agencies provide exemptions for exposures to a broader set of investment firms, such as pension funds operated by state and local governments. In view of the comments regarding pension funds, the interim final rule provides an additional exclusion from the definition of traditional securitization for a ''governmental plan'' (as defined in 29 U.S.C. 1002(32)) that complies with the tax deferral qualification requirements provided in the Internal Revenue Code. The FDIC believes that an exemption for such government plans is appropriate because they are subject to substantial regulation. Commenters also requested that the agencies provide exclusions for certain products provided to investment firms, such as extensions of short-term credit that support day-to-day investment-related activities. The FDIC believes that exposures that meet the definition of traditional securitization, regardless of product type or maturity, would fall under the securitization framework. Accordingly, the FDIC has not provided for any such exemptions under the interim final rule.[152]

To address the treatment of investment firms that are not specifically excluded from the securitization framework, the proposed rule provided discretion to the primary Federal supervisor of a banking organization to exclude from the definition of a traditional securitization those transactions 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. While the commenters supported the agencies' recognition that certain investment firms may warrant an exemption from the securitization framework, some expressed concern that the process for making such a determination may present significant implementation burden.

To maintain sufficient flexibility to provide an exclusion for certain investment firms from the securitization framework, the FDIC has retained this discretionary provision in the interim final rule without change. In determining whether to exclude an investment firm from the securitization framework, the FDIC will consider a number of factors, including the assessment of the transaction's leverage, risk profile, and economic substance. This supervisory exclusion gives the FDIC discretion to distinguish structured finance transactions, to which the securitization framework is 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, are eligible for the exclusion from the definition of traditional securitization under this provision. The FDIC does 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 meet the definition of traditional securitization under the interim final rule.

The line between securitization exposures and non-securitization exposures may be difficult to identify in some circumstances. In addition to the supervisory exclusion from the definition of traditional securitization described above, FDIC may expand the scope of the securitization framework to include other transactions if doing so is justified by the economics of the transaction. Similar to the analysis for excluding an investment firm from treatment as a traditional securitization, the FDIC will consider the economic substance, leverage, and risk profile of a transaction to ensure that an appropriate risk-based capital treatment is applied. The FDIC will 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.

Under the proposal, a synthetic securitization was 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 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). The FDIC has decided to finalize the definition of synthetic securitization largely as proposed, but has also clarified in the interim final rule that transactions in which a portion of credit risk has been retained, not just transferred, through the use of credit derivatives is subject to the securitization framework.

In response to the proposal, commenters requested that the agencies provide an exemption for guarantees that tranche credit risk under certain mortgage partnership finance programs, such as certain programs provided by the FHLBs, whereby participating member banking organizations provide credit enhancement to a pool of residential mortgage loans that have been delivered to the FHLB. The FDIC believes that these exposures that tranche credit risk meet the definition of a synthetic securitization and that the risk of such exposures would be appropriately captured under the securitization framework. In contrast, mortgage-backed pass-through securities (for example, those guaranteed by FHLMC or FNMA) that feature various maturities but do not involve tranching of credit risk do not meet the definition of a securitization exposure. Only those MBS that involve tranching of credit risk are considered to be securitization exposures.

Consistent with the 2009 Enhancements, the proposed rule defined 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. A resecuritization would have meant a securitization in which one or more of the underlying exposures is a securitization exposure. An exposure to an asset-backed commercial paper (ABCP) program would not have been 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

[152] The interim final rule also clarifies that the portion of a synthetic exposure to the capital of a financial institution that is deducted from capital is not a traditional securitization.

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.

Commenters asked the agencies to narrow the definition of resecuritization by exempting resecuritizations in which a minimal amount of underlying assets are securitization exposures. According to commenters, the proposed definition would have a detrimental effect on certain collateralized loan obligation exposures, which typically include a small amount of securitization exposures as part of the underlying pool of assets in a securitization. Specifically, the commenters requested that resecuritizations be defined as a securitization in which five percent or more of the underlying exposures are securitizations. Commenters also asked the agencies to consider employing a pro rata treatment by only applying a higher capital surcharge to the portion of a securitization exposure that is backed by underlying securitization exposures. The FDIC believes that the introduction of securitization exposures into a pool of securitized exposures significantly increases the complexity and correlation risk of the exposures backing the securities issued in the transaction, and that the resecuritization framework is appropriate for applying risk-based capital requirements to exposures to pools that contain securitization exposures.

Commenters sought clarification as to whether the proposed definition of resecuritization would include a single exposure that has been retranched, such as a resecuritization of a real estate mortgage investment conduit (Re-REMIC). The FDIC believes that the increased capital surcharge, or p factor, for resecuritizations was meant to address the increased correlation risk and complexity resulting from retranching of multiple underlying exposures and was not intended to apply to the retranching of a single underlying exposure. As a result, the definition of resecuritization in the interim final rule has been refined to clarify that resecuritizations do not include exposures comprised of a single asset that has been retranched. The FDIC notes that for purposes of the interim final rule, a resecuritization does not include pass-through securities that have been pooled together and effectively re-issued as tranched securities. This is because the pass-through securities do not tranche credit protection and, as a result, are not considered securitization exposures under the interim final rule.

Under the interim final rule, if a transaction involves a traditional multi-seller ABCP conduit, an FDIC-supervised institution must 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 loans. To ensure that the commercial paper issued by each conduit is highly-rated, an FDIC-supervised institution 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 is not a resecuritization exposure under the interim final rule 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 constitutes tranching of risk of a pool of multiple assets containing at least one securitization exposure, and, therefore, is 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 is not a resecuritization exposure if, as noted above, either (1) the program-wide credit enhancement does not meet the definition of a resecuritization exposure or (2) the commercial paper is fully supported by the sponsoring FDIC-supervised institution. When the sponsoring FDIC-supervised institution fully supports the commercial paper, the commercial paper holders effectively are exposed to default risk of the sponsor instead of the underlying exposures, and the external rating of the commercial paper is expected to be based primarily on the credit quality of the FDIC-supervised institution 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 ratings issued by Nationally Recognized Statistical Rating Organizations (NRSROs) and did not perform internal credit analysis of their securitization exposures. Consistent with the Basel capital framework and the agencies' general expectations for investment analysis, the proposal required banking organizations to satisfy specific due diligence requirements for securitization exposures. Specifically, under the proposal 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 its performance. The banking organization's analysis would have to be commensurate with the complexity of the exposure and the materiality of the exposure in relation to capital of the banking organization. On an ongoing basis (no less frequently than quarterly), the banking organization must evaluate, review, and update as appropriate the analysis required under section 41(c)(1) of the proposed rule for each securitization exposure. The analysis of the risk characteristics of the exposure prior to acquisition, and periodically thereafter, would have to consider:

(1) Structural features of the securitization that 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.

Commenters expressed concern that many banking organizations would be

unable to perform the due diligence necessary to meet the requirements and, as a result, would no longer purchase privately-issued securitization exposures and would increase their holdings of GSE-guaranteed securities, thereby increasing the size of the GSEs. Commenters also expressed concerns regarding banking organizations' ability to obtain relevant market data for certain exposures, such as foreign exposures and exposures that are traded in markets that are typically illiquid, as well as their ability to obtain market data during periods of general market illiquidity. Commenters also stated concerns that uneven application of the requirements by supervisors may result in disparate treatment for the same exposure held at different banking organizations due to perceived management deficiencies. For these reasons, many commenters requested that the agencies consider removing the market data requirement from the due diligence requirements. In addition, some commenters suggested that the due diligence requirements be waived provided that all of the underlying loans meet certain underwriting standards.

The FDIC notes that the proposed due diligence requirements are generally consistent with the goal of the its investment permissibility requirements, which provide that FDIC-supervised institutions must be able to determine the risk of loss is low, even under adverse economic conditions. The FDIC acknowledges potential restrictions on data availability and believes that the standards provide sufficient flexibility so that the due diligence requirements, such as relevant market data requirements, would be implemented as applicable. In addition, the FDIC notes that, where appropriate, pool-level data could be used to meet certain of the due diligence requirements. As a result, the FDIC is finalizing the due diligence requirements as proposed.

Under the proposal, if a banking organization is not able to meet these due diligence requirements and 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. Commenters requested that the agencies adopt a more flexible approach to due diligence requirements rather than requiring a banking organization to assign a risk weight of 1,250 percent for violation of those requirements. For example, some commenters recommended that the agencies assign progressively increasing risk weights based on the severity and duration of infringements of due diligence requirements, to allow the agencies to differentiate between minor gaps in due diligence requirements and more serious violations.

The FDIC believes that the requirement to assign a 1,250 percent risk weight, rather than applying a lower risk weight, to exposures for violation of these requirements is appropriate given that such information is required to monitor appropriately the risk of the underlying assets. The FDIC recognizes the importance of consistent and uniform application of the standards across FDIC-supervised institutions and will endeavor to ensure that the FDIC consistently reviews FDIC-supervised institutions' due diligence on securitization exposures. The FDIC believes that these efforts will mitigate concerns that the 1,250 percent risk weight will be applied inappropriately to FDIC-supervised institutions' failure to meet the due diligence requirements. At the same time, the FDIC believes that the requirement that an FDIC-supervised institution's analysis be commensurate with the complexity and materiality of the securitization exposure provides the FDIC-supervised institution with sufficient flexibility to mitigate the potential for undue burden. As a result, the FDIC is finalizing the risk weight requirements related to due diligence requirements as proposed.

b. Operational Requirements for Traditional Securitizations

The proposal outlined certain operational requirements for traditional securitizations that had to be met in order to apply the securitization framework. The FDIC is finalizing these operational requirements as proposed.

In a traditional securitization, an originating FDIC-supervised institution typically transfers a portion of the credit risk of exposures to third parties by selling them to a securitization special purpose entity (SPE).[153] Consistent with the proposal, the interim final rule defines an FDIC-supervised institution to be an originating FDIC-supervised institution with respect to a securitization 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 interim final rule, consistent with the proposal, an FDIC-supervised institution that transfers exposures it has originated or purchased to a securitization SPE or other third party in connection with a traditional securitization can 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 FDIC-supervised institution's consolidated balance sheet under GAAP; (2) the FDIC-supervised institution 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).[154]

An originating FDIC-supervised institution that meets these conditions must hold risk-based capital against any credit risk it retains or acquires in connection with the securitization. An originating FDIC-supervised institution that fails to meet these conditions is required to 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.

In addition, if a securitization (1) includes 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 (2) contains an early amortization provision, the originating FDIC-supervised institution is 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.[155] The FDIC believes that

[153] The interim final rule defines 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.

[154] Commenters asked the agencies to consider the interaction between the proposed non-consolidation condition and the agencies' proposed rules implementing section 941 of the Dodd-Frank Act regarding risk retention, given concerns that satisfaction of certain of the proposed risk retention requirements would affect the accounting treatment for certain transactions. The FDIC acknowledges these concerns and will take into consideration any effects on the securitization framework as they continue to develop the risk retention rules.

[155] 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 an FDIC-supervised institution capital needs if new draws on the revolving credit facilities need to be financed by the FDIC-supervised

Continued

this treatment is appropriate given the lack of risk transference in securitizations of revolving underlying exposures with early amortization provisions.

c. Operational Requirements for Synthetic Securitizations

In general, the proposed operational requirements for synthetic securitizations were similar to those proposed for traditional securitizations. The operational requirements for synthetic securitizations, however, were more detailed to ensure that the originating banking organization has truly transferred credit risk of the underlying exposures to one or more third parties. Under the proposal, an originating banking organization would have been able to 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'' was satisfied. The FDIC is finalizing the operational requirements largely as proposed. However, to ensure that synthetic securitizations created through tranched guarantees and credit derivatives are properly included in the framework, in the interim final rule the FDIC has amended the operational requirements to recognize guarantees that meet all of the criteria set forth in the definition of eligible guarantee except the criterion under paragraph (3) of the definition. Additionally, the operational criteria recognize a credit derivative provided that the credit derivative meets all of the criteria set forth in the definition of eligible credit derivative except for paragraph 3 of the definition of eligible guarantee. As a result, a guarantee or credit derivative that provides a tranched guarantee would not be excluded by the operational requirements for synthetic securitizations.

Failure to meet these operational requirements for a synthetic securitization prevents an FDIC-supervised institution that has purchased tranched credit protection referencing one or more of its exposures from using the securitization framework with respect to the reference exposures and requires the FDIC-supervised institution to hold risk-based capital against the underlying exposures as if they had not been synthetically securitized. An FDIC-supervised institution that holds a synthetic securitization as a result of purchasing credit protection may use the securitization framework to determine the risk-based capital requirement for its exposure. Alternatively, it may instead choose to disregard the credit protection and use the general credit risk framework. An FDIC-supervised institution that provides tranched credit protection in the form of a synthetic securitization or credit protection to a synthetic securitization must use the securitization framework to compute risk-based capital requirements for its exposures to the synthetic securitization even if the originating FDIC-supervised institution fails to meet one or more of the operational requirements for a synthetic securitization.

d. Clean-Up Calls

Under the proposal, 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 proposed rule defined 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.

The interim final rule retains the proposed treatment for clean-up calls, and defines an eligible clean-up call as a clean-up call that (1) is exercisable solely at the discretion of the originating FDIC-supervised institution 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 meets criteria (3) of the definition of ''eligible clean-up call'' as long as the outstanding principal amount in that series or tranche was 10 percent or less of its original amount at the inception of the series.

3. Risk-Weighted Asset Amounts for Securitization Exposures

The proposed framework for assigning risk-based capital requirements to securitization exposures required banking organizations generally to calculate a risk-weighted asset amount for a securitization exposure by applying either (i) the simplified supervisory formula approach (SSFA), described in section VIII.H of the preamble, or (ii) if the banking organization is 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 SSFA or the gross-up approach consistently across all of its securitization exposures. However, a banking organization could choose to assign a 1,250 percent risk weight to any securitization exposure.

Commenters expressed concerns regarding the potential differences in risk weights for similar exposures when using the gross-up approach compared to the SSFA, and the potential for capital arbitrage depending on the outcome of capital treatment under the framework. The FDIC acknowledges these concerns and, to reduce arbitrage opportunities, has required that a banking organization apply either the gross-up approach or the SSFA consistently across all of its securitization exposures. Commenters also asked the agencies to clarify how often and under what circumstances a banking organization is allowed to switch between the SSFA and the gross-up approach. While the FDIC is not placing restrictions on the ability of

institution 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 the FDIC-supervised institution to a greater risk of loss than in other securitization transactions. The interim final rule defines an early amortization provision 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 (1) is solely triggered by events not related to the performance of the underlying exposures or the originating FDIC-supervised institution (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.

FDIC-supervised institutions to switch from the SSFA to the gross-up approach, the FDIC does not anticipate there should be a need for frequent changes in methodology by an FDIC-supervised institution absent significant change in the nature of the FDIC-supervised institution's securitization activities, and expect FDIC-supervised institutions to be able to provide a rationale for changing methodologies to the FDIC if requested.

Citing potential disadvantages of the proposed securitization framework as compared to standards to be applied to international competitors that rely on the use of credit ratings, some commenters requested that banking organizations be able to continue to implement a ratings-based approach to allow the agencies more time to calibrate the SSFA in accordance with international standards that rely on ratings. The FDIC again observes that the use of ratings in FDIC regulations is inconsistent with section 939A of the Dodd-Frank Act. Accordingly, the interim final rule does not include any references to, or reliance on, credit ratings. The FDIC has determined that the SSFA is an appropriate substitute standard to credit ratings that can be used to measure risk-based capital requirements and may be implemented uniformly across institutions.

Under the proposed securitization framework, banking organizations would have been required or could choose to assign a risk weight of 1,250 percent to certain securitization exposures. Commenters stated that the 1,250 percent risk weight required under certain circumstances in the securitization framework would penalize banking organizations that hold capital above the total risk-based capital minimum and could require a banking organization to hold more capital against the exposure than the actual exposure amount at risk. As a result, commenters requested that the amount of risk-based capital required to be held against a banking organization's exposure be capped at the exposure amount. The FDIC has decided to retain the proposed 1,250 percent risk weight in the interim final rule, consistent with their overall goals of simplicity and comparability, to provide for comparability in risk-weighted asset amounts for the same exposure across institutions.

Consistent with the proposal, the interim final rule provides for alternative treatment of securitization exposures to ABCP programs and certain gains-on-sale and CEIO exposures. Specifically, similar to the general risk-based capital rules, the interim final rule includes a minimum 100 percent risk weight for interest-only mortgage-backed securities and exceptions to the securitization framework for certain small-business loans and certain derivatives as described below. An FDIC-supervised institution may use the securitization credit risk mitigation rules to adjust the capital requirement under the securitization framework for an exposure to reflect certain collateral, credit derivatives, and guarantees, as described in more detail below.

a. Exposure Amount of a Securitization Exposure

Under the interim final rule, 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 is generally the FDIC-supervised institution's carrying value of the exposure. The interim final rule modifies the proposed treatment for determining exposure amounts under the securitization framework to reflect the ability of an FDIC-supervised institution not subject to the advanced approaches rule to make an AOCI opt-out election. As a result, the exposure amount of an on-balance sheet securitization exposure that is an available-for-sale debt security or an available-for-sale debt security transferred to held-to-maturity held by an FDIC-supervised institution that has made an AOCI opt-out election is the FDIC-supervised institution's carrying value (including net accrued but unpaid interest and fees), less any net unrealized gains on the exposure and plus any net unrealized losses on 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 (other than a credit derivative), or a derivative that is a cleared transaction (other than a credit derivative) is the notional amount of the exposure. The treatment for OTC credit derivatives is described in more detail below.

For purposes of calculating the exposure amount of an off-balance sheet exposure to an ABCP securitization exposure, such as a liquidity facility, consistent with the proposed rule, the notional amount may be reduced to the maximum potential amount that the FDIC-supervised institution 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 improve, then the exposure amount is $200. An ABCP program is defined 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 is defined as a liquidity facility supporting ABCP, in form or in substance, which 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 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.

Commenters, citing accounting changes that require certain ABCP securitization exposures to be consolidated on banking organizations balance sheets, asked the agencies to consider capping the amount of an off-balance sheet securitization exposure to the maximum potential amount that the banking organization could be required to fund given the securitization SPE's current underlying assets. These commenters stated that the downward adjustment of the notional amount of a banking organization's off-balance sheet securitization exposure to the amount of the available asset pool generally should be permitted regardless of whether the exposure to a customer SPE is made directly through a credit commitment by the banking organization to the SPE or indirectly through a funding commitment that the banking organization makes to an ABCP conduit. The FDIC believes that the requirement to hold risk-based capital against the full amount that may be drawn more accurately reflects the risks of potential draws under these exposures and have decided not to provide a separate provision for off-balance sheet exposures to customer-sponsored SPEs that are not ABCP conduits.

Under the interim final rule, consistent with the proposal, the exposure amount of an eligible ABCP liquidity facility that is subject to the SSFA equals 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 is the notional

amount of the exposure multiplied by a 50 percent CCF. The exposure amount of a securitization exposure that is a repo-style transaction, eligible margin loan, an OTC derivative contract (other than a purchased credit derivative), or derivative that is a cleared transaction (other than a purchased credit derivative) is the exposure amount of the transaction as calculated under section 324.34 or section 324.37 of the interim final rule, as applicable.

b. Gains-on-Sale and Credit-Enhancing Interest-Only Strips

Consistent with the proposal, under the interim final rule an FDIC-supervised institution 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 a CEIO that does not constitute an after-tax gain-on-sale. The FDIC believes 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 FDIC-supervised institution's risk-based capital requirement following a securitization, the FDIC believes that such anomalies are rare where a securitization transfers significant credit risk from the originating FDIC-supervised institution to third parties.

c. Exceptions Under the Securitization Framework

Commenters stated concerns that the proposal would inhibit demand for private label securitization by making it more difficult for banking organizations, especially community banking organizations, to purchase private label mortgage-backed securities. Instead of implementing the SSFA and the gross-up approach, commenters suggested allowing banking organizations to assign a 20 percent risk weight to securitization exposures that are backed by mortgage exposures that would be ''qualified mortgages'' under the Truth in Lending Act and implementing regulations issued by the CFPB.[156] The FDIC believes that the proposed securitization approaches would be more appropriate in capturing the risks provided by structured transactions, including those backed by QM. The interim final rule does not provide an exclusion for such exposures.

Under the interim final rule, consistent with the proposal, there are several exceptions to the general provisions in the securitization framework that parallel the general risk-based capital rules. First, an FDIC-supervised institution is required to assign a risk weight of at least 100 percent to an interest-only MBS. The FDIC believes 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 continues to apply to securitizations of small-business loans and leases on personal property transferred with retained contractual exposure by well-capitalized depository institutions.[157] Finally, 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), an FDIC-supervised institution may choose to set the risk-weighted asset amount of the exposure equal to the amount of the exposure.

d. Overlapping Exposures

Consistent with the proposal, the interim final rule includes provisions to limit the double counting of risks in situations involving overlapping securitization exposures. If an FDIC-supervised institution has multiple securitization exposures that provide duplicative coverage to the underlying exposures of a securitization (such as when an FDIC-supervised institution provides a program-wide credit enhancement and multiple pool-specific liquidity facilities to an ABCP program), the FDIC-supervised institution is not required to hold duplicative risk-based capital against the overlapping position. Instead, the FDIC-supervised institution must 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.

Consistent with the proposal, under the interim final rule an FDIC-supervised institution must apply the SSFA or the gross-up approach, as described below, or a 1,250 percent risk weight to a servicer cash advance facility. The treatment of the undrawn portion of the facility depends on whether the facility is an eligible servicer cash advance facility. An eligible servicer cash advance facility is 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.

Under the proposal, a banking organization that is a servicer under an eligible servicer cash advance facility is not required to hold risk-based capital against potential future cash advanced payments that it may be required to provide under the contract governing the 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 other off-balance sheet securitization exposures. The FDIC is clarifying the terminology in the interim final rule to specify that an FDIC-supervised institution that is a servicer under a non-eligible servicer cash advance facility must hold risk-based capital against the amount of all potential

[156] 78 FR 6408 (Jan. 30, 2013).

[157] *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. The interim final rule does not expressly provide that the FDIC may permit adequately-capitalized FDIC-supervised institutions to use the small business recourse rule on a case-by-case basis because the FDIC may make such a determination under the general reservation of authority in section 1 of the interim final rule.

future cash advance payments that it may be contractually required to provide during the subsequent 12-month period under the contract governing the facility.

f. Implicit Support

Consistent with the proposed rule, the interim final rule requires an FDIC-supervised institution that provides support to a securitization in excess of its predetermined contractual obligation (implicit support) to 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.[158] In addition, the FDIC-supervised institution must disclose publicly (i) that it has provided implicit support to the securitization, and (ii) the risk-based capital impact to the FDIC-supervised institution of providing such implicit support. The FDIC notes that under the reservations of authority set forth in the interim final rule, the FDIC also could require the FDIC-supervised institution to hold risk-based capital against all the underlying exposures associated with some or all the FDIC-supervised institution's other securitizations as if the underlying 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

The proposed rule incorporated the SSFA, a simplified version of the supervisory formula approach (SFA) in the advanced approaches rule, to assign risk weights to securitization exposures. Many of the commenters focused on the burden of implementing the SSFA given the complexity of the approach in relation to the proposed treatment of mortgages exposures. Commenters also stated concerns that implementation of the SSFA would generally restrict credit growth and create competitive equity concerns with other jurisdictions implementing ratings-based approaches. The FDIC acknowledges that there may be differences in capital requirements under the SSFA and the ratings-based approach in the Basel capital framework. As explained previously, the use of alternative standards of creditworthiness in FDIC regulations is consistent with section 939A of the Dodd-Frank Act. Any alternative standard developed by the FDIC may not generate the same result as a ratings-based capital framework under every circumstance. However, the FDIC, together with the other agencies, has designed the SSFA to result in generally comparable capital requirements to those that would be required under the Basel ratings-based approach without undue complexity. The FDIC will monitor implementation of the SSFA and, based on supervisory experience, consider what modifications, if any, may be necessary to improve the SSFA in the future.

The FDIC has adopted the proposed SSFA largely as proposed, with a revision to the delinquency parameter (parameter W) that will increase the risk sensitivity of the approach and clarify the operation of the formula when the contractual terms of the exposures underlying a securitization permit borrowers to defer payments of principal and interest, as described below. To limit potential burden of implementing the SSFA, FDIC-supervised institutions that are not subject to the market risk rule may also choose to use as an alternative the gross-up approach described in section VIII.H.5 below, provided that they apply the gross-up approach to all of their securitization exposures.

Similar to the SFA under the advanced approaches rule, the SSFA is a formula that starts with a baseline derived from the capital requirements that apply to all exposures underlying the securitization and then assigns risk weights based on the subordination level of an exposure. The FDIC designed the SSFA 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 applies a 1,250 percent risk weight to securitization exposures that absorb losses up to the amount of capital that is required for the underlying exposures under subpart D of the interim final rule had those exposures been held directly by an FDIC-supervised institution. In addition, the FDIC is implementing a supervisory risk-weight floor or minimum risk weight for a given securitization of 20 percent. While some commenters requested that the floor be lowered for certain low-risk securitization exposures, the FDIC believes that a 20 percent floor is prudent given the performance of many securitization exposures during the recent crisis.

At the inception of a securitization, the SSFA requires more capital on a transaction-wide basis than would be required if the underlying assets had not been securitized. That is, if the FDIC-supervised institution held every tranche of a securitization, its overall capital requirement would be greater than if the FDIC-supervised institution held the underlying assets in portfolio. The FDIC believes this overall outcome is important in reducing the likelihood of regulatory capital arbitrage through securitizations.

The proposed rule required banking organizations to use data to assign the SSFA parameters that are not more than 91 days old. Commenters requested that the data requirement be amended to account for securitizations of underlying assets with longer payment periods, such as transactions featuring annual or biannual payments. In response, the FDIC amended this requirement in the interim final rule so that data used to determine SSFA parameters must be the most currently available data. However, for exposures that feature payments on a monthly or quarterly basis, the interim final rule requires the data to be no more than 91 calendar days old.

Under the interim final rule, to use the SSFA, an FDIC-supervised institution must obtain or determine the weighted-average risk weight of the underlying exposures (K_G), as well as the attachment and detachment points for the FDIC-supervised institution's position within the securitization structure. ''K_G,'' is calculated using the risk-weighted asset amounts in the standardized approach and 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 FDIC-supervised institution may recognize the relative seniority of the exposure, as well as all cash funded enhancements, in determining attachment and detachment points. In addition, an FDIC-supervised institution must be able to determine the credit performance of the underlying exposures.

The commenters expressed concerns that certain types of data that would be required to calculate K_G may not be readily available, particularly data necessary to calculate the weighted-average capital requirement of residential mortgages according to the proposed rule's standardized approach for residential mortgages. Some commenters therefore asked to be able to use the risk weights under the general risk-based capital rules for residential mortgages in the calculation of K_G. Commenters also requested the use of alternative estimates or conservative

[158] The interim final rule is consistent with longstanding guidance on the treatment of implicit support, entitled, ''Interagency Guidance on Implicit Recourse in Asset Securitizations,'' (May 23, 2002). *See* FIL–52–2002.

proxy data to implement the SSFA when a parameter is not readily available, especially for securitizations of mortgage exposures. As previously discussed, the FDIC is retaining in the interim final rule the existing mortgage treatment under the general risk-based capital rules. Accordingly, the FDIC believes that FDIC-supervised institutions should generally have access to the data necessary to calculate the SSFA parameters for mortgage exposures.

Commenters characterized the K_G parameter as not sufficiently risk sensitive and asked the agencies to provide more recognition under the SSFA with respect to the credit quality of the underlying assets. Some commenters observed that the SSFA did not take into account sequential pay structures. As a result, some commenters requested that banking organizations be allowed to implement cash-flow models to increase risk sensitivity, especially given that the SSFA does not recognize the various types of cash-flow waterfalls for different transactions.

In developing the interim final rule, the FDIC considered the trade-offs between added risk sensitivity, increased complexity that would result from reliance on cash-flow models, and consistency with standardized approach risk weights. The FDIC believes it is important to calibrate capital requirements under the securitization framework in a manner that is consistent with the calibration used for the underlying assets of the securitization to reduce complexity and best align capital requirements under the securitization framework with requirements for credit exposures under the standardized approach. As a result, the FDIC has decided to finalize the K_G parameter as proposed.

To make the SSFA more risk-sensitive and forward-looking, the parameter K_G is modified based on delinquencies among the underlying assets of the securitization. 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.

$K_A - C^1 - W) \cdot K_G + (0.5 \cdot W)$

Under the proposal, the *W* parameter equaled the ratio of the sum of the dollar amounts of any underlying exposures of the securitization 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, in default, or have contractually deferred interest for 90 days or more divided by the ending balance, measured in dollars, of the underlying exposures. Commenters expressed concern that the proposal would require additional capital for payment deferrals that are unrelated to the creditworthiness of the borrower, and encouraged the agencies to amend the proposal so that the numerator of the *W* parameter would not include deferrals of interest that are unrelated to the performance of the loan or the borrower, as is the case for certain federally-guaranteed student loans or certain consumer credit facilities that allow the borrower to defer principal and interest payments for the first 12 months following the purchase of a product or service. Some commenters also asserted that the proposed SSFA would not accurately calibrate capital requirements for those student loans with a partial government guarantee. Another commenter also asked for clarification on which exposures are in the securitized pool.

In response to these concerns, the FDIC has decided to explicitly exclude from the numerator of parameter *W* loans with deferral of principal or interest for (1) federally-guaranteed student loans, in accordance with the terms of those programs, or (2) for consumer loans, including non-federally-guaranteed student loans, provided that such payments are deferred pursuant to provisions included in the contract at the time funds are disbursed that provide for period(s) of deferral that are not initiated based on changes in the creditworthiness of the borrower. The FDIC believes that the SSFA appropriately reflects partial government guarantees because such guarantees are reflected in K_G in the same manner that they are reflected in capital requirements for loans held on balance sheet. For clarity, the FDIC has eliminated the term ''securitized pool'' from the interim final rule. The calculation of parameter *W* includes all underlying exposures of a securitization transaction.

The FDIC believes that, with the parameter *W* calibration set equal to 0.5, the overall capital requirement produced by the SSFA is sufficiently responsive and prudent to ensure sufficient capital for pools that demonstrate credit weakness. The entire specification of the SSFA in the interim final rule is as follows:

$$K_{SSFA} = \frac{e^{a \cdot u} - e^{a \cdot l}}{a(u - l)}$$

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:

$$\mathbf{a} = -\frac{1}{p \cdot K_A}$$

$$\mathbf{u} = D - K_A$$

$$\mathbf{l} = \max(A - K_A, 0)$$

$\mathbf{e} = 2.71828$, the base of the natural logarithms.

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 held by the FDIC-supervised institution to the current dollar amount of all underlying exposures.

Commenters requested that the agencies recognize unfunded forms of

credit support, such as excess spread, in the calculation of *A*. Commenters also stated that where the carrying value of an exposure is less than its par value, the discount to par for a particular exposure should be recognized as additional credit protection. However, the FDIC believes it is prudent to recognize only funded credit enhancements, such as overcollateralization or reserve accounts funded by accumulated cash flows, in the calculation of parameter *A*. Discounts and write-downs can be related to credit risk or due to other factors such as interest rate movements or liquidity. As a result, the FDIC does not believe that discounts or write-downs should be factored into the SSFA as credit enhancement.

Parameter *D* is the detachment point for the tranche that contains the securitization exposure and represents the threshold at which credit losses 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 parameter *A* plus the ratio of the current dollar amount of the securitization exposures that are pari passu with the FDIC-supervised institution's securitization exposure (that is, have equal seniority with respect to credit risk) to the current 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.

When 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. 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}. As suggested by commenters, in order to make the description of the SSFA formula clearer, the term ''*l*'' has been redefined to be the maximum of 0 and A-K_A, instead of the proposed A-K_A. The risk weight would be determined according to the following formula:

$$RW = \left[\left(\frac{K_A - A}{D - A}\right) \times 1{,}250 \text{ percent}\right] + \left[\left(\frac{D - K_A}{D - A}\right) \times 1{,}250 \text{ percent} \times K_{SSFA}\right]$$

For resecuritizations, FDIC-supervised institutions must use the SSFA to measure the underlying securitization exposure'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 were mortgage loans that qualified for a 50 percent risk weight and that the remaining 10 percent of the pool was a tranche of a separate securitization (where the underlying exposures consisted of mortgages that also qualified for a 50 percent weight). An exposure to this hypothetical tranche would meet the definition of a resecuritization exposure. Next, assume that the attachment point *A* of the underlying securitization that is the 10 percent share of the pool is 0.06 and the detachment point *D* is 0.08. Finally, assume that none of the underlying mortgage exposures of either the hypothetical tranche or the underlying securitization exposure meet the interim final rule definition of ''delinquent.''

The value of K_G for the resecuritization exposure equals 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 (that is, 50 percent of the 8 percent risk-based capital standard). $K_{G,re\text{-}securitization} = (0.9 \cdot 0.04) + (0.1 \cdot K_{G,securitization})$

To calculate the value of $K_{G,securitization}$, an FDIC-supervised institution 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:

$K_{G,re\text{-}securitization} = (0.9 \cdot 0.04) + (0.1 \cdot 0.2325) = 0.05925$

This value of 0.05925 for $K_{G,re\text{-}securitization}$, 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 $K_{G,re\text{-}securitization}$ the capital charge is nearly equal to the maximum risk weight of 1,250 percent.

To apply the securitization framework to a single tranched exposure that has been re-tranched, such as some Re-REMICs, an FDIC-supervised institution must apply the SSFA or gross-up approach to the retranched exposure as if it were still part of the structure of the original securitization transaction. Therefore, an FDIC-supervised institution implementing the SSFA or the gross-up approach would calculate parameters for those approaches that would treat the retranched exposure as if it were still embedded in the original structure of the transaction while still recognizing any added credit enhancement provided by retranching. For example, under the SSFA an FDIC-supervised institution would calculate the approach using hypothetical attachment and detachment points that reflect the seniority of the retranched exposure within the original deal structure, as well as any additional credit enhancement provided by retranching of the exposure. Parameters that depend on pool-level characteristics, such as the *W* parameter under the SSFA, would be calculated based on the characteristics of the total underlying exposures of the initial securitization transaction, not just the retranched exposure.

5. Gross-Up Approach

Under the interim final rule, consistent with the proposal, FDIC-supervised institutions that are not subject to the market risk rule may assign risk-weighted asset amounts to securitization exposures by implementing the gross-up approach described in section 43 of the interim final rule, which is similar to an existing approach provided under the general risk-based capital rules. If the FDIC-supervised institution chooses to apply the gross-up approach, it is required to apply this approach to all of its securitization exposures, except as otherwise provided for certain securitization exposures under sections 324.44 and 324.45 of the interim final rule.

The gross-up approach assigns risk-weighted asset amounts based on the full amount of the credit-enhanced assets for which the FDIC-supervised institution directly or indirectly assumes credit risk. To calculate risk-weighted assets under the gross-up

approach, an FDIC-supervised institution determines 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 FDIC-supervised institution's exposure as a percentage of the par value of the tranche in which the securitization exposure resides. The enhanced amount is the par 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 as calculated under the standardized approach.

Under the gross-up approach, an FDIC-supervised institution is required to calculate the credit equivalent amount, which equals the sum of (1) the exposure of the FDIC-supervised institution's securitization exposure and (2) the pro rata share multiplied by the enhanced amount. To calculate risk-weighted assets for a securitization exposure under the gross-up approach, an FDIC-supervised institution is 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 is 20 percent.

As discussed above, the FDIC recognizes that different capital requirements are likely to result from the application of the gross-up approach as compared to the SSFA. However, the FDIC believes allowing smaller, less complex FDIC-supervised institutions not subject to the market risk rule to use the gross up approach (consistent with past practice under the existing general risk-based capital rules) is appropriate and should reduce operational burden for many FDIC-supervised institutions.

6. Alternative Treatments for Certain Types of Securitization Exposures

Under the proposal, a banking organization generally would assign a 1,250 percent risk weight to any securitization exposure to which the banking organization does not apply the SSFA or the gross-up approach. However, the proposal provided 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 Asset-Backed Commercial Paper Liquidity Facilities

Under the interim final rule, consistent with the proposal and the Basel capital framework, an FDIC-supervised institution is permitted to 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.

b. A Securitization Exposure in a Second-Loss Position or Better to an Asset-Backed Commercial Paper Program

Under the interim final rule and consistent with the proposal, an FDIC-supervised institution 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, provided the exposure meets the following criteria:

(1) The exposure is not 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 FDIC-supervised institution holding the exposure does not retain or provide protection for the first-loss position.

The FDIC believes 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. The FDIC is adopting this aspect of the proposal, without change, for purposes of the interim final rule.

7. Credit Risk Mitigation for Securitization Exposures

Under the interim final rule, and consistent with the proposal, the treatment of credit risk mitigation for securitization exposures would differ slightly from the treatment for other exposures. To recognize the risk mitigating effects of financial collateral or an eligible guarantee or an eligible credit derivative from an eligible guarantor, an FDIC-supervised institution that purchases credit protection uses the approaches for collateralized transactions under section 324.37 of the interim final rule or the substitution treatment for guarantees and credit derivatives described in section 3324.6 of the interim final rule. In cases of maturity or currency mismatches, or, if applicable, lack of a restructuring event trigger, the FDIC-supervised institution must make any applicable adjustments to the protection amount of an eligible guarantee or credit derivative as required by section 324.36 for any hedged securitization exposure. In addition, for synthetic securitizations, when an eligible guarantee or eligible credit derivative covers multiple hedged exposures that have different residual maturities, the FDIC-supervised institution is required to use the longest residual maturity of any of the hedged exposures as the residual maturity of all the hedged exposures. In the interim final rule, the FDIC is clarifying that an FDIC-supervised institution is not required to compute a counterparty credit risk capital requirement for the credit derivative provided that this treatment is applied consistently for all of its OTC credit derivatives. However, an FDIC-supervised institution must calculate counterparty credit risk if the OTC credit derivative is a covered position under the market risk rule.

Consistent with the proposal, an FDIC-supervised institution that purchases an OTC credit derivative (other than an nth-to-default credit derivative) that is recognized as a credit risk mitigant for a securitization exposure that is not a covered position under the market risk rule is not required to compute a separate counterparty credit risk capital requirement provided that the FDIC-supervised institution does so consistently for all such credit derivatives. The FDIC-supervised institution 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. If an FDIC-supervised institution cannot, or chooses not to, recognize a credit derivative that is a securitization exposure as a credit risk mitigant, the FDIC-supervised institution must determine the exposure amount of the credit derivative under the treatment for OTC derivatives in section 34. In the interim final rule, the FDIC is clarifying that if the FDIC-supervised institution purchases the credit protection from a counterparty that is a securitization, the FDIC-supervised institution must determine the risk weight for counterparty credit risk according to the securitization framework. If the FDIC-supervised institution purchases credit protection from a counterparty that is not a securitization, the FDIC-supervised institution must determine the risk weight for counterparty credit risk according to general risk weights

under section 32. An FDIC-supervised institution that provides protection in the form of a guarantee or credit derivative (other than an nth-to-default credit derivative) that covers the full amount or a pro rata share of a securitization exposure's principal and interest 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.

8. N^{th}-to-Default Credit Derivatives

Under the interim final rule and consistent with the proposal, the capital requirement for credit protection provided through an nth-to-default credit derivative is determined either by using the SSFA, or applying a 1,250 percent risk weight.

An FDIC-supervised institution providing credit protection must determine its exposure to an 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 FDIC-supervised institution'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 FDIC-supervised institution'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 FDIC-supervised institution'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 FDIC-supervised institution's exposure to the total notional amount of the underlying exposures. An FDIC-supervised institution 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, an FDIC-supervised institution 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 324.36(b) of the interim final rule must determine its risk-based capital requirement for the underlying exposures as if the FDIC-supervised institution synthetically securitized the underlying exposure with the smallest risk-weighted asset amount and had obtained no credit risk mitigant on the other underlying exposures. An FDIC-supervised institution must calculate a risk-based capital requirement for counterparty credit risk according to section 324.34 of the interim final rule for a first-to-default credit derivative that does not meet the rules of recognition of section 324.36(b).

For second-or-subsequent-to-default credit derivatives, an FDIC-supervised institution 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 324.36(b) of the interim final rule (other than a first-to-default credit derivative) may recognize the credit risk mitigation benefits of the derivative only if the FDIC-supervised institution 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 an FDIC-supervised institution satisfies these requirements, the FDIC-supervised institution determines its risk-based capital requirement for the underlying exposures as if the FDIC-supervised institution had only synthetically securitized the underlying exposure with the nth smallest risk-weighted asset amount and had obtained no credit risk mitigant on the other underlying exposures. For a nth-to-default credit derivative that does not meet the rules of recognition of section 324.36(b), an FDIC-supervised institution must calculate a risk-based capital requirement for counterparty credit risk according to the treatment of OTC derivatives under section 324.34 of the interim final rule. The FDIC is adopting this aspect of the proposal without change for purposes of the interim final rule.

IX. Equity Exposures

The proposal significantly revised the general risk-based capital rules' treatment for equity exposures. To improve risk sensitivity, the interim final rule generally follows the same approach to equity exposures as the proposal, while providing clarification on investments in a separate account as detailed below. In particular, the interim final rule requires an FDIC-supervised institution to apply the 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. These approaches are discussed in greater detail below.

A. Definition of Equity Exposure and Exposure Measurement

The FDIC is adopting the proposed definition of equity exposures, without change, for purposes of the interim final rule.[159] Under the interim final rule, an FDIC-supervised institution is 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, other than an equity exposure that is classified as AFS where the FDIC-supervised institution has made an AOCI opt-out election under section 324.22(b)(2) of the interim final rule, the adjusted carrying value is an FDIC-supervised institution's carrying value of the exposure. For the on-balance sheet component of an equity exposure that is classified as AFS where the FDIC-supervised institution has made an AOCI opt-out election under section 324.22(b)(2) of the interim final rule, the adjusted carrying value of the exposure is the FDIC-supervised institution's carrying value of the exposure less any net gains on the exposure that are reflected in the carrying value but excluded from the FDIC-supervised institution's regulatory capital components. For a commitment to acquire an equity exposure that is unconditional, the adjusted carrying value is 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 is 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 is 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-

[159] *See* the definition of ''equity exposure'' in section 324.2 of the interim final rule. However, as described above in section VIII.A of this preamble, the FDIC has adjusted the definition of ''exposure amount'' in line with certain requirements necessary for FDIC-supervised institutions that make an AOCI opt-out election.

balance sheet component of the exposure.

The FDIC included the concept of the effective notional principal amount of the off-balance sheet portion of an equity exposure to provide a uniform method for FDIC-supervised institutions 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.

B. Equity Exposure Risk Weights

The proposal set forth a SRWA for equity exposures, which the FDIC has adopted without change in the interim final rule. Therefore, under the interim final rule, an FDIC-supervised institution determines 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 section 324.52 of the interim final rule. An FDIC-supervised institution determines the risk-weighted asset amount for an equity exposure to an investment fund under section 324.53 of the interim final rule. An FDIC-supervised institution sums risk-weighted asset amounts for all of its equity exposures to calculate its aggregate risk-weighted asset amount for its equity exposures.

Some commenters asserted that mutual banking organizations, which are more highly exposed to equity exposures than traditional depository institutions, should be permitted to assign a 100 percent risk weight to their equity exposures rather than the proposed 300 percent risk weight for publicly-traded equity exposures or 400 percent risk weight for non-publicly traded equity exposures. Some commenters also argued that a banking organization's equity investment in a banker's bank should get special treatment, for instance, exemption from the 400 percent risk weight or deduction as an investment in the capital of an unconsolidated financial institution.

The FDIC has decided to retain the proposed risk weights in the interim final rule because it does not believe there is sufficient justification for a lower risk weight solely based on the nature of the institution (for example, mutual banking organization) holding the exposure. In addition, the FDIC believes that a 100 percent risk weight does not reflect the inherent risk for equity exposures that fall under the proposed 300 percent and 400 percent risk-weight categories or that are subject to deduction as investments in unconsolidated financial institutions. The FDIC has agreed to finalize the SRWA risk weights as proposed, which are summarized below in Table 24.

TABLE 24—SIMPLE RISK-WEIGHT APPROACH

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 324.32 of the interim final rule.
20	An equity exposure to a PSE, Federal Home Loan Bank or Farmer Mac.
100	• Community development equity exposures.[160] • 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 in the form of common stock that is not deducted under section 324.22 of the interim final rule.
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 FDIC's application of paragraph (8) of that definition and (ii) has greater than immaterial leverage.

Consistent with the proposal, the interim final rule 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 refers 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.

[160] The interim final rule generally defines these exposures as exposures that 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). Under the proposal, a savings association's community development equity exposure investments was defined to mean an equity exposure 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). The FDIC has determined that a separate definition for a savings association's community development equity exposure is not necessary and, therefore, the interim final rule applies one definition of community development equity exposure to all types of covered FDIC-supervised institutions.

C. Non-Significant Equity Exposures

Under the interim final rule, and as proposed, an FDIC-supervised institution may apply a 100 percent risk weight to certain equity exposures deemed non-significant. Non-significant equity exposures means an equity exposure to the extent that the aggregate adjusted carrying value of the exposures does not exceed 10 percent of the FDIC-supervised institution's total capital.[161] To compute the aggregate adjusted carrying value of an FDIC-supervised institution's equity exposures for determining their non-significance, the FDIC-supervised institution 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. If an FDIC-supervised institution does not know the actual holdings of the investment fund, the FDIC-supervised institution 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 FDIC-supervised institution must assume that the investment fund invests to the maximum extent possible in equity exposures.

To determine which of an FDIC-supervised institution's equity exposures qualify for a 100 percent risk weight based on non-significance, the FDIC-supervised institution first must 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 must include publicly-traded equity exposures (including those held indirectly through investment funds), and then it must include non-publicly-traded equity exposures (including those held indirectly through investment funds).[162]

One commenter proposed that certain exposures, including those to small-business investment companies, should not be subject to the 10 percent capital limitation for non-significant equity exposures and should receive a 100 percent risk weight, consistent with the treatment of community development investments. The FDIC reflected upon this comment and determined to retain the proposed 10 percent limit on an FDIC-supervised institution's total capital in the interim final rule given the inherent credit and concentration risks associated with these exposures.

D. Hedged Transactions

Under the proposal, to determine risk-weighted assets under the SRWA, a banking organization could identify hedge pairs, which 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. A banking organization would 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. A few commenters requested that non-publicly traded equities be recognized in a hedged transaction under the rule. Equities that are not publicly traded are subject to considerable valuation uncertainty due to a lack of transparency and are generally far less liquid than publicly traded equities. The FDIC has therefore determined that given the potential increased risk associated with equities that are not publicly traded, recognition of these instruments as hedges under the rule is not appropriate. One commenter indicated that the test of hedge effectiveness used in the calculation of publicly traded equities should be more risk sensitive in evaluating all components of the transaction to better determine the appropriate risk weight. The examples the commenter highlighted indicated dissatisfaction with the assignment of a 100 percent risk weight to the effective portion of all hedge pairs. As described further below, the proposed rule contained three methodologies for identifying the measure of effectiveness of an equity hedge relationship, methodologies which recognize less-than-perfect hedges. The proposal assigns a 100 percent risk weight to the effective portion of a hedge pair because some hedge pairs involve residual risks. In developing the standardized approach the agencies sought to balance complexity and risk sensitivity, which limits the degree of granularity in hedge recognition. On balance, the FDIC believes that it is more reflective of an FDIC-supervised institutions risk profile to recognize a broader range of hedge pairs and assign all hedge pairs a 100 percent risk weight than to recognize only perfect hedges and assign a lower risk weight. Accordingly, the FDIC is finalizing the proposed treatment without change.

Under the interim final rule, 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 FDIC-supervised institution acquires at least one of the equity exposures); the documentation specifies the measure of effectiveness (E) the FDIC-supervised institution uses for the hedge relationship throughout the life of the transaction; and the hedge relationship has an E greater than or equal to 0.8. An FDIC-supervised institution measures E at least quarterly and uses 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 an FDIC-supervised institution's exposure to a particular equity instrument is part of a hedge pair. For example, assume an FDIC-supervised institution 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 FDIC-supervised institution treats $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 is 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 is 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 is $0.8 \times \$100 = \$80$, and the ineffective portion of the hedge pair is $(1 - 0.8) \times \$100 = \$20$.

E. Measures of Hedge Effectiveness

As stated above, an FDIC-supervised institution could determine effectiveness using any one of three

[161] The definition excludes exposures to an investment firm that (1) meet the definition of traditional securitization were it not for the primary Federal regulator's application of paragraph (8) of the definition of a traditional securitization and (2) has greater than immaterial leverage.

[162] *See* 15 U.S.C. 682.

methods: the dollar-offset method, the variability-reduction method, or the regression method. Under the dollar-offset method, an FDIC-supervised institution determines 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 is -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 equals the absolute value of RVC. If RVC is negative and less than -1, then E equals 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 is computed as:

$$E = 1 - \frac{\sum_{t=1}^{T} \left(X_t - X_{t-1} \right)^2}{\sum_{t=1}^{T} \left(A_t - A_{t-1} \right)^2}, \text{ where}$$

$$X_t = A_t - B_t$$

$A_t =$ 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 ranges 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 equals 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. Accordingly, E is higher when the relationship between the values of the two exposures is closer.

F. 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 proposal included an additional option, referred to in the NPR as the full look-through approach. The agencies proposed this separate treatment for equity exposures to an investment fund to ensure that the regulatory capital treatment for these exposures is commensurate with the risk. Thus, the risk-based capital requirement for equity exposures to investment funds that hold only low-risk assets would be relatively low, whereas high-risk exposures held through investment funds would be subject to a higher capital requirement. The interim final rule implements these three approaches as proposed and clarifies that the risk-weight for any equity exposure to an investment fund must be no less than 20 percent.

In addition, the interim final rule clarifies, generally consistent with prior agency guidance, that an FDIC-supervised institution must treat an investment in a separate account, such as bank-owned life insurance, as if it were an equity exposure to an investment fund.[163] An FDIC-supervised institution must use one of the look-through approaches provided in section 53 and, if applicable, section 154 of the interim final rule to determine the risk-weighted asset amount for such investments. An FDIC-supervised institution that purchases stable value protection on its investment in a separate account must treat the portion of the carrying value of its investment in the separate account attributable to the stable value protection as an exposure to the provider of the protection and the remaining portion as an equity exposure to an investment fund. Stable value protection means a contract where the provider of the contract pays to the policy owner of the separate account an amount equal to the shortfall between the fair value and cost basis of the separate account when the policy owner of the separate account surrenders the policy. It also includes a contract where the provider of the contract pays to the beneficiary an amount equal to the shortfall between the fair value and book value of a specified portfolio of assets.

An FDIC-supervised institution that provides stable value protection, such as through a stable value wrap that has provisions and conditions that minimize the wrap's exposure to credit risk of the underlying assets in the fund, must treat the exposure as if it were an equity derivative on an investment fund and determine the adjusted carrying value of the exposure as the sum of the adjusted carrying values of any on-balance sheet asset component determined according to section 324.51(b)(1), and the off-balance sheet component determined according to section 324.51(b)(3). That is, the adjusted carrying value is 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

[163] Interagency Statement on the Purchase and Risk Management of Life Insurance, pp. 19–20, *http://www.federalreserve.gov/boarddocs/srletters/2004/SR0419a1.pdf.*

same change in fair value (measured in dollars) given a small change in the price of the underlying equity instrument without subtracting the adjusted carrying value of the on-balance sheet component of the exposure as calculated under the same paragraph. Risk-weighted assets for such an exposure is determined by applying one of the three look-through approaches as provided in section 324.53 and, if applicable, section 324.154 of the interim final rule.

As discussed further below, under the interim final rule, an FDIC-supervised institution determines 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. The risk-weighted asset amount for such community development equity exposures is the exposure's adjusted carrying value. If an FDIC-supervised institution does not use the full look-through approach, and an equity exposure to an investment fund is part of a hedge pair, an FDIC-supervised institution must 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 is equal to its adjusted carrying value. An FDIC-supervised institution could choose which approach to apply for each equity exposure to an investment fund.

1. Full Look-Through Approach

An FDIC-supervised institution may use the full look-through approach only if the FDIC-supervised institution is able to calculate a risk-weighted asset amount for each of the exposures held by the investment fund. Under the interim final rule, an FDIC-supervised institution using the full look-through approach is required to calculate the risk-weighted asset amount for its proportionate ownership share of each of the exposures held by the investment fund (as calculated under subpart D of the interim final rule) as if the proportionate ownership share of the adjusted carrying value of each exposures were held directly by the FDIC-supervised institution. The FDIC-supervised institution's risk-weighted asset amount for the exposure to the fund is equal to (1) the aggregate risk-weighted asset amount of the exposures held by the fund as if they were held directly by the FDIC-supervised institution multiplied by (2) the FDIC-supervised institution's proportional ownership share of the fund.

2. Simple Modified Look-Through Approach

Under the simple modified look-through approach, an FDIC-supervised institution sets 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 applicable risk weight under subpart D of the interim final rule 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 FDIC-supervised institution 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.

3. Alternative Modified Look-Through Approach

Under the alternative modified look-through approach, an FDIC-supervised institution 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 interim final rule 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 FDIC-supervised institution's equity exposure to the investment fund is 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 permissible investments within the fund exceeds 100 percent, the FDIC-supervised institution 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 subpart D 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 FDIC-supervised institution must use the highest applicable risk weight. An FDIC-supervised institution 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.

Commenters expressed concerns regarding the application of the look-through approaches where an investment fund holds securitization exposures. Specifically, the commenters indicated a banking organization would be forced to apply a 1,250 percent risk weight to investment funds that hold securitization exposures if the banking organization does not have the information required to use one of the two applicable methods under subpart D to calculate the risk weight applicable to a securitization exposure: gross-up treatment or the SSFA. According to the commenters, such an outcome would be overly punitive and inconsistent with the generally diversified composition of investment funds. The FDIC acknowledges that an FDIC-supervised institution may have some difficulty obtaining all the information needed to use the gross-up treatment or SSFA, but believes that the proposed approach provides strong incentives for FDIC-supervised institutions to obtain such information. As a result, the FDIC is finalizing the treatment as proposed.

X. Market Discipline and Disclosure Requirements

A. Proposed Disclosure Requirements

The FDIC has long supported meaningful public disclosure by FDIC-supervised institutions with the objective of improving market discipline and encouraging sound risk-management practices. 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.[164] The BCBS introduced additional disclosure requirements in Basel III, which, under the interim final rule, apply to banking organizations as discussed herein.[165]

The agencies received a limited number of comments on the proposed disclosure requirements. The commenters expressed some concern that the proposed requirements would be extended to apply to smaller banking organizations. As discussed further below, the agencies proposed the

[164] The agencies incorporated the BCBS disclosure requirements into the advanced approaches rule in 2007. *See* 72 FR 69288, 69432 (December 7, 2007).

[165] In June 2012, the BCBS adopted Pillar 3 disclosure requirements in a paper titled ''Composition of Capital Disclosure Requirements,'' available at *http://www.bis.org/publ/bcbs221.pdf*. The FDIC anticipates incorporating these disclosure requirements through a separate notice and comment period.

disclosure requirements for banking organizations with $50 billion or more in assets and believe they are most appropriate for these companies. The FDIC believes that the proposed disclosure requirements strike the appropriate balance between the market benefits of disclosure and the additional burden to an FDIC-supervised institution that provides the disclosures, and therefore has adopted the requirements as proposed, with minor clarification with regard to timing of disclosures as discussed further below.

The public disclosure requirements under section 62 of the interim final rule apply only to FDIC-supervised institutions with total consolidated assets of $50 billion or more that are not a consolidated subsidiary of a BHC, covered SLHC, or depository institution that is subject to these disclosure requirements or a subsidiary of a non-U.S. FDIC-supervised institution that is subject to comparable public disclosure requirements in its home jurisdiction or an advanced approaches FDIC-supervised institution making public disclosures pursuant to section 172 of the interim final rule. An advanced approaches FDIC-supervised institution that meets the $50 billion asset threshold, but that has not received approval from the FDIC to exit parallel run, must make the disclosures described in sections 324.62 and 324.63 of the interim final rule. The FDIC notes 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 FDIC-supervised institutions.[166] An FDIC-supervised institution may be able to fulfill some of the disclosure requirements by relying on similar disclosures made in accordance with federal securities law requirements. In addition, an FDIC-supervised institution may use information provided in regulatory reports to fulfill certain disclosure requirements. In these situations, an FDIC-supervised institution is required to explain any material differences between the accounting or other disclosures and the disclosures required under the interim final rule.

An FDIC-supervised institution'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 FDIC-supervised institution. Accordingly, an FDIC-supervised institution must have a formal disclosure policy approved by its board of directors that addresses the FDIC-supervised institution'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 should 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 FDIC-supervised institution must attest that the disclosures meet the requirements of this interim final rule.

An FDIC-supervised institution must decide the relevant disclosures based on a materiality concept. Information is regarded as material for purposes of the disclosure requirements in the interim final rule if the information's omission or misstatement could change or influence the assessment or decision of a user relying on that information for the purpose of making investment decisions.

B. Frequency of Disclosures

Consistent with the FDIC's longstanding requirements for robust quarterly disclosures in regulatory reports, and considering the potential for rapid changes in risk profiles, the interim final rule requires that an FDIC-supervised institution provide timely public disclosures after each calendar quarter. However, qualitative disclosures that provide a general summary of an FDIC-supervised institution's risk-management objectives and policies, reporting system, and definitions may be disclosed annually after the end of the fourth calendar quarter, provided any significant changes are disclosed in the interim. The FDIC acknowledges 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 FDIC considers those disclosures that are made within 45 days of the end of the calendar quarter (or within 60 days for the limited purpose of the FDIC-supervised institution's first reporting period in which it is subject to the rule's disclosure requirements) as timely. In general, where an FDIC-supervised institution's fiscal year-end coincides with the end of a calendar quarter, the FDIC considers qualitative and quantitative 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 FDIC 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 FDIC-supervised institution's capital adequacy and risk profile. In those cases, an FDIC-supervised institution needs to disclose the general nature of these changes and briefly describe how they are likely to affect public disclosures going forward. An FDIC-supervised institution should 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 under the interim final rule must 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 FDIC-supervised institution became subject to the disclosure requirements. For example, an FDIC-supervised institution that begins to make public disclosures in the first quarter of 2015 must make all of its required disclosures publicly available until the first quarter of 2018, after which it must make its required disclosures for the previous three years publicly available. Except as discussed below, management has some discretion to determine the appropriate medium and location of the disclosure. Furthermore, an FDIC-supervised institution has flexibility in formatting its public disclosures.

The FDIC encourages management to provide all of the required disclosures in one place on the entity's public Web site and the FDIC anticipates that the public Web site address would be reported in an FDIC-supervised institution's regulatory report. However, an FDIC-supervised institution may provide the disclosures in more than one public financial report or other regulatory reports (for example, in Management's Discussion and Analysis included in SEC filings), provided that the FDIC-supervised institution publicly provides a summary table specifically indicating the location(s) of all such disclosures (for example, regulatory

[166] *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).

report schedules, page numbers in annual reports). The FDIC expects that 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.

D. Proprietary and Confidential Information

The FDIC believes that the disclosure requirements strike an appropriate balance between the need for meaningful disclosure and the protection of proprietary and confidential information.[167] Accordingly, the FDIC believes that FDIC-supervised institutions 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 interim final rule compel an FDIC-supervised institution to reveal confidential and proprietary information. In these unusual situations, if an FDIC-supervised institution 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 FDIC-supervised institution will not be required to disclose those specific items under the rule's periodic disclosure requirement. Instead, the FDIC-supervised institution 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 applies only to those disclosures included in this interim final rule and does not apply to disclosure requirements imposed by accounting standards, other regulatory agencies, or under other requirements of the FDIC.

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 FDIC notes 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 section 63 of the interim final rule. An FDIC-supervised institution must make the disclosures described in Tables 1 through 10.[168]

Table 1 disclosures, ''Scope of Application,'' name the top corporate entity in the group to which subpart D of the interim final rule applies and 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 2 disclosures, ''Capital Structure,'' provide summary information on the terms and conditions of the main features of regulatory capital instruments, which allow for an evaluation of the quality of the capital available to absorb losses within an FDIC-supervised institution. An FDIC-supervised institution also must disclose the total amount of common equity tier 1, tier 1 and total capital, with separate disclosures for deductions and adjustments to capital. The FDIC expects that many of these disclosure requirements would be captured in revised regulatory reports.

Table 3 disclosures, ''Capital Adequacy,'' provide information on an FDIC-supervised institution's approach for categorizing and risk weighting its exposures, as well as the amount of total risk-weighted assets. The Table also includes 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 4 disclosures, ''Capital Conservation Buffer,'' require an FDIC-supervised institution to disclose the capital conservation buffer, the eligible retained income and any limitations on capital distributions and certain discretionary bonus payments, as applicable.

Disclosures in Tables 5, ''Credit Risk: General Disclosures,'' 6, ''General Disclosure for Counterparty Credit Risk-Related Exposures,'' and 7, ''Credit Risk Mitigation,'' relate to credit risk, counterparty credit risk and credit risk mitigation, respectively, and provide market participants with insight into different types and concentrations of credit risk to which an FDIC-supervised institution 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 FDIC-supervised institution without revealing proprietary information.

Table 8 disclosures, ''Securitization,'' provide information to market participants on the amount of credit risk transferred and retained by an FDIC-supervised institution 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 provide a better understanding of how securitization transactions impact the credit risk of an FDIC-supervised institution. For purposes of these disclosures, ''exposures securitized'' include underlying exposures transferred into a securitization by an FDIC-supervised institution, whether originated by the FDIC-supervised institution or purchased from third parties, and third-party exposures included in sponsored programs. Securitization transactions in which the originating FDIC-supervised institution does not retain any securitization exposure are shown separately and are only reported for the year of inception of the transaction.

Table 9 disclosures, ''Equities Not Subject to Subpart F of this Part,'' provide market participants with an understanding of the types of equity securities held by the FDIC-supervised institution and how they are valued. These disclosures also provide information on the capital allocated to different equity products and the amount of unrealized gains and losses.

Table 10 disclosures, ''Interest Rate Risk for Non-trading Activities,'' require an FDIC-supervised institution to provide certain quantitative and qualitative disclosures regarding the FDIC-supervised institution's management of interest rate risks.

XI. Risk-Weighted Assets—Modifications to the Advanced Approaches

In the Advanced Approaches NPR, the agencies proposed revisions to the advanced approaches rule to incorporate certain aspects of Basel III, as well as the requirements introduced by the BCBS in the 2009

[167] Proprietary information encompasses information that, if shared with competitors, would render an FDIC-supervised institution'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.

[168] Other public disclosure requirements would continue to apply, such as federal securities law, and regulatory reporting requirements for FDIC-supervised institutions.

Enhancements [169] and subsequent consultative papers. In accordance with Basel III, the proposal sought to require advanced approaches banking organizations to hold more appropriate levels of capital for counterparty credit risk, CVA, and wrong-way risk. Consistent with the 2009 Enhancements, the agencies proposed to strengthen 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 to enhance the disclosure requirements related to those exposures.

The agencies also proposed revisions to the advanced approaches rule that are consistent with the requirements of section 939A of the Dodd-Frank Act.[170] The agencies proposed to remove references to ratings from certain defined terms under the advanced approaches rule, as well as the ratings-based approach for securitization exposures, and replace these provisions with alternative standards of creditworthiness. The proposed rule also contained a number of proposed technical amendments to clarify or adjust existing requirements under the advanced approaches rule.

This section of the preamble describes the proposals in the Advanced Approaches NPR, comments received on those proposals, and the revisions to the advanced approaches rule reflected in the interim final rule.

In many cases, the comments received on the Standardized Approach NPR were also relevant to the proposed changes to the advanced approaches framework. The FDIC generally took a consistent approach towards addressing the comments with respect to the standardized approach and the advanced approaches rule. Banking organizations that are or would be subject to the advanced approaches rule should refer to the relevant sections of the discussion of the standardized approach for further discussion of these comments.

One commenter raised concerns about the use of models in determining regulatory capital requirements and encouraged the agencies to conduct periodic validation of banking organizations' models for capital adequacy and require modification if necessary. Consistent with the current advanced approaches rule, the interim final rule requires an FDIC-supervised institution to validate its models used to determine regulatory capital requirements on an ongoing basis. This validation must include an evaluation of conceptual soundness; an ongoing monitoring process that includes verification of processes and benchmarking; and an outcomes analysis process that includes backtesting. Under section 324.123 of the interim final rule, the FDIC may require the FDIC-supervised institution to calculate its advanced approaches risk-weighted assets according to modifications provided by the FDIC if the FDIC determines that the FDIC-supervised institution's advanced approaches total risk-weighted assets are not commensurate with its credit, market, operational or other risks.

Other commenters suggested that the agencies interpret section 171 of the Dodd-Frank Act narrowly with regard to the advanced approaches framework. The FDIC has adopted the approach taken in the proposed rule because it believes that the approach provides clear, consistent minimum requirements across institutions that comply with the requirements of section 171.

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 were intended to 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 proposed rule included counterparty credit risk revisions in a manner generally consistent with the Basel III revisions to international standards, modified to incorporate alternative standards to the use of credit ratings. The discussion below highlights the proposed revisions, industry comments, and outcome of the interim final rule.

1. Recognition of Financial Collateral

a. Financial Collateral

The EAD adjustment approach under section 132 of the proposed rules permitted a banking organization to recognize the credit risk mitigation benefits of financial collateral by adjusting the EAD rather than the loss given default (LGD) of the exposure for repo-style transactions, eligible margin loans and OTC derivative contracts. The permitted methodologies for recognizing such benefits included the collateral haircut approach, simple VaR approach and the IMM.

Consistent with Basel III, the Advanced Approaches NPR proposed certain modifications to the definition of financial collateral. For example, the definition of financial collateral was modified so that resecuritizations would no longer qualify as financial collateral.[171] Thus, resecuritization collateral could not be used to adjust the EAD of an exposure. The FDIC believes that this treatment is appropriate because resecuritizations have been shown to have more market value volatility than other types of financial collateral.

The proposed rule also removed conforming residential mortgages from the definition of financial collateral. As a result, a banking organization would no longer be able to recognize the credit risk mitigation benefit of such instruments through an adjustment to EAD. Consistent with the Basel III framework, the agencies proposed to exclude all debt securities that are not investment grade from the definition of financial collateral. As discussed in section VII.F of this preamble, the proposed rule revised the definition of ''investment grade'' for the advanced approaches rule and proposed conforming changes to the market risk rule.

As discussed in section VIII.F of the preamble, the FDIC believes that the additional collateral types suggested by commenters are not appropriate forms of financial collateral because they exhibit increased variation and credit risk, and are relatively more speculative than the recognized forms of financial collateral under the proposal. In some cases, the assets suggested by commenters for eligibility as financial collateral were precisely the types of assets that became illiquid during the recent financial crisis. As a result, the FDIC has retained the definition of financial collateral as proposed.

[169] *See* ''Enhancements to the Basel II framework'' (July 2009), available at *http://www.bis.org/publ/bcbs157.htm*.

[170] *See* section 939A of Dodd-Frank Act (15 U.S.C. 78o–7 note).

[171] Under the proposed rule, a securitization in which one or more of the underlying exposures is a securitization position would be a resecuritization. A resecuritization position under the proposal meant an on- or off-balance sheet exposure to a resecuritization, or an exposure that directly or indirectly references a securitization exposure.

b. Revised Supervisory Haircuts

Securitization exposures have increased levels of volatility relative to other types of financial collateral. To address this issue, consistent with Basel III, the proposal incorporated new standardized supervisory haircuts for securitization exposures in the EAD adjustment approach based on the credit quality of the exposure. Consistent with section 939A of the Dodd-Frank Act, the proposed rule set out an alternative approach to assigning standard supervisory haircuts for securitization exposures, and amended the standard supervisory haircuts for other types of financial collateral to remove the references to credit ratings.

Some commenters proposed limiting the maximum haircut for non-sovereign issuers that receive a 100 percent risk weight to 12 percent, and more specifically assigning a lower haircut than 25 percent for financial collateral in the form of an investment-grade corporate debt security that has a shorter residual maturity. The commenters asserted that these haircuts conservatively correspond to the existing rating categories and result in greater alignment with the Basel framework. As discussed in section VIII.F of the preamble, in the interim final rule, the FDIC has revised the standard supervisory market price volatility haircuts for financial collateral issued by non-sovereign issuers with a risk weight of 100 percent from 25.0 percent to 4.0 percent for maturities of less than one year, 8.0 percent for maturities greater than one year but less than or equal to five years, and 16.0 percent for maturities greater than five years, consistent with Table 25 below. The FDIC believes that the revised haircuts better reflect the collateral's credit quality and an appropriate differentiation based on the collateral's residual maturity.

Consistent with the proposal, under the interim final rule, supervisory haircuts for exposures to sovereigns, GSEs, public sector entities, depository institutions, foreign banks, credit unions, and corporate issuers are calculated based upon the risk weights for such exposures described under section 324.32 of the interim final rule. The interim final rule also clarifies that if an FDIC-supervised institution lends instruments that do not meet the definition of financial collateral, such as non-investment-grade corporate debt securities or resecuritization exposures, the haircut applied to the exposure must be 25 percent.

TABLE 25—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS [1]

Residual maturity	Haircut (in percent) assigned based on:						Investment-grade securitization exposures (in percent)
	Sovereign issuers risk weight under section 32 [2] (in percent)			Non-sovereign issuers risk weight under section 32 (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	4.0	4.0
Greater than 1 year and less than or equal to 5 years	2.0	3.0	15.0	4.0	6.0	8.0	12.0
Greater than 5 years	4.0	6.0	15.0	8.0	12.0	16.0	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			
Other exposure types				25.0			

[1] The market price volatility haircuts in Table 25 are based on a 10 business-day holding period.
[2] Includes a foreign PSE that receives a zero percent risk weight.

2. Holding Periods and the Margin Period of Risk

As noted in the proposal, during the recent financial crisis, many financial institutions experienced significant delays in settling or closing out collateralized transactions, such as repo-style transactions and collateralized OTC derivative contracts. The assumed holding period for collateral in the collateral haircut and simple VaR approaches and the margin period of risk in the IMM proved to be inadequate for certain transactions and netting sets.[172] It also did not reflect the difficulties and delays experienced by institutions when settling or liquidating collateral during a period of financial stress.

Consistent with Basel III, the proposed rule would have amended the advanced approaches rule to incorporate 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, and eligible margin loans, with respect to large netting sets, netting sets involving illiquid collateral or including OTC derivatives that could not easily be replaced, or two margin disputes within a netting set over the previous two quarters that last for a certain length of time. For cleared transactions, which are discussed below, the agencies proposed not to require a banking organization to adjust the holding period or margin period of risk upward when determining the capital requirement for its counterparty credit risk exposures to the CCP, which is also consistent with Basel III.

[172] 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.

One commenter asserted that the proposed triggers for the increased margin period of risk were not in the spirit of the advanced approaches rule, which is intended to be more risk sensitive than the general risk-based capital rules. Another commenter asserted that banking organizations should be permitted to increase the holding period or margin period of risk by one or more business days, but not be required to increase it to the full period required under the proposal (20 business days or at least double the margin period of risk).

The FDIC believes the triggers set forth in the proposed rule, as well as the increased holding period or margin period of risk are empirical indicators of increased risk of delay or failure of close-out on the default of a counterparty. The goal of risk sensitivity would suggest that modifying these indicators is not warranted and could lead to increased risks to the banking system. Accordingly, the interim final rule adopts these features as proposed.

3. Internal Models Methodology

Consistent with Basel III, the proposed rule would have amended the advanced approaches rule so that the capital requirement for IMM exposures is 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. The proposed rule defined an IMM exposure as a repo-style transaction, eligible margin loan, or OTC derivative contract for which a banking organization calculates EAD using the IMM.

The proposed rule would have required a banking organization to demonstrate to the satisfaction of the banking organization's primary Federal supervisor at least quarterly that the stress period it uses for the IMM coincides with increased CDS or other credit spreads of its counterparties and to have procedures in place to evaluate the effectiveness of its stress calibration. These procedures would have been 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, under the proposal, the primary Federal supervisor could require a banking organization to modify its stress calibration if the primary Federal supervisor believes that another calibration better reflects the actual historic losses of the portfolio.

Consistent with Basel III and the current advanced approaches rule, the proposed rule would have required a banking organization to establish a process for initial validation and annual review of its internal models. As part of the process, the proposed rule would have required a banking organization to have a backtesting program for its model that includes a process by which unacceptable model performance is identified and remedied. In addition, a banking organization would have been required to multiply the expected positive exposure (EPE) of a netting set by the default scaling factor alpha (set equal to 1.4) in calculating EAD. The primary Federal supervisor could require the banking organization to set a higher default scaling factor based on the past performance of the banking organization's internal model.

The proposed rule would have required 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 have been required to have a comprehensive stress testing program for the IMM that captures all credit exposures to counterparties and incorporates stress testing of principal market risk factors and the creditworthiness of its counterparties.

Basel III provided that a banking organization could 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 the ''shortcut'' method for capturing the effects of collateral agreements 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 proposed rule included the Basel III modification of the ''shortcut'' method.

The interim final rule adopts all the proposed requirements discussed above with two modifications. With respect to the proposed requirement that an FDIC-supervised institution must demonstrate on a quarterly basis to the FDIC the appropriateness of its stress period, under the interim final rule, the FDIC-supervised institution must instead demonstrate at least quarterly that the stress period coincides with increased CDS or other credit spreads of the FDIC-supervised institution's counterparties, and must maintain documentation of such demonstration. In addition, the formula for the ''shortcut'' method has been modified to clarify that the add-on is computed as the expected increase in the netting set's exposure over the margin period of risk.

a. Recognition of Wrong-Way Risk

The recent financial crisis highlighted the interconnectedness of large financial institutions through an array of complex transactions. In recognition of 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 defined wrong-way risk as the risk that arises when an exposure to a particular counterparty is positively correlated with the probability of default of that counterparty.

The proposed rule provided enhancements to the advanced approaches rule that require banking organizations' risk-management procedures to identify, monitor, and control wrong-way risk throughout the life of an exposure. The proposed rule required these risk-management procedures to 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. The proposed rule defined specific wrong-way risk as 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, under the proposal, 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 otherwise applies the IMM, the banking organization would set the probability of default (PD) of the counterparty and a LGD equal to 100 percent. The banking organization would then enter these parameters into the appropriate risk-based capital formula specified in Table 1 of section 131 of the proposed rule, and 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,[173] 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 of the interim final rule and with the estimated value of the collateral substituted for the parameter C in the equation.

The interim final rule adopts the proposed requirements regarding wrong-way risk discussed above.

b. Increased Asset Value Correlation Factor

To recognize the correlation of financial institutions' creditworthiness attributable to similar sensitivities to common risk factors, the agencies proposed to incorporate the Basel III increase in the correlation factor used in the formulas 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. The proposal also included a definition of ''regulated financial institution,'' meaning a financial institution subject to consolidated supervision and regulation comparable to that imposed on certain U.S. financial institutions, namely depository institutions, depository institution holding companies, nonbank financial companies supervised by the Federal Reserve, designated FMUs, securities broker-dealers, credit unions, or insurance companies. 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.

Several commenters pointed out that in the proposed formulas for wholesale exposures to unregulated and regulated financial institutions, the 0.18 multiplier should be revised to 0.12 in order to be consistent with Basel III. The FDIC has corrected this aspect of both formulas in the interim final rule.

Another comment asserted that the 1.25 multiplier for the correlation factor for wholesale exposures to unregulated financial institutions or regulated financial institutions with more than $100 billion in assets is an overly blunt tool and is not necessary as single counterparty credit limits already address interconnectivity risk. Consistent with the concerns about systemic risk and interconnectedness surrounding these classes of institutions, the FDIC continues to believe that the 1.25 multiplier appropriately reflects the associated additional risk. Therefore, the interim final rule retains the 1.25 multiplier. In addition, the interim final rule also adopts the definition of ''regulated financial institution'' without change from the proposal. As discussed in section V.B, above, the FDIC received significant comment on the definition of ''financial institution'' in the context of deductions of investments in the capital of unconsolidated financial institutions. That definition also, under the proposal, defined the universe of ''unregulated'' financial institutions as companies meeting the definition of ''financial institution'' that were not regulated financial institutions. For the reasons discussed in section V.B of the preamble, the FDIC has modified the definition of ''financial institution,'' including by introducing an ownership interest threshold to the ''predominantly engaged'' test to determine if an FDIC-supervised institution must subject a particular unconsolidated investment in a company that may be a financial institution to the relevant deduction thresholds under subpart C of the interim final rule. While commenters stated that it would be burdensome to determine whether an entity falls within the definition of financial institution using the predominantly engaged test, the FDIC believes that advanced approaches FDIC-supervised institutions should have the systems and resources to identify the activities of their wholesale counterparties. Accordingly, under the interim final rule, the FDIC has adopted a definition of ''unregulated financial institution'' that does not include the ownership interest threshold test but otherwise incorporates revisions to the definition of ''financial institution.'' Under the interim final rule, an ''unregulated financial institution'' is a financial institution that is not a regulated financial institution and that meets the definition of ''financial institution'' under the interim final rule without regard to the ownership interest thresholds set forth in paragraph (4)(i) of that definition. The FDIC believes the ''unregulated financial institution'' definition is necessary to maintain an appropriate scope for the 1.25 multiplier consistent with the proposal and Basel III.

4. Credit Valuation Adjustments

After the recent financial crisis, 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 fair value losses from CVA (that is, the fair value adjustment to reflect counterparty credit risk in the valuation of an OTC derivative contract), whereas one-third of counterparty credit risk losses resulted from actual defaults. The internal ratings-based approach in Basel II addressed counterparty credit risk as a combination of default risk and credit migration risk. Credit migration risk accounts for fair 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. Basel III therefore includes an explicit capital requirement for CVA risk. Accordingly, consistent with Basel III and the proposal, the interim final rule requires FDIC-supervised institutions to calculate risk-weighted assets for CVA risk.

[173] Under the interim final rule, equity derivatives that are call options are not subject to a counterparty credit risk capital requirement for specific wrong-way risk.

Consistent with the Basel III CVA capital requirement and the proposal, the interim final rule reflects in risk-weighted assets a potential increase of the firm-wide CVA due to changes in counterparties' credit spreads, assuming fixed expected exposure (EE) profiles. The proposed and interim final rules provide two approaches for calculating the CVA capital requirement: the simple approach and the advanced CVA approach. However, unlike Basel III, they do not include references to credit ratings.

Consistent with the proposal and Basel III, the simple CVA approach in the interim final rule permits calculation of the CVA capital requirement (K_{CVA}) based on a formula described in more detail below, with a modification consistent with section 939A of the Dodd-Frank Act. Under the advanced CVA approach in the interim final rule, consistent with the proposal, an FDIC-supervised institution would use the VaR model that it uses to calculate specific risk under section 324.207(b) of subpart F or another model that meets the quantitative requirements of sections 324.205(b) and 324.207(b)(1) of subpart F to calculate its CVA capital requirement for its entire portfolio of OTC derivatives that are subject to the CVA capital requirement [174] by modeling the impact of changes in the counterparties' credit spreads, together with any recognized CVA hedges on the CVA for the counterparties. To convert the CVA capital requirement to a risk-weighted asset amount, an FDIC-supervised institution must multiply its CVA capital requirement by 12.5. The CVA risk-weighted asset amount is not a component of credit risk-weighted assets and therefore is not subject to the 1.06 multiplier for credit risk-weighted assets under the interim final rule. Consistent with the proposal, the interim final rule provides that only an FDIC-supervised institution that is subject to the market risk rule and had obtained prior approval from the FDIC to calculate (1) the EAD for OTC derivative contracts using the IMM described in section 324.132, and (2) the specific risk add-on for debt positions using a specific risk model described in section 324.207(b) of subpart F is eligible to use the advanced CVA approach. An FDIC-supervised institution that receives such approval would be able to continue to use the advanced CVA approach until it notifies the FDIC in writing that it expects to begin calculating its CVA capital requirement using the simple CVA approach. Such notice must include an explanation from the FDIC-supervised institution as to why it is choosing to use the simple CVA approach and the date when the FDIC-supervised institution would begin to calculate its CVA capital requirement using the simple CVA approach.

Consistent with the proposal, under the interim final rule, when calculating a CVA capital requirement, an FDIC-supervised institution may recognize the hedging benefits of single name CDS, single name contingent CDS, any other equivalent hedging instrument that references the counterparty directly, and index CDS (CDS_{ind}), provided that the equivalent hedging instrument is managed as a CVA hedge in accordance with the FDIC-supervised institution's hedging policies. A tranched or n^{th}-to-default CDS would not qualify as a CVA hedge. In addition, any position that is recognized as a CVA hedge would not be a covered position under the market risk rule, except in the case where the FDIC-supervised institution 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. The agencies received several comments on the proposed CVA capital requirement. One commenter asserted that there was ambiguity in the ''total CVA risk-weighted assets'' definition which could be read as indicating that K_{CVA} is calculated for each counterparty and then summed. The FDIC agrees that K_{CVA} relates to an FDIC-supervised institution's entire portfolio of OTC derivatives contracts, and the interim final rule reflects this clarification.

A commenter asserted that the proposed CVA treatment should not apply to central banks, MDBs and other similar counterparties that have very low credit risk, such as the Bank for International Settlements and the European Central Bank, as well as U.S. PSEs. Another commenter pointed out that the proposal in the European Union to implement Basel III excludes sovereign, pension fund, and corporate counterparties from the proposed CVA treatment. Another commenter argued that the proposed CVA treatment should not apply to transactions executed with end-users when hedging business risk because the resulting increase in pricing will disproportionately impact small- and medium-sized businesses.

The interim final rule does not exempt the entities suggested by commenters. However, the FDIC anticipates that a counterparty that is exempt from the 0.03 percent PD floor under § 324.131(d)(2) and receives a zero percent risk weight under § 324.32 (that is, central banks, MDBs, the Bank for International Settlements and European Central Bank) likely would attract a minimal CVA requirement because the credit spreads associated with these counterparties have very little variability. Regarding the other entities mentioned by commenters (U.S. public sector entities, pension funds and corporate end-users), the FDIC believes it is appropriate for CVA to apply as these counterparty types exhibit varying degrees of credit risk.

Some commenters asked that the agencies clarify that interest rate hedges of CVA are not covered positions as defined in subpart F and, therefore, not subject to a market risk capital requirement. In addition, some commenters asserted that the overall capital requirements for CVA are more appropriately addressed as a trading book issue in the context of the BCBS Fundamental Review of the Trading Book.[175] Another commenter asserted that CVA rates hedges (to the extent they might be covered positions) should be excluded from the market-risk rule capital requirements until supervisors are ready to approve allowing CVA rates sensitivities to be incorporated into a banking organization's general market risk VaR.

The FDIC recognizes that CVA is not a covered position under the market risk rule. Hence, as elaborated in the market risk rule, hedges of non-covered positions that are not themselves trading positions also are not eligible to be a covered position under the market risk rule. Therefore, the FDIC clarifies that non-credit risk hedges (market risk hedges or exposure hedges) of CVA generally are not covered positions under the market risk rule, but rather are assigned risk-weighted asset amounts under subparts D and E of the interim final rule.[176] Once the BCBS Fundamental Review of the Trading

[174] Certain CDS may be exempt from inclusion in the portfolio of OTC derivatives that are subject to the CVA capital requirement. For example, a CDS on a loan that is recognized as a credit risk mitigant and receives substitution treatment under section 134 would not be included in the portfolio of OTC derivatives that are subject to the CVA capital requirement.

[175] *See* ''Fundamental review of the trading book'' (May 2012) available at *http://www.bis.org/publ/bcbs219.pdf*.

[176] The FDIC believes that an FDIC-supervised institution needs to demonstrate rigorous risk management and the efficacy of its CVA hedges and should follow the risk management principles of the Interagency Supervisory Guidance on Counterparty Credit Risk Management (2011) and identification of covered positions as in the FDIC's market risk rule, *see* 77 FR 53060 (August 30, 2012).

Book is complete, the agencies will review the BCBS findings and consider whether they are appropriate for U.S. banking organizations.

One commenter asserted that observable LGDs for credit derivatives do not represent the best estimation of LGD for calculating CVA under the advanced CVA approach, and that a final rule should instead consider a number of parameters, including market observable recovery rates on unsecured bonds and structural components of the derivative. Another commenter argued that banking organizations should be permitted greater flexibility in determining market-implied loss given default (LGD_{MKT}) and credit spread factors for VaR.

Consistent with the BCBS's frequently asked question (BCBS FAQ) on this topic,[177] the FDIC recognizes that while there is often limited market information of LGD_{MKT} (or equivalently the market implied recovery rate), the FDIC considers the use of LGD_{MKT} to be the most appropriate approach to quantify CVA. It is also the market convention to use a fixed recovery rate for CDS pricing purposes; FDIC-supervised institutions may use that information for purposes of the CVA capital requirement in the absence of other information. In cases where a netting set of OTC derivative contracts has a different seniority than those derivative contracts that trade in the market from which LGD_{MKT} is inferred, an FDIC-supervised institution may adjust LGD_{MKT} to reflect this difference in seniority. Where no market information is available to determine LGD_{MKT}, an FDIC-supervised institution may propose a method for determining LGD_{MKT} based upon data collected by the FDIC-supervised institution that would be subject to approval by the FDIC. The interim final rule has been amended to include this alternative.

Regarding the proposed CVA EAD calculation assumptions in the advanced CVA approach, one commenter asserted that EE constant treatment is inappropriate, and that it is more appropriate to use the weighted average maturity of the portfolio rather than the netting set. Another commenter asserted that maturity should equal the weighted average maturity of all transactions in the netting set, rather than the greater of the notional weighted average maturity and the maximum of half of the longest maturity occurring in the netting set. The FDIC notes that this issue is relevant only where an FDIC-supervised institution utilized the current exposure method or the ''shortcut'' method, rather than IMM, for any immaterial portfolios of OTC derivatives contracts. As a result, the interim final rule retains the requirement to use the greater of the notional weighted average maturity (WAM) and the maximum of half of the longest maturity in the netting set when calculating EE constant treatment in the advanced CVA approach.

One commenter asked the agencies to clarify that section 132(c)(3) would exempt the purchased CDS from the proposed CVA capital requirements in section 132(e) of a final rule. Consistent with the BCBS FAQ on this topic, the FDIC agrees that purchased credit derivative protection against a wholesale exposure that is subject to the double default framework or the PD substitution approach and where the wholesale exposure itself is not subject to the CVA capital requirement, will not be subject to the CVA capital requirement in the interim final rule. Also consistent with the BCBS FAQ, the purchased credit derivative protection may not be recognized as a hedge for any other exposure under the interim final rule.

Another commenter asserted that single-name proxy CDS trades should be allowed as hedges in the advanced CVA approach CVA VaR calculation. Under the interim final rule, an FDIC-supervised institution is permitted to recognize the hedging benefits of single name CDS, single name contingent CDS, any other equivalent hedging instrument that references the counterparty directly, and CDS_{ind}, provided that the hedging instrument is managed as a CVA hedge in accordance with the FDIC-supervised institution's hedging policies. The interim final rule does not permit the use of single-name proxy CDS. The FDIC believes this is an important limitation because of the significant basis risk that could arise from the use of a single-name proxy.

Additionally, the interim final rule reflects several clarifying amendments to the proposed rule. First, the interim final rule divides the Advanced CVA formulas in the proposed rule into two parts: Formula 3 and Formula 3a. The FDIC believes that this clarification is important to reflect the different purposes of the two formulas: the first formula (Formula 3) is for the CVA VaR calculation, whereas the second formula (Formula 3a) is for calculating CVA for each credit spread simulation scenario. The interim final rule includes a description that clarifies each formula's purpose. In addition, the notations in proposed Formula 3 have been changed from $CVA_{stressedVaR}$ and $CVA_{unstressedVaR}$ to $VaR^{CVA}{}_{stressed}$ and $VaR^{CVA}{}_{unstressed}$. The definitions of these terms have not changed in the interim final rule. Finally, the subscript ''$_j$'' in Formula 3a has been defined as referring either to stressed or unstressed calibrations. These formulas are discussed in the interim final rule description below.

a. Simple Credit Valuation Adjustment approach

Under the interim final rule, an FDIC-supervised institution without approval to use the advanced CVA approach must use formula 1 to calculate its CVA capital requirement for its entire portfolio of OTC derivative contracts. The simple CVA approach is based on an analytical approximation derived from a general CVA VaR formulation under a set of simplifying assumptions:

(1) All credit spreads have a flat term structure;

(2) All credit spreads at the time horizon have a lognormal distribution;

(3) Each single name credit spread is driven by the combination of a single systematic factor and an idiosyncratic factor;

(4) The correlation between any single name credit spread and the systematic factor is equal to 0.5;

(5) All credit indices are driven by the single systematic factor; and

(6) The time horizon is short (the square root of time scaling to 1 year is applied). The approximation is based on the linearization of the dependence of both CVA and CDS hedges on credit spreads. Given the assumptions listed above, a measure of CVA VaR has a closed-form analytical solution. The formula of the simple CVA approach is obtained by applying certain standardizations, conservative adjustments, and scaling to the analytical CVA VaR result.

An FDIC-supervised institution calculates K_{CVA}, where:

[177] *See* ''Basel III counterparty credit risk and exposures to central counterparties—Frequently asked questions (December 2012 (update of FAQs published November 2012)) at *http://www.bis.org/publ/bcbs237.pdf.*

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 26 below.[178] In Basel III, the BCBS assigned w_i based on the external rating of the counterparty. However, consistent with the proposal and section 939A of the Dodd-Frank Act, the interim final rule assigns w_i based on the relevant PD of the counterparty, as assigned by the FDIC-supervised institution. Quantity w_{ind} in Formula 1 refers to the weight applicable to the CDS_{ind} based on the average weight under Table 26 of the underlying reference names that comprise the index.

TABLE 26—ASSIGNMENT OF COUNTERPARTY WEIGHT UNDER THE SIMPLE CVA

Internal PD (in percent)	Weight w_i (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 interim final rule, as adjusted by Formula 2 or the IMM described in section 132(d) of the interim final rule. When the FDIC-supervised institution calculates EAD using the IMM, EAD_i^{total} equals $EAD_{unstressed}$.

Formula 2

$$EAD \times \left(\frac{1 - exp^{-.05 \times M_i}}{.05 \times M_i} \right)$$

The term ''exp'' is the exponential function. Quantity 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). Quantity M_i^{hedge} in Formula 1 refers to the notional weighted average maturity of the hedge instrument. Quantity 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.

Quantity 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 $(1-\exp(-0.05 \times M_i^{hedge}))/(0.05 \times M_i^{hedge})$. Quantity 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 $(1-\exp(-0.05 \times M_{ind}))/(0.05 \times M_{ind})$. If counterparty *i* is part of an index used for hedging, an FDIC-supervised institution is allowed to treat the notional amount in an 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 CDS_{ind} hedge with the notional amount reduced by B_i can still be treated as a CVA index hedge.

b. Advanced Credit Valuation Adjustment approach

The interim final rule requires that the VaR model incorporate only changes in the counterparties' credit spreads, not changes in other risk factors; it does not require an FDIC-supervised institution to capture jump-to-default risk in its VaR model.

In order for an FDIC-supervised institution to receive approval to use the advanced CVA approach under the interim final rule, the FDIC-supervised institution needs to have the systems capability to calculate the CVA capital requirement on a daily basis but is not expected or required to calculate the CVA capital requirement on a daily basis.

The CVA capital requirement under the advanced CVA approach is equal to the general market risk capital requirement of the CVA exposure using the ten-business-day time horizon of the market risk rule. The capital requirement does not include the incremental risk requirement of subpart F. If an FDIC-supervised institution uses the current exposure methodology to calculate the EAD of any immaterial OTC derivative portfolio, under the interim final rule the FDIC-supervised institution must use this EAD as a constant EE in the formula for the calculation of CVA. Also, the FDIC-supervised institution must set 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.

The interim final rule requires an FDIC-supervised institution to use the formula for the advanced CVA approach to calculate K_{CVA} as follows:

[178] These weights represent the assumed values of the product of a counterparties' current credit spread and the volatility of that credit spread.

Formula 3

$$K_{CVA} = 3 \times \left(VaR^{CVA}_{Unstressed} + VaR^{CVA}_{Stressed}\right)$$

VaR_j is the 99 percent VaR reflecting changes of CVA_j and fair value of eligible hedges (aggregated across all counterparties and eligible hedges) resulting from simulated changes of credit spreads over a ten-day time horizon.[179] CVA_j for a given counterparty must be calculated according to

Formula 3a

$$CVA_j = \left(LGD_{MKT}\right) \times \sum_{i=1}^{T} Max\left(0; \exp\left(-\frac{s_{i-1} \times t_{i-1}}{LGD_{MKT}}\right) - \exp\left(-\frac{s_i \times t_i}{LGD_{MKT}}\right)\right) \times \left(\frac{EE_{i-1} \times D_{i-1} + EE_i \times D_i}{2}\right)$$

In Formula 3a:

(A) t_i equals the time of the i-th revaluation time bucket starting from $t_0 = 0$.

(B) t_T equals the longest contractual maturity across the OTC derivative contracts with the counterparty.

(C) s_i equals 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 FDIC-supervised institution must use a proxy spread based on the credit quality, industry and region of the counterparty.

(D) LGD_{MKT} equals 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 equals 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 equals the risk-free discount factor at time t_i, where $D_0 = 1$.

(G) The function exp is the exponential function.

(H) The subscript j refers either to a stressed or an unstressed calibration as described in section 324.132(e)(6)(iv) and (v) of the interim final rule.

Under the interim final rule, if an FDIC-supervised institution's VaR model is not based on full repricing, the FDIC-supervised institution must 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 FDIC-supervised institution must calculate each credit spread sensitivity according to Formula 4:

[179] For purposes of this formula, the subscript "$_j$" refers either to a stressed or unstressed calibration as described in section 133(e)(6)(iv) and (v) of the interim final rule.

Formula 4

$$\text{Regulatory CS01} = 0.0001 \times t_i \times \exp\left(-\frac{s_i \times t_i}{LGD_{MKT}}\right) \times \left(\frac{EE_{i-1} \times D_{i-1} - EE_{i+1} \times D_{i+1}}{2}\right)$$

For the final time bucket $i = T$, the corresponding formula is 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 FDIC-supervised institution must calculate each credit spread sensitivity according to Formula 5:

Formula 5

Regulatory CS01 =

$$0.0001 \times \sum_{i=1}^{T}\left(t_i \times \exp\left(-\frac{s_i \times t_i}{LGD_{MKT}}\right) - t_{i-1} \times \exp\left(-\frac{s_{i-1} \times t_{i-1}}{LGD_{MKT}}\right)\right) \times \left(\frac{EE_{i-1} \times D_{i-1} + EE_i \times D_i}{2}\right)$$

Under the interim final rule, an FDIC-supervised institution must calculate $VaR^{CVA}_{unstressed}$ using $CVA_{Unstressed}$ and $VaR^{CVA}_{stressed}$ using $CVA_{Stressed.}$ To calculate the $CVA_{Unstressed}$ measure in Formula 3a, an FDIC-supervised institution must use the EE for a counterparty calculated using current market data to compute current exposures and estimate model parameters using the historical observation period required under section 205(b)(2) of subpart F. However, if an FDIC-supervised institution uses the ''shortcut'' method described in section 324.132(d)(5) of the interim final rule to capture the effect of a collateral agreement when estimating EAD using the IMM, the FDIC-supervised institution must 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 $CVA_{Stressed}$ measure in Formula 3a, the interim final rule requires an FDIC-supervised institution to use the EE for a counterparty calculated using the stress calibration of the IMM. However, if an FDIC-supervised institution uses the ''shortcut'' method described in section 324.132(d)(5) of the interim final rule to capture the effect of a collateral agreement when estimating EAD using the IMM, the FDIC-supervised institution must calculate the EE for the counterparty using that method and keep that EE 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 interim final rule requires an FDIC-supervised institution 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. However, the FDIC retains the flexibility to require an FDIC-supervised institution to use a different period of significant financial stress in the calculation of the $CVA_{Stressed}$ measure that better reflects actual historic losses of the portfolio.

Under the interim final rule, an FDIC-supervised institution's VaR model is 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 FDIC-supervised institution is permitted to reflect only 50 percent of the notional amount of the CDS_{ind} hedge in the VaR model.

5. Cleared Transactions (Central Counterparties)

As discussed more fully in section VIII.E of this preamble on cleared transactions under the standardized approach, 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. Similar to the changes to the cleared transaction treatment in the subpart D of the interim final rule, the requirements regarding the cleared transaction framework in the subpart E has been revised to reflect the material changes from the BCBS CCP interim framework. Key changes from the CCP interim framework, include: (1) Allowing a clearing member FDIC-supervised institution to use a reduced

margin period of risk when using the IMM or a scaling factor of no less than 0.71 [180] when using the CEM in the calculation of its EAD for client-facing derivative trades; (2) updating the risk weights applicable to a clearing member FDIC-supervised institution's exposures when the clearing member FDIC-supervised institution guarantees QCCP performance; (3) permitting clearing member FDIC-supervised institutions to choose from one of two approaches for determining the capital requirement for exposures to default fund contributions; and (4) updating the CEM formula to recognize netting to a greater extent for purposes of calculating its risk-weighted asset amount for default fund contributions.

Additionally, changes in response to comments received on the proposal, as discussed in detail in section VIII.E of this preamble with respect to cleared transactions in the standardized approach, are also reflected in the interim final rule for advanced approaches. FDIC-supervised institutions seeking more information on the changes relating to the material elements of the BCBS CCP interim framework and the comments received should refer to section VIII.E of this preamble.

6. Stress Period for Own Estimates

During the recent financial crisis, increased volatility in the value of collateral led to higher counterparty exposures than estimated by banking organizations. Under the collateral haircut approach in the advanced approaches interim final rule, consistent with the proposal, an FDIC-supervised institution that receives prior approval from the FDIC may calculate market price and foreign exchange volatility using own internal estimates. In response to the increased volatility experienced during the crisis, however, the interim final rule modifies the quantitative standards for approval by requiring FDIC-supervised institutions 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 section VIII.F of this preamble with respect to the standardized approach, an FDIC-supervised institution is also required to have policies and procedures that describe how it determines the period of significant financial stress used to calculate the FDIC-supervised institution's own internal estimates, and must be able to provide empirical support for the period used. To ensure an appropriate level of conservativeness, in certain circumstances the FDIC may require an FDIC-supervised institution to use a different period of significant financial stress in the calculation of own internal estimates for haircuts. The FDIC is adopting this aspect of the proposal without change.

B. Removal of Credit Ratings

Consistent with the proposed rule and section 939A of the Dodd-Frank Act, the interim final rule includes a number of changes to definitions in the advanced approaches rule that currently reference credit ratings.[181] These changes are consistent with the alternative standards included in the Standardized Approach and alternative standards that already have been implemented in the FDIC's market risk rule. In addition, the interim final rule includes necessary changes to the hierarchy for risk weighting securitization exposures necessitated by the removal of the ratings-based approach, as described further below.

In certain instances, the interim final rule uses an ''investment grade'' standard that does not rely on credit ratings. Under the interim final rule and consistent with the market risk rule, investment grade means that the entity to which the FDIC-supervised institution 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.

The FDIC is largely finalizing the proposed alternatives to ratings as proposed. Consistent with the proposal, the FDIC is retaining the standards used to calculate the PFE for derivative contracts (as set forth in Table 2 of the interim final rule), which are based in part on whether the counterparty satisfies the definition of investment grade under the interim final rule. The FDIC is also finalizing as proposed the term ''eligible double default guarantor,'' which is used for purposes of determining whether an FDIC-supervised institution may recognize a guarantee or credit derivative under the credit risk mitigation framework. In addition, the FDIC is finalizing the proposed requirements for qualifying operational risk mitigants, which among other criteria, must be provided by an unaffiliated company that the FDIC-supervised institution deems to have strong capacity to meet its claims payment obligations and the obligor rating category to which the FDIC-supervised institution assigns the company is assigned a PD equal to or less than 10 basis points.

1. Eligible Guarantor

Previously, to be an eligible securitization guarantor under the advanced approaches rule, a guarantor was required to meet a number of criteria. For example, the guarantor 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 interim final rule replaces the term ''eligible securitization guarantor'' with the term ''eligible guarantor,'' which includes certain entities that have issued and outstanding unsecured debt securities without credit enhancement that are investment grade. Comments and modifications to the definition of eligible guarantor are discussed below and in section VIII.F of this preamble.

2. Money Market Fund Approach

Previously, under the money market fund approach in the advanced approaches rule, 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. The proposed rule eliminated the money market fund approach. Commenters stated that the elimination of the existing 7 percent risk weight for equity exposures to money market funds would result in an overly stringent treatment for those exposures under the remaining look-through approaches. However, during the recent financial crisis, several money market funds demonstrated elevated credit risk that is not consistent with a low 7 percent risk weight. Accordingly, the FDIC believes it is appropriate to eliminate the preferential risk weight for money market fund investments. As a result of the changes, an FDIC-supervised institution must use one of the three alternative approaches under section 154 of the interim final rule to determine the risk weight for its exposures to a money market fund.

[180] *See* Table 20 in section VIII.E of this preamble. Consistent with the scaling factor for the CEM in Table 20, an advanced approaches FDIC-supervised institution may reduce the margin period of risk when using the IMM to no shorter than 5 days.

[181] *See* 76 FR 79380 (Dec. 21, 2011).

3. 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 have been based on the highest risk weight assigned to the exposure under the standardized approach (subpart D) based on the investment limits in the fund's prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. As discussed in the preamble regarding the standardized approach, commenters expressed concerns regarding their ability to implement the look-through approaches for investment funds that hold securitization exposures. However, the FDIC believes that FDIC-supervised institutions should be aware of the nature of the investments in a fund in which the organization invests. To the extent that information is not available, the treatment in the interim final rule will create incentives for FDIC-supervised institutions to obtain the information necessary to compute risk-based capital requirements under the approach. These incentives are consistent with the FDIC's supervisory aim that FDIC-supervised institutions have sufficient understanding of the characteristics and risks of their investments.

C. Revisions to the Treatment of Securitization Exposures

1. Definitions

As discussed in section VIII.H of this preamble with respect to the standardized approach, the proposal introduced a new definition for resecuritization exposures consistent with the 2009 Enhancements and broadened the definition of a securitization exposure. In addition, the agencies proposed to amend the existing definition of traditional securitization in order to exclude certain types of investment firms from treatment under the securitization framework. Consistent with the approach taken with respect to the standardized approach, the proposed definitions under the securitization framework in the advanced approach are largely included in the interim final rule as proposed, except for changes described below. Banking organizations should refer to part VIII.H of this preamble for further discussion of these comments.

In response to the proposed definition of traditional securitization, commenters generally agreed with the proposed exemptions from the definition and requested that the agencies provide exemptions for exposures to a broader set of investment firms, such as pension funds operated by state and local governments. In view of the comments regarding pension funds, the interim final rule, as described in part VIII.H of this preamble, excludes from the definition of traditional securitization a ''governmental plan'' (as defined in 29 U.S.C. 1002(32)) that complies with the tax deferral qualification requirements provided in the Internal Revenue Code. In response to the proposed definition of resecuritization, commenters requested clarification regarding its potential scope of application to exposures that they believed should not be considered resecuritizations. In response, the FDIC has amended the definition of resecuritization by excluding securitizations that feature re-tranching of a single exposure. In addition, the FDIC notes that for purposes of the interim final rule, a resecuritization does not include pass-through securities that have been pooled together and effectively re-issued as tranched securities. This is because the pass-through securities do not tranche credit protection and, as a result, are not considered securitization exposures under the interim final rule.

Previously, under the advanced approaches rule issued in 2007, the definition of eligible securitization guarantor included, among other entities, any entity (other than a securitization 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 interim final rule removes the existing references to ratings from the definition of an eligible guarantor (the new term for an eligible securitization guarantor) and finalizes the requirements as proposed, as described in section VIII.F of this preamble.

During the recent 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. Consistent with the proposal, a guarantor is not an eligible guarantor under the interim final rule if the guarantor's creditworthiness is positively correlated with the credit risk of the exposures for which it has provided guarantees. In addition, insurance companies engaged predominately in the business of providing credit protection are not eligible guarantors. Further discussion can be found in section VIII.F of this preamble.

2. Operational Criteria for Recognizing Risk Transference in Traditional Securitizations

The proposal outlined certain operational requirements for traditional securitizations that had to be met in order to apply the securitization framework. Consistent with the standardized approach as discussed in section VIII.H of this preamble, the interim final rule includes the operational criteria for recognizing risk transference in traditional securitizations largely as proposed.

3. The Hierarchy of Approaches

Consistent with section 939A of the Dodd-Frank Act, the proposed rule removed the ratings-based approach (RBA) and internal assessment approach for securitization exposures. The interim final rule includes the hierarchy largely as proposed. Under the interim final rule, the hierarchy for securitization exposures is as follows:

(1) An FDIC-supervised institution is 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 CEIO that does not constitute after-tax gain-on-sale.

(2) If a securitization exposure does not require deduction, an FDIC-supervised institution is required to assign a risk weight to the securitization exposure using the SFA. The FDIC expects FDIC-supervised institutions to use the SFA rather than the SSFA in all instances where data to calculate the SFA is available.

(3) If the FDIC-supervised institution cannot apply the SFA because not all the relevant qualification criteria are met, it is allowed to apply the SSFA. An FDIC-supervised institution should be able to explain and justify (for example, based on data availability) to the FDIC any instances in which the FDIC-supervised institution uses the SSFA rather than the SFA for its securitization exposures.

The SSFA, described in detail in part VIII.H of this preamble, is similar in construct and function to the SFA. An FDIC-supervised institution needs several inputs to calculate the SSFA. The first input is the weighted-average capital requirement calculated under the standardized approach that applies to the underlying exposures as if they are held directly by the FDIC-supervised

institution. 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. An FDIC-supervised institution must apply the hierarchy of approaches in section 142 of this interim final rule to determine which approach it applies to a securitization exposure. The SSFA is included in this interim final rule as proposed, with the exception of some modifications to the delinquency parameter, as discussed in part VIII.H of this preamble.

4. Guarantees and Credit Derivatives Referencing a Securitization Exposure

The current advanced approaches rule includes methods for calculating risk-weighted assets for n^{th}-to-default credit derivatives, including first-to-default credit derivatives and second-or-subsequent-to-default credit derivatives.[182] The current advanced approaches rule, however, does not specify how to treat guarantees or credit derivatives (other than n^{th}-to-default credit derivatives) purchased or sold that reference a securitization exposure. Accordingly, the proposal included specific treatment for credit protection purchased or provided in the form of a guarantee or credit derivative (other than an nth-to-default credit derivative) that references a securitization exposure.

For a guarantee or credit derivative (other than an nth-to-default credit derivative) where the FDIC-supervised institution has provided protection, the interim final rule requires an FDIC-supervised institution providing credit protection 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 FDIC-supervised institution calculates its risk-based capital requirement for the guarantee or credit derivative by applying either (1) the SFA as provided in section 324.143 of the interim final rule to the reference exposure if the FDIC-supervised institution and the reference exposure qualify for the SFA; or (2) the SSFA as provided in section 324.144 of the interim final rule. If the guarantee or credit derivative and the reference securitization exposure do not qualify for the SFA, or the SSFA, the FDIC-supervised institution is required to assign a 1,250 percent risk weight to the notional amount of protection provided under the guarantee or credit derivative.

The interim final rule also clarifies how an FDIC-supervised institution 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 FDIC-supervised institution. An FDIC-supervised institution that purchases an OTC credit derivative (other than an nth-to-default credit derivative) that is recognized as a credit risk mitigant for a securitization exposure that is not a covered position under the market risk rule is not required to compute a separate counterparty credit risk capital requirement provided that the FDIC-supervised institution does so consistently for all such credit derivatives. The FDIC-supervised institution 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. If an FDIC-supervised institution cannot, or chooses not to, recognize a credit derivative that is a securitization exposure as a credit risk mitigant, the FDIC-supervised institution must determine the exposure amount of the credit derivative under the treatment for OTC derivatives in section 324.132. If the FDIC-supervised institution purchases the credit protection from a counterparty that is a securitization, the FDIC-supervised institution must determine the risk weight for counterparty credit risk according to the securitization framework. If the FDIC-supervised institution purchases credit protection from a counterparty that is not a securitization, the FDIC-supervised institution must determine the risk weight for counterparty credit risk according to general risk weights under section 324.131.

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 banking organizations. 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 proposed rule introduced due diligence requirements that banking organizations would be required to undertake to use the SFA or SSFA. Comments received regarding the proposed due diligence requirements and the rationale for adopting the proposed treatment in the interim final rule are discussed in part VIII of the preamble.

6. N^{th}-to-Default Credit Derivatives

Consistent with the proposal, the interim final rule provides that an FDIC-supervised institution that provides credit protection through an nth-to-default derivative must assign a risk weight to the derivative using the SFA or the SSFA. In the case of credit protection sold, an FDIC-supervised institution must 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 FDIC-supervised institution's exposure to the total notional amount of all underlying exposures. For purposes of applying the SFA, parameter A is 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 FDIC-supervised institution'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 FDIC-supervised institution'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 FDIC-supervised institution's exposure to the total notional amount of the underlying exposures. Under the SFA, Parameter D is set to equal L plus the thickness of the tranche (T) under the SFA formula. An FDIC-supervised institution that does not use the SFA or SSFA to calculate a risk weight for an nth-to-default credit derivative must assign a risk weight of 1,250 percent to the exposure.

For the treatment of protection purchased through a first-to-default credit derivative, an FDIC-supervised institution must determine its risk-based capital requirement for the underlying

[182] 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. *See* 12 CFR part 325, appendix D, section 42(l) (state nonmember banks), and 12 CFR part 390, subpart Z, appendix A, section 42(l) (state savings associations).

exposures as if the FDIC-supervised institution had synthetically securitized the underlying exposure with the lowest risk-based capital requirement and had obtained no credit risk mitigant on the other underlying exposures. An FDIC-supervised institution must calculate a risk-based capital requirement for counterparty credit risk according to section 132 of the interim final rule for a first-to-default credit derivative that does not meet the rules of recognition for guarantees and credit derivatives under section 324.134(b).

For second-or-subsequent-to default credit derivatives, an FDIC-supervised institution 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 324.134(b) of the interim final rule (other than a first-to-default credit derivative) is permitted to recognize the credit risk mitigation benefits of the derivative only if the FDIC-supervised institution 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 an FDIC-supervised institution satisfies these requirements, the FDIC-supervised institution determines its risk-based capital requirement for the underlying exposures as if the FDIC-supervised institution had only synthetically securitized the underlying exposure with the nth smallest risk-based capital requirement and had obtained no credit risk mitigant on the other underlying exposures. An FDIC-supervised institution that does not fulfill these requirements must calculate a risk-based capital requirement for counterparty credit risk according to section 132 of the interim final rule for a nth-to-default credit derivative that does not meet the rules of recognition of section 134(b) of the interim final rule.

D. Treatment of Exposures Subject to Deduction

Under the current advanced approaches rule, an FDIC-supervised institution is required to 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. Consistent with Basel III, the proposed rule required a banking organization to assign a 1,250 percent risk weight to many exposures that previously were deducted from capital.

In the proposal, the agencies noted that such treatment would not be 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. Commenters acknowledged these points and asked the agencies to replace the 1,250 percent risk weight with the maximum risk weight that would correspond with deduction. Commenters also stated that the agencies should consider the effect of the 1,250 percent risk weight given that the Basel III proposals, over time, would require banking organizations to maintain a total risk-based capital ratio of at least 10.5 percent to meet the minimum required capital ratio plus the capital conservation buffer.

The FDIC is finalizing the requirements as proposed, in order to provide for comparability in risk-weighted asset measurements across institutions. The FDIC did not propose 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 proposed that an after-tax 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 clarified 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. The interim final rule includes these requirements as proposed.

E. Technical Amendments to the Advanced Approaches Rule

In the proposed rule, the agencies introduced a number of amendments to the advanced approaches rule that were designed to refine and clarify certain aspects of the rule's implementation. The interim final rule includes each of these technical amendments as proposed. Additionally, in the interim final rule, the FDIC is amending the treatment of defaulted exposures that are covered by government guarantees. 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 FDIC notes 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 FDIC-supervised institution or some other third party. However, based on their risk characteristics, the FDIC believes that these guarantees should be recognized as eligible guarantees. Therefore, the FDIC is amending 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 is otherwise considered a conditional guarantee.

Related to the change to the eligible guarantee definition, the FDIC has amended the provision in the advanced approaches rule pertaining to the 10 percent floor on the LGD for residential mortgage exposures. Currently, the rule provides that 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. The provision would therefore require a 10 percent LGD floor on segments of residential mortgage exposures for which all or substantially all of the principal are conditionally guaranteed by the U.S. government. The interim final rule allows an exception from the 10 percent floor in such cases.

2. Calculation of Foreign Exposures for Applicability of the Advanced Approaches—Changes to Federal Financial Institutions Economic Council 009

The FDIC is revising the advanced approaches rule to comport with changes to the FFIEC's 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 FDIC has made a similar change under section 100, the

section of the interim final rule that makes the rules applicable to an FDIC-supervised institution 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, an FDIC-supervised institution sums its adjusted cross-border claims, local country claims, and cross-border revaluation gains calculated in accordance with FFIEC 009. Adjusted cross-border claims 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.

3. Applicability of the Interim Final Rule

The FDIC believes that once an FDIC-supervised institution reaches the asset size or level of foreign activity that causes it to become subject to the advanced approaches that it should remain subject to the advanced approaches rule even if it subsequently drops below the asset or foreign exposure threshold. The FDIC believes that it is appropriate for it to evaluate whether an FDIC-supervised institution's business or risk exposure has changed after dropping below the thresholds in a manner that it would no longer be appropriate for the FDIC-supervised institution to be subject to the advanced approaches. As a result, consistent with the proposal, the interim final rule clarifies that once an FDIC-supervised institution is subject to the advanced approaches rule under subpart E, it remains subject to subpart E until the FDIC determines that application of the rule would not be appropriate in light of the FDIC-supervised institution's asset size, level of complexity, risk profile, or scope of operations. In connection with the consideration of an FDIC-supervised institution's level of complexity, risk profile, and scope of operations, the FDIC also may consider an FDIC-supervised institution's interconnectedness and other relevant risk-related factors.

4. 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 FDIC has 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, consistent with the proposal, the FDIC is deleting the regulatory seasoning provision and will instead consider seasoning when evaluating an FDIC-supervised institution's assessment of its capital adequacy from a supervisory perspective. In addition to the difficulties in applying the advanced approaches rule's seasoning requirements discussed above, the FDIC believes that seasoning is more appropriately considered from a supervisory perspective. First, seasoning involves the determination of minimum required capital for a period in excess of the 12-month time horizon implicit in the advanced approaches risk-based capital ratio calculations. 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. Second, seasoning is a major issue only where an FDIC-supervised institution has a concentration of unseasoned loans. The risk-based capital ratios do not take concentrations of any kind into account; however, they are an explicit factor in the internal capital adequacy assessment process.

5. Cash Items in Process of Collection

Under the current advanced approaches rule, cash items in the process of collection are not assigned a risk-based capital treatment and, as a result, are subject to a 100 percent risk weight. Under the interim final rule, consistent with the proposal, the FDIC is revising the advanced approaches rule to risk weight cash items in the process of collection at 20 percent of the carrying value, as the FDIC believes that this treatment is more commensurate with the risk of these exposures. A corresponding provision is included in section 324.32 of the interim final rule.

6. Change to the Definition of Qualifying Revolving Exposure

The agencies proposed modifying the definition of qualifying 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 would qualify as QRE. Under the previous definition in the advanced approaches rule, only unsecured and unconditionally cancellable revolving exposures with a pre-established maximum exposure amount of $100,000 or less (such as credit cards) were 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'') were instead classified as ''other retail.'' For risk-based capital purposes, this classification was material and generally results in substantially higher minimum required capital to the extent that the exposure's asset value correlation (AVC) would 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).

Under the proposed definition, certain charge card products would 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. Commenters agreed that charge cards should be included as QRE because, compared to credit cards, they generally exhibit lower loss rates and loss volatility. Where an FDIC-supervised institution consistently imposes in practice an

upper exposure limit of $100,000 the FDIC believes that charge cards are more closely aligned from a risk perspective with credit cards than with any type of ''other retail'' exposure and is therefore amending the definition of QRE in order to more appropriately capture such products under the definition of QRE. With respect to a product with a balance that the borrower is required to pay in full every month, the exposure would qualify as QRE under the interim final rule as long as its balance does not in practice exceed $100,000. If the balance of an exposure were to exceed that amount, it would represent evidence that such a limit is not maintained in practice for the segment of exposures in which that exposure is placed for risk parameter estimation purposes. As a result, that segment of exposures would not qualify as QRE over the next 24 month period. In addition, the FDIC believes that the definition of QRE should be sufficiently flexible to encompass products with new features that were not envisioned at the time of finalizing the advanced approaches rule, provided, however, that the FDIC-supervised institution can demonstrate to the satisfaction of the FDIC that the performance and risk characteristics (in particular the volatility of loss rates over time) of the new product are consistent with the definition and requirements of QRE portfolios.

7. 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, the proposed rule specified 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. Commenters requested clarification on whether short-term self-liquidating trade finance instruments would be considered exempt from the one-year maturity floor, as they do not constitute an ongoing financing of the obligor. In addition, commenters stated that applying the proposed framework for AVCs to trade-related letters of credit would result in banking organizations maintaining overly conservative capital requirements in relation to the risk of trade finance exposures, which could reduce the availability of trade finance and increase the cost of providing trade finance for businesses globally. As a result, commenters requested that trade finance exposures be assigned a separate AVC that would better reflect the product's low default rates and low correlation.

The FDIC believes that, in light of the removal of the one-year maturity floor, the proposed requirements for trade-related letters of credit are appropriate without a separate AVC. The interim final rule includes the treatment of trade-related letters of credit as proposed. Under the interim final rule, trade finance exposures that meet the stated requirements above may be assigned a maturity lower than one year. Section 324.32 of the interim final rule includes a provision that similarly recognizes the low default rates of these exposures.

8. Defaulted Exposures That Are Guaranteed by the U.S. Government

Under the current advanced approaches rule, a banking organization is required to apply an 8.0 percent capital requirement to the EAD for each wholesale exposure to a defaulted obligor and for each segment of defaulted retail exposures. The advanced approaches rule does not recognize yet-to-be paid protection in the form of guarantees or insurance on defaulted exposures. For example, under certain programs, a U.S. government agency that provides a guarantee or insurance is not required to pay on claims on exposures to defaulted obligors or segments of defaulted retail exposures until the collateral is sold. The time period from default to sale of collateral can be significant and the exposure amount covered by such U.S. sovereign guarantees or insurance can be substantial.

In order to make the treatment for exposures to defaulted obligors and segments of defaulted retail exposures more risk sensitive, the FDIC has decided to amend the advanced approaches rule by assigning a 1.6 percent capital requirement to the portion of the EAD for each wholesale exposure to a defaulted obligor and each segment of defaulted retail exposures that is covered by an eligible guarantee from the U.S. government. The portion of the exposure amount for each wholesale exposure to a defaulted obligor and each segment of defaulted retail exposures not covered by an eligible guarantee from the U.S. government continues to be assigned an 8.0 percent capital requirement.

9. Stable Value Wraps

The FDIC is clarifying that an FDIC-supervised institution that provides stable value protection, such as through a stable value wrap that has provisions and conditions that minimize the wrap's exposure to credit risk of the underlying assets in the fund, must treat the exposure as if it were an equity derivative on an investment fund and determine the adjusted carrying value of the exposure as the sum of the adjusted carrying values of any on-balance sheet asset component determined according to section 324.151(b)(1) and the off-balance sheet component determined according to section 324.151(b)(2). That is, the adjusted carrying value is 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 without subtracting the adjusted carrying value of the on-balance sheet component of the exposure as calculated under the same paragraph. Risk-weighted assets for such an exposure is determined by applying one of the three look-through approaches as provided in section 324.154 of the interim final rule.

10. Treatment of Pre-Sold Construction Loans and Multi-Family Residential Loans

The interim final rule assigns either a 50 percent or a 100 percent risk weight to certain one-to-four family residential pre-sold construction loans under the advanced approaches rule, consistent with provisions of the RTCRRI Act.[183] This treatment is consistent with the treatment under the general risk-based capital rules and under the standardized approach.

F. Pillar 3 Disclosures

1. Frequency and Timeliness of Disclosures

For purposes of the interim final rule, an FDIC-supervised institution is required to provide certain qualitative and quantitative public disclosures on a quarterly, or in some cases, annual basis, and these disclosures must be ''timely.'' Qualitative disclosures that provide a general summary of an FDIC-supervised institution's risk-management objectives and policies, reporting system, and definitions may be disclosed annually after the end of the fourth calendar quarter, provided any significant changes are disclosed in the interim. In the preamble to the advanced approaches rule, the FDIC

[183] *See* 12 U.S.C. 1831n, note.

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 FDIC acknowledges 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 FDIC also indicated that an FDIC-supervised institution 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. For calendar quarters that do not correspond to fiscal year end, the FDIC considers those disclosures that are made within 45 days of the end of the calendar quarter (or within 60 days for the limited purpose of the FDIC-supervised institution's first reporting period in which it is subject to the public disclosure requirements) as timely. In general, where an FDIC-supervised institution's fiscal year-end coincides with the end of a calendar quarter, the FDIC considers qualitative and quantitative 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 FDIC 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 FDIC-supervised institution's capital adequacy and risk profile. In those cases, an FDIC-supervised institution needs to disclose the general nature of these changes and briefly describe how they are likely to affect public disclosures going forward. An FDIC-supervised institution should make these interim disclosures as soon as practicable after the determination that a significant change has occurred.

2. Enhanced Securitization Disclosure Requirements

In view of the significant market uncertainty during the recent financial crisis caused by the lack of disclosures regarding banking organizations' securitization-related exposures, the FDIC believes that enhanced disclosure requirements are appropriate. Consistent with the disclosures introduced by the 2009 Enhancements, the proposal amended the qualitative section for Table 9 disclosures (Securitization) under section 324.173 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 FDIC is implementing the disclosure requirements included in the 2009 Enhancements in the interim final rule. However, consistent with section 939A of the Dodd-Frank Act, the tables do not include those disclosure requirements that are tied to the use of ratings.

3. Equity Holdings That Are Not Covered Positions

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 interim final rule, the FDIC refers to such exposures as equity holdings that are not covered positions in the interim final rule.

XII. Market Risk Rule

On August 30, 2012, 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.[184]

As noted in the introduction of this preamble, the agencies proposed to expand the scope of the market risk rule to include state savings associations, and to codify the market risk rule in a manner similar to the other regulatory capital rules in the three proposals. In the interim final rule, consistent with the proposal, the FDIC has also merged definitions and made appropriate technical changes.

As a general matter, an FDIC-supervised institution that is subject to the market risk rule will continue to exclude covered positions (other than certain foreign exchange and commodities positions) when calculating its risk-weighted assets under the other risk-based capital rules. Instead, the FDIC-supervised institution must determine an appropriate capital requirement for such positions using the methodologies set forth in the final market risk 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 include that amount in its standardized approach risk-weighted assets and for an advanced approaches banking organization's advanced approaches risk-weighted assets.

The market risk rule 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 fair 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 proposed to apply the market risk rule to state savings associations. Consistent with the proposal, the FDIC in this interim final rule has expanded the scope of the market risk rule to state savings associations that meet the stated thresholds. The market risk rule applies to any state savings association 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. The FDIC retains the authority to apply its respective market risk rule to any entity under its jurisdiction, regardless of whether it meets either of the thresholds described above, if the agency deems it necessary or appropriate for safe and sound banking practices.

Application of the market risk rule to all banking organizations with material exposure to market risk is particularly important because of banking organizations' increased exposure to

[184] *See* 77 FR 53060 (August 30, 2012).

traded credit products, such as CDSs, asset-backed securities and other structured products, as well as other less liquid products. In fact, many of the August 2012 revisions to the market risk rule were made in response to concerns that arose during the recent financial crisis when banking organizations holding certain trading assets suffered 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 and 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 rule must have a well-defined valuation process for all covered positions.

The FDIC received comments on the market risk rule. One commenter asserted that the agencies should establish standardized capital requirements for trading operations rather than relying on risk modeling techniques because there is no way for regulators or market participants to judge whether bank calculations of market risk are meaningful. Regarding the use of standardized requirements for trading operations rather than reliance on risk modeling, banking organizations' models are subject to initial approval and ongoing review under the market risk rule. The FDIC is aware that the BCBS is considering, among other options, greater use of standardized approaches for market risk. The FDIC would consider modifications to the international market risk framework when and if it is revised.

Another commenter asserted that the effective date for application of the market risk rule (and the advanced approaches rule) to SLHCs should be deferred until at least July 21, 2015. This commenter also asserted that SLHCs with substantial insurance operations should be exempt from the advanced approaches and market risk rules if their subsidiary bank or savings association comprised less than 5 percent or 10 percent of the total assets of the SLHC. As a general matter, savings associations and SLHCs do not engage in trading activity to a substantial degree. However, the FDIC believes that any state savings association whose trading activity grows to the extent that it meets either of 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 rule. Therefore, it is appropriate to expand the scope of the market risk rule to apply to state savings associations as of January 1, 2015.

Another commenter asserted that regulations should increase the cost of excessive use of short-term borrowing to fund long maturity assets. The FDIC is considering the implications of short-term funding from several perspectives outside of the regulatory capital framework. Specifically, the FDIC expects short-term funding risks would be a potential area of focus in forthcoming Basel III liquidity and enhanced prudential standards regulations.

The FDIC also has adopted conforming changes to certain elements of the market risk rule to reflect changes that are being made to other aspects of the regulatory capital framework. These changes are designed to correspond to the changes to the CRC references and treatment of securitization exposures under subparts D and E of the interim final rule, which are discussed more fully in the standardized and advanced approaches sections. See sections VIII.B and XII.C of this preamble for a discussion of these changes.

More specifically, the market risk rule is being amended to incorporate a revised definition of parameter W in the SSFA. The agencies received comment on the existing definition, which assessed a capital penalty if borrowers exercised contractual rights to defer payment of principal or interest for more than 90 days on exposures underlying a securitization. In response to commenters, the FDIC is modifying this definition to exclude all loans issued under Federally-guaranteed student loan programs, and certain consumer loans (including non-Federally guaranteed student loans) from being included in this component of parameter W.

The FDIC has made a technical amendment to the market risk rule with respect to the covered position definition. Previously, the definition of covered position excluded equity positions that are not publicly traded. The FDIC has refined this exception such that a covered position may include a position in a non-publicly traded investment company, as defined in and registered with the SEC under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) (or its non-U.S. equivalent), provided that all the underlying equities held by the investment company are publicly traded. The FDIC believes that a ''look-through'' approach is appropriate in these circumstances because of the liquidity of the underlying positions, so long as the other conditions of a covered position are satisfied.

The FDIC also has clarified where an FDIC-supervised institution subject to the market risk rule must make its required market risk disclosures and require that these disclosures be timely. The FDIC-supervised institution must provide its quantitative disclosures after each calendar quarter. In addition, the interim final rule clarifies that an FDIC-supervised institution must provide its qualitative disclosures at least annually, after the end of the fourth calendar quarter, provided any significant changes are disclosed in the interim.

The FDIC acknowledges 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 FDIC considers those disclosures that are made within 45 days of the end of the calendar quarter (or within 60 days for the limited purpose of the FDIC-supervised institution's first reporting period in which it is subject to the rule) as timely. In general, where an FDIC-supervised institution's fiscal year-end coincides with the end of a calendar quarter, the FDIC considers qualitative and quantitative 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 FDIC 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 FDIC-supervised institution's capital adequacy and risk profile. In those cases, an FDIC-supervised institution needs to disclose the general nature of these changes and briefly describe how they are likely to affect public disclosures going forward. An FDIC-supervised institution should make these interim disclosures as soon as practicable after the determination that a significant change has occurred.

The interim final rule also clarifies that an FDIC-supervised institution's management may provide all of the disclosures required by the market risk

rule in one place on the FDIC-supervised institution's public Web site or may provide the disclosures in more than one public financial report or other regulatory reports, provided that the FDIC-supervised institution publicly provides a summary table specifically indicating the location(s) of all such disclosures.

XIII. Abbreviations

ABCP Asset-Backed Commercial Paper
ADC Acquisition, Development, or Construction
AFS Available For Sale
ALLL Allowance for Loan and Lease Losses
AOCI Accumulated Other Comprehensive Income
AVC Asset Value Correlation
BCBS Basel Committee on Banking Supervision
BCBS FAQ Basel Committee on Banking Supervision Frequently Asked Questions
BHC Bank Holding Company
CCF Credit Conversion Factor
CCP Central Counterparty
CDFI Community Development Financial Institution
CDS Credit Default Swap
CDSind Index Credit Default Swap
CEIO Credit-Enhancing Interest-Only Strip
CEM Current Exposure Method
CFR Code of Federal Regulations
CFPB Consumer Financial Protection Bureau
CFTC Commodity Futures Trading Commission
CPSS Committee on Payment and Settlement Systems
CRC Country Risk Classifications
CUSIP Committee on Uniform Securities Identification Procedures
CVA Credit Valuation Adjustment
DAC Deferred Acquisition Cost
DCO Derivatives Clearing Organizations
DTA Deferred Tax Asset
DTL Deferred Tax Liability
DvP Delivery-versus-Payment
E Measure of Effectiveness
EAD Exposure at Default
ECL Expected Credit Loss
EE Expected Exposure
EPE Expected Positive Exposure
ERISA Employee Retirement Income Security Act of 1974
ESOP Employee Stock Ownership Plan
FDIC Federal Deposit Insurance Corporation
FDICIA Federal Deposit Insurance Corporation Improvement Act of 1991
FFIEC Federal Financial Institutions Examination Council
FHA Federal Housing Administration
FHLB Federal Home Loan Bank
FHLMC Federal Home Loan Mortgage Corporation
FIRREA Financial Institutions, Reform, Recovery and Enforcement Act
FMU Financial Market Utility
FNMA Federal National Mortgage Association
FRFA Final Regulatory Flexibility Act
GAAP U.S. Generally Accepted Accounting Principles
GNMA Government National Mortgage Association
GSE Government-sponsored Enterprise
HAMP Home Affordable Mortgage Program
HOLA Home Owners' Loan Act
HTM Held-To-Maturity
HVCRE High-Volatility Commercial Real Estate
IFRS International Financial Reporting Standards
IMM Internal Models Methodology
IOSCO International Organization of Securities Commissions
IRB Internal Ratings-Based
IRFA Initial Regulatory Flexibility Analysis
LGD Loss Given Default
LTV Loan-to-Value Ratio
M Effective Maturity
MBS Mortgage-backed Security
MDB Multilateral Development Bank
MDI Minority Depository Institution
MHC Mutual Holding Company
MSA Mortgage Servicing Assets
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
OMB Office of Management and Budget
OTC Over-the-Counter
OTS Office of Thrift Supervision
PCA Prompt Corrective Action
PCCR Purchased Credit Card Relationship
PD Probability of Default
PFE Potential Future Exposure
PMI Private Mortgage Insurance
PMSR Purchased Mortgage Servicing Right
PRA Paperwork Reduction Act of 1995
PSE Public Sector Entities
PvP Payment-versus-Payment
QCCP Qualifying Central Counterparty
QIS Quantitative Impact Study
QM Qualified Mortgages
QRE Qualifying Revolving Exposure
RBA Ratings-Based Approach
RBC Risk-Based Capital
REIT Real Estate Investment Trust
Re-REMIC Resecuritization of Real Estate Mortgage Investment Conduit
RFA Regulatory Flexibility Act
RTCRRI Act Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991
RVC Ratio of Value Change
SAP Statutory Accounting Principles
SEC U.S. Securities and Exchange Commission
SFA Supervisory Formula Approach
SLHC Savings and Loan Holding Company
SPE Special Purpose Entity
SR Supervision and Regulation Letter
SRWA Simple Risk-Weight Approach
SSFA Simplified Supervisory Formula Approach
TruPS Trust Preferred Security
TruPS CDO Trust Preferred Security Collateralized Debt Obligation
UMRA Unfunded Mandates Reform Act of 1995
U.S.C. United States Code
VA Veterans Administration
VaR Value-at-Risk
VOBA Value of Business Acquired
WAM Weighted Average Maturity

XIV. Regulatory Flexibility Act

In general, section 4 of the Regulatory Flexibility Act (5 U.S.C. 604) (RFA) requires an agency to prepare a final regulatory flexibility analysis (FRFA), for a final rule unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banking entities with total assets of $175 million or less and after July 22, 2013, total assets of $500 million or less). Pursuant to the RFA, the agency must make the FRFA available to members of the public and must publish the FRFA, or a summary thereof, in the **Federal Register**. In accordance with section 4 of the RFA, the FDIC is publishing the following summary of its FRFA.[185]

For purposes of the FRFA, the FDIC analyzed the potential economic impact on the entities it regulates with total assets of $175 million or less and $500 million or less, including state nonmember banks and state savings associations (small FDIC-supervised institutions).

As discussed in more detail in section E, below, the FDIC believes that this interim final rule may have a significant economic impact on a substantial number of the small entities under its jurisdiction. Accordingly, the FDIC has prepared the following FRFA pursuant to the RFA.

A. Statement of the Need for, and Objectives of, the Interim Final Rule

As discussed in the Supplementary Information of the preamble to this interim final rule, the FDIC is revising its regulatory capital requirements to promote safe and sound banking practices, implement Basel III and other aspects of the Basel capital framework, harmonize capital requirements between types of FDIC-supervised institutions, and codify capital requirements.

Additionally, this interim final rule satisfies certain requirements under the

[185] The FDIC published a summary of its initial regulatory flexibility analysis (IRFA) in connection with each of the proposed rules in accordance with Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA). In the IRFAs provided in connection with the proposed rules, the FDIC requested comment on all aspects of the IRFAs, and, in particular, on any significant alternatives to the proposed rules applicable to covered small FDIC-supervised institutions that would minimize their impact on those entities. In the IRFA provided by the FDIC in connection with the advanced approach proposed rule, the FDIC determined that there would not be a significant economic impact on a substantial number of small FDIC-supervised institutions and published a certification and a short explanatory statement pursuant to section 605(b) of the RFA.

Dodd-Frank Act by: (1) Revising regulatory capital requirements to remove references to, and requirements of reliance on, credit ratings,[186] and (2) imposing new or revised minimum capital requirements on certain FDIC-supervised institutions.[187]

Under section 38(c)(1) of the Federal Deposit Insurance Act, the FDIC may prescribe capital standards for depository institutions that it regulates.[188] The FDIC also must establish capital requirements under the International Lending Supervision Act for institutions that it regulates.[189]

B. Summary and Assessment of Significant Issues Raised by Public Comments in Response to the IRFAs, and a Statement of Changes Made as a Result of These Comments

The FDIC received three public comments directly addressing the IRFAs. One commenter questioned the FDIC's assumption that risk-weighted assets would increase only 10 percent and questioned reliance on Call Report data for this assumption, as the commenter asserted that existing Call Report data does not contain the information required to accurately analyze the proposal's impact on risk-weighted assets (for example, under the Standardized Approach NPR, an increase in the risk weights for 1–4 family residential mortgage exposures that are balloon mortgages). The commenters also expressed general concern that the FDIC was underestimating the compliance cost of the proposed rules. For instance, one commenter questioned whether small banking organizations would have the information required to determine the applicable risk weights for residential mortgage exposures, and stated that the cost of applying the proposed standards to existing exposures was underestimated. Another commenter stated that the FDIC did not adequately consider the additional costs relating to new reporting systems, assimilating data, and preparing reports required under the proposed rules.

To measure the potential impact on small entities for the purposes of its IRFAs, the FDIC used the most current reporting data available and, to address information gaps, applied conservative assumptions. The FDIC considered the comments it received on the potential impact of the proposed rules, and, as discussed in Item F, below, made significant revisions to the interim final rule in response to the concerns expressed regarding the potential burden on small FDIC-supervised institutions.

Commenters expressed concern that the FDIC, along with the OCC and Federal Reserve, did not use a uniform methodology for conducting their IRFAs and suggested that the agencies should have compared their analyses prior to publishing the proposed rules. The agencies coordinated closely in conducting the IRFAs to maximize consistency among the methodologies used for determining the potential impact on the entities regulated by each agency. However, the analyses differed as appropriate in light of the different entities each agency supervises. For their respective FRFAs, the agencies continued to coordinate closely in order to ensure maximum consistency and comparability.

One commenter questioned the alternatives described in the IRFAs. This commenter asserted that the alternatives were counter-productive and added complexity to the capital framework without any meaningful benefit. As discussed throughout the preamble and in Item F, below, the FDIC has responded to commenters' concerns and sought to reduce the compliance burden on FDIC-supervised institutions throughout this interim final rule.

The FDIC also received a number of more general comments regarding the overall burden of the proposed rules. For example, many commenters expressed concern that the complexity and implementation cost of the proposed rules would exceed the expected benefit. According to these commenters, implementation of the proposed rules would require software upgrades for new internal reporting systems, increased employee training, and the hiring of additional employees for compliance purposes.

A few commenters also urged the FDIC to recognize that compliance costs have increased significantly over recent years due to other regulatory changes. As discussed throughout the preamble and in Item F, below, the FDIC recognizes the potential compliance costs associated with the proposals. Accordingly, for purposes of the interim final rule the FDIC modified certain requirements of the proposals to reduce the compliance burden on small FDIC-supervised institutions. The FDIC believes the interim final rule maintains its objectives regarding the implementation of the Basel III framework while reducing costs for small FDIC-supervised institutions.

C. Response to Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration, and Statement of Changes Made as a Result of the Comment

The Chief Counsel for Advocacy of the Small Business Administration (CCA) filed a letter with the FDIC providing comments on the proposed rules. The CCA generally commended the FDIC for the IRFAs provided with the proposed rules, and specifically commended the FDIC for considering the cumulative economic impact of the proposals on small FDIC-supervised institutions. The CCA acknowledged that the FDIC provided lists of alternatives being considered, but encouraged the FDIC to provide more detailed discussion of these alternatives and the potential burden reductions associated with the alternatives. The CCA acknowledged that the FDIC had certified that the advanced approaches proposed rule would not have a significant economic impact on a substantial number of small FDIC-supervised institutions.

The CCA stated that small FDIC-supervised institutions should be able to continue to use the current regulatory capital framework to compute their capital requirements. The FDIC recognizes that the new regulatory capital framework will carry costs, but believes that the supervisory interest in improved and uniform capital standards, and the resulting improvements in the safety and soundness of the U.S. banking system, outweighs the increased burden.

The CCA also urged the FDIC to give careful consideration to comments discussing the impact of the proposed rules on small FDIC-supervised institutions and to analyze possible alternatives to reduce this impact. The FDIC gave careful consideration to all comments received, in particular the comments that discussed the potential impact of the proposed rules on small FDIC-supervised institutions and made certain changes to reduce the potential impact of the interim final rule, as discussed throughout the preamble and in Item F, below.

The CCA expressed concern that aspects of the proposals could be problematic and onerous for small FDIC-supervised institutions. The CCA stated that the proposed rules were designed for large, international banks and not adapted to the circumstances of small FDIC-supervised institutions. Specifically, the CCA expressed concern over higher risk weights for certain products, which, the CCA argued, could drive small FDIC-supervised institutions

[186] *See* 15 U.S.C. 78o–7, note.

[187] *See* 12 U.S.C. 5371.

[188] *See* 12 U.S.C. 1831o(c).

[189] *See* 12 U.S.C. 3907.

into products carrying additional risks. The CCA also noted heightened compliance and technology costs associated with implementing the proposed rules and raised the possibility that small FDIC-supervised institutions may exit the mortgage market. As discussed throughout the preamble and in Item F below, the FDIC has made significant revisions to the proposed rules that address the concerns raised in the CCA's comment.

D. Description and Estimate of Small FDIC-Supervised Institutions Affected by the Interim Final Rule

Under regulations issued by the Small Business Administration,[190] a small entity includes a depository institution with total assets of $175 million or less and beginning July 22, 2013, total assets of $500 million or less.

As of March 31, 2013, the FDIC supervised approximately 2,453 small depository institutions with total assets of $175 million or less. 2,295 are small state nonmember banks, 112 are small state savings banks, and 46 are small state savings associations. As of March 31, 2013, the FDIC supervised approximately 3,711 small depository institutions with total assets of $500 million or less. 3,398 are small state nonmember banks, 259 are small state savings banks, and 54 are small state savings associations.

E. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The interim final rule may impact small FDIC-supervised institutions in several ways. The interim final rule affects small FDIC-supervised institutions' regulatory capital requirements by changing the qualifying criteria for regulatory capital, including required deductions and adjustments, and modifying the risk weight treatment for some exposures. The interim final rule also requires small FDIC-supervised institutions 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 interim final rule, all FDIC-supervised institutions would remain subject to a 4 percent minimum tier 1 leverage ratio.[191] The interim final rule imposes limitations on capital distributions and discretionary bonus payments for small FDIC-supervised institutions that do not hold a buffer of common equity tier 1 capital above the minimum ratios.

The interim final rule also includes changes to the general risk-based capital requirements that address the calculation of risk-weighted assets. The interim final rule:

- Introduces a higher risk weight for certain past due exposures and acquisition and development real estate loans;
- Provides a more risk sensitive approach to exposures to non-U.S. sovereigns and non-U.S. public sector entities;
- Replaces references to credit ratings with new measures of creditworthiness;[192]
- Provides more comprehensive recognition of collateral and guarantees; and
- Provides a more favorable capital treatment for transactions cleared through qualifying central counterparties.

As a result of the new requirements, some small FDIC-supervised institutions may have to alter their capital structure (including by raising new capital or increasing retention of earnings) in order to achieve compliance.

The FDIC has excluded from its analysis any burden associated with changes to the Consolidated Reports of Income and Condition for small FDIC-supervised institutions (FFIEC 031 and 041; OMB Nos. 7100–0036, 3064–0052, 1557–0081). The FDIC is proposing information collection changes to reflect the requirements of the interim final rule, and is publishing separately for comment on the regulatory reporting requirements that will include associated estimates of burden. Further analysis of the projected reporting requirements imposed by the interim final rule is located in the Paperwork Reduction Act section, below.

Most small FDIC-supervised institutions hold capital in excess of the minimum leverage and risk-based capital requirements set forth in the interim final rule. Although the capital requirements under the interim final rule are not expected to significantly impact the capital structure of these institutions, the FDIC expects that some may change internal capital allocation policies and practices to accommodate the requirements of the interim final rule. For example, an institution may elect to raise capital to return its excess capital position to the levels maintained prior to implementation of the interim final rule.

A comparison of the capital requirements in the interim final rule on a fully-implemented basis to the minimum requirements under the general risk-based capital rules shows that approximately 57 small FDIC-supervised institutions with total assets of $175 million or less currently do not hold sufficient capital to satisfy the requirements of the interim final rule. Those institutions, which represent approximately two percent of small FDIC-supervised institutions, collectively would need to raise approximately $83 million in regulatory capital to meet the minimum capital requirements under the interim final rule.

A comparison of the capital requirements in the interim final rule on a fully-implemented basis to the minimum requirements under the general risk-based capital rules shows that approximately 96 small FDIC-supervised institutions with total assets of $500 million or less currently do not hold sufficient capital to satisfy the requirements of the interim final rule. Those institutions, which represent approximately three percent of small FDIC-supervised institutions, collectively would need to raise approximately $445 million in regulatory capital to meet the minimum capital requirements under the interim final rule.

To estimate the cost to FDIC-supervised institutions of the new capital requirement, the FDIC examined the effect of this requirement on capital structure and the overall cost of capital.[193] The cost of financing an FDIC-supervised institution is the weighted average cost of its various financing sources, which amounts to a weighted average cost of capital reflecting 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 funding costs, and the weighted average cost of financing tends to decline as leverage increases. Thus, an increase in required equity capital would—all else equal—increase the cost of capital for that institution. This effect could be offset to some extent if the additional capital protection caused the risk-premium demanded by the institution's

[190] *See* 13 CFR 121.201.

[191] FDIC-supervised institutions subject to the advanced approaches rule 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 interim final rule and section II.B of the preamble for a more detailed discussion of the applicable minimum capital ratios.

[192] Section 939A of the Dodd-Frank Act addresses the use of credit ratings in regulations of the FDIC. Accordingly, the interim final rule introduces alternative measures of creditworthiness for foreign debt, securitization positions, and resecuritization positions.

[193] See Merton H. Miller, (1995), ''Do the M & M propositions apply to banks?'' Journal of Banking & Finance, Vol. 19, pp. 483–489.

counterparties to decline sufficiently. The FDIC did not try to measure this effect. This increased cost in the most burdensome year would be tax benefits foregone: The capital requirement, multiplied by the interest rate on the debt displaced and by the effective marginal tax rate for the FDIC-supervised institutions affected by the interim 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 and 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.[194] So, using an estimated interest rate on debt of 6 percent, the FDIC estimated that for institutions with total assets of $175 million or less, the annual tax benefits foregone on $83 million of capital switching from debt to equity is approximately $469,000 per year ($83 million * 0.06 (interest rate) * 0.094 (median marginal tax savings)). Averaged across 57 institutions, the cost is approximately $8,000 per institution per year. Similarly, for institutions with total assets of $500 million or less, the annual tax benefits foregone on $445 million of capital switching from debt to equity is approximately $2.5 million per year ($445 million * 0.06 (interest rate) * 0.094 (median marginal tax savings)). Averaged across 96 institutions, the cost is approximately $26,000 per institution per year.

Working with the other agencies, the FDIC also estimated the direct compliance costs related to financial reporting as a result of the interim final rule. This aspect of the interim final rule likely will require additional personnel training and expenses related to new systems (or modification of existing systems) for calculating regulatory capital ratios, in addition to updating risk weights for certain exposures. The FDIC assumes that small FDIC-supervised institutions will spend approximately $43,000 per institution to update reporting system and change the classification of existing exposures. Based on comments from the industry, the FDIC increased this estimate from the $36,125 estimate used in the proposed rules. The FDIC believes that this revised cost estimate is more conservative because it has increased even though many of the labor-intensive provisions of the interim final rule have been excluded. For example, small FDIC-supervised institutions have the option to maintain the current reporting methodology for gains and losses classified as Available for Sale (AFS) thus eliminating the need to update systems. Additionally the exposures where the risk-weights are changing typically represent a small portion of assets (less than 5 percent) on institutions' balance sheets. Additionally, small FDIC-supervised institutions can maintain existing risk-weights for residential mortgage exposures, eliminating the need for those institutions to reclassify existing exposure. This estimate of direct compliance costs is the same under both the $175 million and $500 million size thresholds.

The FDIC estimates that the $43,000 in direct compliance costs will represent a significant burden for approximately 37 percent of small FDIC-supervised institutions with total assets of $175 million or less. The FDIC estimates that the $43,000 in direct compliance costs will represent a burden for approximately 25 percent of small FDIC-supervised institutions with total assets of $500 million or less. For purposes of this interim final rule, the FDIC defines significant burden as an estimated cost greater than 2.5 percent of total non-interest expense or 5 percent of annual salaries and employee benefits. The direct compliance costs are the most significant cost since few small FDIC-supervised institutions will need to raise capital to meet the minimum ratios, as noted above.

F. Steps Taken To Minimize the Economic Impact on Small FDIC-Supervised Institutions; Significant Alternatives

In response to commenters' concerns about the potential implementation burden on small FDIC-supervised institutions, the FDIC has made several significant revisions to the proposals for purposes of the interim final rule. Under the interim final rule, non-advanced approaches FDIC-supervised institutions will be permitted to elect to exclude amounts reported as accumulated other comprehensive income (AOCI) when calculating regulatory capital, to the same extent currently permitted under the general risk-based capital rules.[195] In addition, for purposes of calculating risk-weighted assets under the standardized approach, the FDIC is not adopting the proposed treatment for 1–4 family residential mortgages, which would have required small FDIC-supervised institutions to categorize residential mortgage loans into one of two categories based on certain underwriting standards and product features, and then risk-weight each loan based on its loan-to-value ratio. The FDIC also is retaining the 120-day safe harbor from recourse treatment for loans transferred pursuant to an early default provision. The FDIC believes that these changes will meaningfully reduce the compliance burden of the interim final rule for small FDIC-supervised institutions. For instance, in contrast to the proposal, the interim final rule does not require small FDIC-supervised institutions to review existing mortgage loan files, purchase new software to track loan-to-value ratios, train employees on the new risk-weight methodology, or hold more capital for exposures that would have been deemed category 2 under the proposed rule, removing the proposed distinction between risk weights for category 1 and 2 residential mortgage exposures. Similarly, the option to elect to retain the current treatment of AOCI will reduce the burden associated with managing the volatility in regulatory capital resulting from changes in the value of an FDIC-supervised institutions' AFS debt securities portfolio due to shifting interest rate environments. The FDIC believes these modifications to the proposed rule will substantially reduce compliance burden for small FDIC-supervised institutions.

XV. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

In conjunction with the proposed rules, the FDIC submitted the information collection requirements contained therein to OMB for review. In response, OMB filed comments with the FDIC in accordance with 5 CFR 1320.11(c) withholding PRA approval and instructing that the collection should be resubmitted to OMB at the interim final rule stage. As instructed by OMB, the information collection requirements contained in this interim final rule have been submitted by the FDIC to OMB for review under the PRA, under OMB Control No. 3064–0153.

[194] *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.

[195] For most non-advanced approaches banking organizations, this will be a one-time only election. However, in certain limited circumstances, such as a merger of organizations that have made different elections, the FDIC may permit the resultant entity to make a new election.

The interim final rule contains information collection requirements subject to the PRA. They are found in sections 324.3, 324.22, 324.35, 324.37, 324.41, 324.42, 324.62, 324.63 (including tables), 324.121, through 324.124, 324.132, 324.141, 324.142, 324.153, 324.173 (including tables). The information collection requirements contained in sections 324.203, through 324.210, and 324.212 concerning market risk are approved by OMB under Control No. 3604–0178.

A total of nine comments were received concerning paperwork. Seven expressed concern regarding the increase in paperwork resulting from the rule. They addressed the concept of paperwork generally and not within the context of the PRA.

One comment addressed cost, competitiveness, and qualitative impact statements, and noted the lack of cost estimates. It was unclear whether the commenter was referring to cost estimates for regulatory burden, which are included in the preamble to the rule, or cost estimates regarding the PRA burden, which are included in the submissions (information collection requests) made to OMB by the agencies regarding the interim final rule. All of the agencies' submissions are publicly available at *www.reginfo.gov*.

One commenter seemed to indicate that the agencies' burden estimates are overstated. The commenter stated that, for their institution, the PRA burden will parallel that of interest rate risk (240 hours per year). The agencies' estimates far exceed that figure, so no change to the estimates would be necessary. The FDIC continues to believe that its estimates are reasonable averages that are not overstated.

The FDIC has 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.

XVI. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

XVII. Small Business Regulatory Enforcement Fairness Act of 1996

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' the FDIC must advise the OMB as to whether the interim final rule constitutes a ''major'' rule.[196] If a rule is major, its effectiveness will generally be delayed for 60 days pending congressional review.

In accordance with SBREFA, the FDIC has advised the OMB that this interim final rule is a major rule for the purpose of congressional review. Following OMB's review, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the final rule may be reviewed.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Banks, banking, Bank merger, Branching, Foreign investments, Golden parachute payments, Insured branches, Interstate branching, *Reporting and recordkeeping requirements, Savings associations.*

12 CFR Part 308

Administrative practice and procedure, Banks, banking, *Claims, Crime; Equal access to justice,* Ex parte communications, Hearing procedure, *Lawyers, Penalties,* State nonmember banks.

12 CFR Part 324

Administrative practice and procedure, Banks, banking, Capital adequacy, *Reporting and recordkeeping requirements, Savings associations,* State non-member banks.

12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations.

12 CFR Part 333

Banks, banking, Corporate powers.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 347

Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Credit, Foreign banking, Investments, Reporting and recordkeeping requirements, United States investments abroad.

12 CFR Part 349

Foreign banking, Banks, banking.

12 CFR Part 360

Banks, banking, Investments.

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Investments, Reporting and recordkeeping requirements.

12 CFR Part 363

Accounting, Administrative practice and procedure, Banks, banking, Reporting and recordkeeping requirements.

12 CFR Part 364

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 365

Banks, banking, Mortgages.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Credit, Civil rights, Conflicts of interest, Crime, Equal employment opportunity, Ethics, Fair housing' Governmental employees, Home mortgage disclosure, Individuals with disabilities, OTS employees, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 391

Administrative practice and procedure, Advertising, Aged, Credit, Civil rights, Conflicts of interest, Crime, Equal employment opportunity, Ethics, Fair housing, Governmental employees, Home mortgage disclosure, Individuals with disabilities, OTS employees, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation amends chapter III of title

[196] 5 U.S.C. 801 et seq.

12 of the Code of Federal Regulations as follows:

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

■ 2. Section 303.2 is amended by revising paragraphs (b), (ee), and (ff) to read as follows:

§ 303.2 Definitions.

* * * * *

(b) Adjusted part 325 total assets means adjusted 12 CFR part 325 or part 324, as applicable, total assets as calculated and reflected in the FDIC's Report of Examination.

* * * * *

(ee) Tier 1 capital shall have the same meaning as provided in § 325.2(v) of this chapter (12 CFR 325.2(v)) or § 324.2, as applicable.

(ff) Total assets shall have the same meaning as provided in § 325.2(x) of this chapter (12 CFR 325.2(x)) or § 324.401(g), as applicable.

* * * * *

■ 3. Section 303.64 is amended by revising paragraph (a)(4)(i) to read as follows:

§ 303.64 Processing.

(a) * * *

(4) * * *

(i) Immediately following the merger transaction, the resulting institution will be ''well-capitalized'' pursuant to subpart B of part 325 of this chapter (12 CFR part 325) or subpart H of part 324 of this chapter (12 CFR part 324), as applicable; and

* * * * *

■ 4. Section 303.181 is amended by revising paragraph (c)(4) to read as follows:

§ 303.181 Definitions.

* * * * *

(c) * * *

(4) Is well-capitalized as defined in subpart B of part 325 of this chapter or subpart H of part 324 of this chapter, as applicable; and

* * * * *

■ 5. Section 303.184 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 303.184 Moving an insured branch of a foreign bank.

* * * * *

(d) * * *

(1) * * *

(ii) The applicant is at least adequately capitalized as defined in subpart B of part 325 of this chapter or subpart H of part 324 of this chapter, as applicable;

* * * * *

■ 6. Section 303.200 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 303.200 Scope.

(a) * * *

(2) Definitions of the capital categories referenced in this Prompt Corrective Action subpart may be found in subpart B of part 325 of this chapter, § 325.103(b) for state nonmember banks and § 325.103(c) for insured branches of foreign banks, or subpart H of part 324 of this chapter, § 324.403(b) for state nonmember banks and § 324.403(c) for insured branches of foreign banks, as applicable.

(b) *Institutions covered.* Restrictions and prohibitions contained in subpart B of part 325 of this chapter, and subpart H of part 324 of this chapter, as applicable, apply primarily to state nonmember banks and insured branches of foreign banks, as well as to directors and senior executive officers of those institutions. Portions of subpart B of part 325 of this chapter or subpart H of part 324 of this chapter, as applicable, also apply to all insured depository institutions that are deemed to be critically undercapitalized.

■ 7. Section 303.207 is amended by revising paragraph (b)(2) to read as follows:

§ 303.207 Restricted activities for critically undercapitalized institutions.

* * * * *

(b) * * *

(2) Extend credit for any highly leveraged transaction. A highly leveraged transaction means an extension of credit to or investment in a business by an insured depository institution where the financing transaction involves a buyout, acquisition, or recapitalization of an existing business and one of the following criteria is met:

(i) The transaction results in a liabilities-to-assets leverage ratio higher than 75 percent; or

(ii) The transaction at least doubles the subject company's liabilities and results in a liabilities-to-assets leverage ratio higher than 50 percent; or

(iii) The transaction is designated an highly leverage transaction by a syndication agent or a federal bank regulator.

(iv) Loans and exposures to any obligor in which the total financing package, including all obligations held by all participants is $20 million or more, or such lower level as the FDIC may establish by order on a case-by-case basis, will be excluded from this definition.

* * * * *

■ 8. Section 303.241 is amended by revising paragraph (c)(4) to read as follows:

§ 303.241 Reduce or retire capital stock or capital debt instruments.

* * * * *

(c) * * *

(4) If the proposal involves a series of transactions affecting Tier 1 capital components which will be consummated over a period of time which shall not exceed twelve months, the application shall certify that the insured depository institution will maintain itself as a well-capitalized institution as defined in part 325 of this chapter or part 324 of this chapter, as applicable, both before and after each of the proposed transactions;

* * * * *

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 9. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s), Pub. L. 104–134, 110 Stat. 1321–358; and Pub. L. 109–351.

■ 10. Section 308.200 is revised to read as follows:

§ 308.200 Scope.

The rules and procedures set forth in this subpart apply to banks, insured branches of foreign banks and senior executive officers and directors of banks that are subject to the provisions of section 38 of the Federal Deposit Insurance Act (section 38) (12 U.S.C. 1831o) and subpart B of part 325 of this chapter or subpart H of part 324 of this chapter, as applicable.

■ 11. Section 308.202 is amended by revising paragraphs (a)(1)(i)(A) introductory text and (a)(1)(ii) to read as follows:

§ 308.202 Procedures for reclassifying a bank based on criteria other than capital.

(a) * * *

(1) * * *

(i) *Grounds for reclassification.* (A) Pursuant to § 325.103(d) of this chapter

or § 324.403(d) of this chapter, as applicable, the FDIC may reclassify a well-capitalized bank as adequately capitalized or subject an adequately capitalized or undercapitalized institution to the supervisory actions applicable to the next lower capital category if:

* * * * *

(ii) *Prior notice to institution.* Prior to taking action pursuant to § 325.103(d) of this chapter or § 324.403(d) of this chapter, as applicable, the FDIC shall issue and serve on the bank a written notice of the FDIC's intention to reclassify it.

* * * * *

■ 12. Section 308.204 is amended by revising paragraphs (b)(2) and (c) to read as follows:

§ 308.204 Enforcement of directives.

* * * * *

(b) * * *

(2) *Failure to implement capital restoration plan.* The failure of a bank to implement a capital restoration plan required under section 38, or subpart B of part 325 of this chapter or subpart H of part 324 of this chapter, as applicable, or the failure of a company having control of a bank to fulfill a guarantee of a capital restoration plan made pursuant to section 38(e)(2) of the FDI Act shall subject the bank to the assessment of civil money penalties pursuant to section 8(i)(2)(A) of the FDI Act.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the FDIC may seek enforcement of the provisions of section 38 or subpart B of part 325 of this chapter or subpart H of part 324 of this chapter, as applicable, through any other judicial or administrative proceeding authorized by law.

■ 13. Part 324 is added to read as follows:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

Subpart A—General Provisions

Sec.

324.1 Purpose, applicability, reservations of authority, and timing.
324.2 Definitions.
324.3 Operational requirements for counterparty credit risk.
324.4 Inadequate capital as an unsafe or unsound practice or condition.
324.5 Issuance of directives.
324.6 through 324.9 [Reserved]

Subpart B—Capital Ratio Requirements and Buffers

324.10 Minimum capital requirements.
324.11 Capital conservation buffer and countercyclical capital buffer amount.
324.12 through 324.19 [Reserved]

Subpart C—Definition of Capital

324.20 Capital components and eligibility criteria for regulatory capital instruments.
324.21 Minority interest.
324.22 Regulatory capital adjustments and deductions.
324.23 through 324.29 [Reserved]

Subpart D—Risk-Weighted Assets—Standardized Approach

324.30 Applicability.

Risk-Weighted Assets for General Credit Risk

324.31 Mechanics for calculating risk-weighted assets for general credit risk.
324.32 General risk weights.
324.33 Off-balance sheet exposures.
324.34 OTC derivative contracts.
324.35 Cleared transactions.
324.36 Guarantees and credit derivatives: substitution treatment.
324.37 Collateralized transactions.

Risk-Weighted Assets for Unsettled Transactions

324.38 Unsettled transactions.
324.39 through 324.40 [Reserved]

Risk-Weighted Assets for Securitization Exposures

324.41 Operational requirements for securitization exposures.
324.42 Risk-weighted assets for securitization exposures.
324.43 Simplified supervisory formula approach (SSFA) and the gross-up approach.
324.44 Securitization exposures to which the SSFA and gross-up approach do not apply.
324.45 Recognition of credit risk mitigants for securitization exposures.
324.46 through 324.50 [Reserved]

Risk-Weighted Assets for Equity Exposures

324.51 Introduction and exposure measurement.
324.52 Simple risk-weight approach (SRWA).
324.53 Equity exposures to investment funds.
324.54 through 324.60 [Reserved]

Disclosures

324.61 Purpose and scope.
324.62 Disclosure requirements.
324.63 Disclosures by FDIC-supervised institutions described in § 324.61.
324.64 through 324.99 [Reserved]

Subpart E—Risk-Weighted Assets—Internal Ratings-Based and Advanced Measurement Approaches

324.100 Purpose, applicability, and principle of conservatism.
324.101 Definitions.
324.102 through 324.120 [Reserved]

Qualification

324.121 Qualification process.
324.122 Qualification requirements.
324.123 Ongoing qualification.
324.124 Merger and acquisition transitional arrangements.
324.125 through 324.130 [Reserved]

Risk-Weighted Assets for General Credit Risk

324.131 Mechanics for calculating total wholesale and retail risk-weighted assets.
324.132 Counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts.
324.133 Cleared transactions.
324.134 Guarantees and credit derivatives: PD substitution and LGD adjustment approaches.
324.135 Guarantees and credit derivatives: double default treatment.
324.136 Unsettled transactions.
324.137 through 324.140 [Reserved]

Risk-Weighted Assets for Securitization Exposures

324.141 Operational criteria for recognizing the transfer of risk.
324.142 Risk-weighted assets for securitization exposures.
324.143 Supervisory formula approach (SFA).
324.144 Simplified supervisory formula approach (SSFA).
324.145 Recognition of credit risk mitigants for securitization exposures.
324.146 through 324.150 [Reserved]

Risk-Weighted Assets for Equity Exposures

324.151 Introduction and exposure measurement.
324.152 Simple risk weight approach (SRWA).
324.153 Internal models approach (IMA).
324.154 Equity exposures to investment funds.
324.155 Equity derivative contracts.
324.156 through 324.160 [Reserved]

Risk-Weighted Assets for Operational Risk

324.161 Qualification requirements for incorporation of operational risk mitigants.
324.162 Mechanics of risk-weighted asset calculation.
324.163 through 324.170 [Reserved]

Disclosures

324.171 Purpose and scope.
324.172 Disclosure requirements.
324.173 Disclosures by certain advanced approaches FDIC-supervised institutions.
324.174 through 324.200 [Reserved]

Subpart F—Risk-Weighted Assets—Market Risk

324.201 Purpose, applicability, and reservation of authority.
324.202 Definitions.
324.203 Requirements for application of this subpart F.
324.204 Measure for market risk.
324.205 VaR-based measure.
324.206 Stressed VaR-based measure.
324.207 Specific risk.
324.208 Incremental risk.
324.209 Comprehensive risk.
324.210 Standardized measurement method for specific risk.

324.211 Simplified supervisory formula approach (SSFA).
324.212 Market risk disclosures.
324.213 through 324.299 [Reserved]

Subpart G—Transition Provisions

324.300 Transitions.
324.301 through 324.399 [Reserved]

Subpart H—Prompt Corrective Action

324.401 Authority, purpose, scope, other supervisory authority, disclosure of capital categories, and transition procedures.
324.402 Notice of capital category.
324.403 Capital measures and capital category definitions.
324.404 Capital restoration plans.
324.405 Mandatory and discretionary supervisory actions.
324.406 through 324.999 [Reserved]

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).

Subpart A—General Provisions

§ 324.1 Purpose, applicability, reservations of authority, and timing.

(a) *Purpose.* This part 324 establishes minimum capital requirements and overall capital adequacy standards for FDIC-supervised institutions. This part 324 includes methodologies for calculating minimum capital requirements, public disclosure requirements related to the capital requirements, and transition provisions for the application of this part 324.

(b) *Limitation of authority.* Nothing in this part 324 shall be read to limit the authority of the FDIC 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.* Subject to the requirements in paragraphs (d) and (f) of this section:

(1) *Minimum capital requirements and overall capital adequacy standards.* Each FDIC-supervised institution must calculate its minimum capital requirements and meet the overall capital adequacy standards in subpart B of this part.

(2) *Regulatory capital.* Each FDIC-supervised institution must calculate its regulatory capital in accordance with subpart C of this part.

(3) *Risk-weighted assets.* (i) Each FDIC-supervised institution must use the methodologies in subpart D of this part (and subpart F of this part for a market risk FDIC-supervised institution) to calculate standardized total risk-weighted assets.

(ii) Each advanced approaches FDIC-supervised institution must use the methodologies in subpart E (and subpart F of this part for a market risk FDIC-supervised institution) to calculate advanced approaches total risk-weighted assets.

(4) *Disclosures.* (i) Except for an advanced approaches FDIC-supervised institution that is making public disclosures pursuant to the requirements in subpart E of this part, each FDIC-supervised institution with total consolidated assets of $50 billion or more must make the public disclosures described in subpart D of this part.

(ii) Each market risk FDIC-supervised institution must make the public disclosures described in subpart F of this part.

(iii) Each advanced approaches FDIC-supervised institution must make the public disclosures described in subpart E of this part.

(d) *Reservation of authority.* (1) *Additional capital in the aggregate.* The FDIC may require an FDIC-supervised institution to hold an amount of regulatory capital greater than otherwise required under this part if the FDIC determines that the FDIC-supervised institution's capital requirements under this part are not commensurate with the FDIC-supervised institution's credit, market, operational, or other risks.

(2) *Regulatory capital elements.* (i) If the FDIC 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 FDIC may require the FDIC-supervised institution 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.

(ii) Notwithstanding the criteria for regulatory capital instruments set forth in subpart C of this part, the FDIC may find that a capital element may be included in an FDIC-supervised institution's common equity tier 1 capital, additional tier 1 capital, or tier 2 capital on a permanent or temporary basis consistent with the loss absorption capacity of the element and in accordance with § 324.20(e).

(3) *Risk-weighted asset amounts.* If the FDIC determines that the risk-weighted asset amount calculated under this part by the FDIC-supervised institution for one or more exposures is not commensurate with the risks associated with those exposures, the FDIC may require the FDIC-supervised institution 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 FDIC determines that the leverage exposure amount, or the amount reflected in the FDIC-supervised institution's reported average total consolidated assets, for an on- or off-balance sheet exposure calculated by an FDIC-supervised institution under § 324.10 is inappropriate for the exposure(s) or the circumstances of the FDIC-supervised institution, the FDIC may require the FDIC-supervised institution to adjust this exposure amount in the numerator and the denominator for purposes of the leverage ratio calculations.

(5) *Consolidation of certain exposures.* The FDIC may determine that the risk-based capital treatment for an exposure or the treatment provided to an entity that is not consolidated on the FDIC-supervised institution's balance sheet is not commensurate with the risk of the exposure or the relationship of the FDIC-supervised institution to the entity. Upon making this determination, the FDIC may require the FDIC-supervised institution to treat the exposure or entity as if it were consolidated on the balance sheet of the FDIC-supervised institution for purposes of determining the FDIC-supervised institution's risk-based capital requirements and calculating the FDIC-supervised institution's risk-based capital ratios accordingly. The FDIC will look to the substance of, and risk associated with, the transaction, as well as other relevant factors the FDIC 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 FDIC may require a different deduction or limitation, provided that such alternative deduction or limitation is commensurate with the FDIC-supervised institution's risk and consistent with safety and soundness.

(e) *Notice and response procedures.* In making a determination under this section, the FDIC will apply notice and response procedures in the same manner as the notice and response procedures in § 324.5(c).

(f) *Timing.* (1) Subject to the transition provisions in subpart G of this part, an advanced approaches FDIC-supervised

institution that is not a savings and loan holding company must:

(i) Except as described in paragraph (f)(1)(ii) of this section, beginning on January 1, 2014, calculate advanced approaches total risk-weighted assets in accordance with subpart E and, if applicable, subpart F of this part and, beginning on January 1, 2015, calculate standardized total risk-weighted assets in accordance with subpart D and, if applicable, subpart F of this part;

(ii) From January 1, 2014 to December 31, 2014:

(A) Calculate risk-weighted assets in accordance with the general risk-based capital rules under 12 CFR part 325, appendix A, and, if applicable appendix C (state nonmember banks), or 12 CFR part 390, subpart Z and, if applicable, 12 CFR part 325, appendix C (state savings associations) [1] and substitute such risk-weighted assets for standardized total risk-weighted assets for purposes of § 324.10;

(B) If applicable, calculate general market risk equivalent assets in accordance with 12 CFR part 325, appendix C, section 4(a)(3) and substitute such general market risk equivalent assets for standardized market risk-weighted assets for purposes of § 324.20(d)(3); and

(C) Substitute the corresponding provision or provisions of 12 CFR part 325, appendix A, and, if applicable, appendix C (state nonmember banks), and 12 CFR part 390, subpart Z and, if applicable, 12 CFR part 325, appendix C (state savings associations) for any reference to subpart D of this part in: § 324.121(c); § 324.124(a) and (b); § 324.144(b); § 324.154(c) and (d); § 324.202(b) (definition of covered position in paragraph (b)(3)(iv)); and § 324.211(b); [2]

(iii) Beginning on January 1, 2014, calculate and maintain minimum capital ratios in accordance with subparts A, B, and C of this part, provided, however, that such FDIC-supervised institution must:

(A) From January 1, 2014 to December 31, 2014, maintain a minimum common equity tier 1 capital ratio of 4 percent, a minimum tier 1 capital ratio of 5.5 percent, a minimum total capital ratio of 8 percent, and a minimum leverage ratio of 4 percent; and

(B) From January 1, 2015 to December 31, 2017, an advanced approaches FDIC-supervised institution:

(*1*) Is not required to maintain a supplementary leverage ratio; and

(*2*) Must calculate a supplementary leverage ratio in accordance with § 324.10(c), and must report the calculated supplementary leverage ratio on any applicable regulatory reports.

(2) Subject to the transition provisions in subpart G of this part, an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution or a savings and loan holding company that is an advanced approaches FDIC-supervised institution must:

(i) Beginning on January 1, 2015, calculate standardized total risk-weighted assets in accordance with subpart D, and if applicable, subpart F of this part; and

(ii) Beginning on January 1, 2015, calculate and maintain minimum capital ratios in accordance with subparts A, B and C of this part, provided, however, that from January 1, 2015, to December 31, 2017, a savings and loan holding company that is an advanced approaches FDIC-supervised institution:

(A) Is not required to maintain a supplementary leverage ratio; and

(B) Must calculate a supplementary leverage ratio in accordance with § 324.10(c), and must report the calculated supplementary leverage ratio on any applicable regulatory reports.

(3) Beginning on January 1, 2016, and subject to the transition provisions in subpart G of this part, an FDIC-supervised institution is subject to limitations on distributions and discretionary bonus payments with respect to its capital conservation buffer and any applicable countercyclical capital buffer amount, in accordance with subpart B of this part.

§ 324.2 Definitions.

As used in this part:

Additional tier 1 capital is defined in § 324.20(c).

Advanced approaches FDIC-supervised institution means an FDIC-supervised institution that is described in § 324.100(b)(1).

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 FDIC-supervised institution only, advanced market risk-weighted assets; minus

(2) Excess eligible credit reserves not included in the FDIC-supervised institution's tier 2 capital.

Advanced market risk-weighted assets means the advanced measure for market risk calculated under § 324.204 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 valuation allowances that have been established through a charge against earnings to cover estimated credit losses on loans, lease financing receivables or other extensions of credit as determined in accordance with GAAP. ALLL excludes ''allocated transfer risk reserves.'' For purposes of this part, ALLL includes allowances that have been established through a charge against earnings to cover estimated credit losses associated with off-balance sheet credit exposures as determined in accordance with GAAP.

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 an FDIC-supervised institution 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.

Assets classified loss means:

[1] For the purpose of calculating its general risk-based capital ratios from January 1, 2014 to December 31, 2014, an advanced approaches FDIC-supervised institution shall adjust, as appropriate, its risk-weighted asset measure (as that amount is calculated under 12 CFR part 325, appendix A, (state nonmember banks), and 12 CFR part 390, subpart Z (state savings associations) in the general risk-based capital rules) by excluding those assets that are deducted from its regulatory capital under § 324.22.

[2] In addition, for purposes of § 324.201(c)(3), from January 1, 2014 to December 31, 2014, for any circumstance in which the FDIC may require an FDIC-supervised institution to calculate risk-based capital requirements for specific positions or portfolios under subpart D of this part, the FDIC will instead require the FDIC-supervised institution to make such calculations according to 12 CFR part 325, appendix A, and, if applicable, appendix C (state nonmember banks), or 12 CFR part 390, subpart Z and, if applicable, 12 CFR part 325, appendix C (state savings associations).

(1) When measured as of the date of examination of an FDIC-supervised institution, those assets that have been determined by an evaluation made by a state or Federal examiner as of that date to be a loss; and

(2) When measured as of any other date, those assets:

(i) That have been determined—

(A) By an evaluation made by a state or Federal examiner at the most recent examination of an FDIC-supervised institution to be a loss; or

(B) By evaluations made by the FDIC-supervised institution since its most recent examination to be a loss; and

(ii) That have not been charged off from the FDIC-supervised institution's books or collected.

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)).

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 *et seq.*).

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.

Call Report means Consolidated Reports of Condition and Income.

Carrying value means, with respect to an asset, the value of the asset on the balance sheet of the FDIC-supervised institution, determined in accordance with GAAP.

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 FDIC-supervised institution or servicer to call securitization exposures before their stated maturity or call date.

Cleared transaction means an exposure associated with an outstanding derivative contract or repo-style transaction that an FDIC-supervised institution or clearing member has entered into with a central counterparty (that is, a transaction that a central counterparty has accepted).

(1) The following transactions are cleared transactions:

(i) A transaction between a CCP and an FDIC-supervised institution that is a clearing member of the CCP where the FDIC-supervised institution enters into the transaction with the CCP for the FDIC-supervised institution's own account;

(ii) A transaction between a CCP and an FDIC-supervised institution that is a clearing member of the CCP where the FDIC-supervised institution is acting as a financial intermediary on behalf of a clearing member client and the transaction offsets another transaction that satisfies the requirements set forth in § 324.3(a);

(iii) A transaction between a clearing member client FDIC-supervised institution 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 the requirements set forth in § 324.3(a) are met; or

(iv) A transaction between a clearing member client FDIC-supervised institution and a CCP where a clearing member guarantees the performance of the clearing member client FDIC-supervised institution to the CCP and the transaction meets the requirements of § 324.3(a)(2) and (3).

(2) The exposure of an FDIC-supervised institution that is a clearing member to its clearing member client is not a cleared transaction where the FDIC-supervised institution is either acting as a financial intermediary and enters into an offsetting transaction with a CCP or where the FDIC-supervised institution provides a guarantee to the CCP on the performance of the client.[3]

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 an FDIC-supervised institution for a single financial contract or for all financial contracts in a netting set and confers upon the FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC-supervised institution'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 an FDIC-supervised institution 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.

Commodity Exchange Act means the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*)

Common equity tier 1 capital is defined in § 324.20(b).

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 an FDIC-supervised institution; and

(2) Not owned by the FDIC-supervised institution.

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.

Core capital means Tier 1 capital, as defined in § 324.2 of subpart A of this part.

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

[3] For the standardized approach treatment of these exposures, see § 324.34(e) (OTC derivative contracts) or § 324.37(c) (repo-style transactions). For the advanced approaches treatment of these exposures, see § 324.132(c)(8) and (d) (OTC derivative contracts) or § 324.132(b) and 324.132(d) (repo-style transactions) and for calculation of the margin period of risk, see § 324.132(d)(5)(iii)(C) (OTC derivative contracts) and § 324.132(d)(5)(iii)(A) (repo-style transactions).

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 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.

Covered savings and loan holding company means a top-tier savings and loan holding company other than:

(1) A top-tier savings and loan holding company that is:

(i) A grandfathered unitary savings and loan holding company as defined in section 10(c)(9)(A) of HOLA; and

(ii) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1842(k));

(2) A top-tier savings and loan holding company that is an insurance underwriting company; or

(3)(i) A top-tier savings and loan holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk); and

(ii) For purposes of paragraph 3(i) of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Federal Reserve.

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 an FDIC-supervised institution 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:

(1) Early default clauses and similar warranties that permit the return of, or premium refund clauses covering, 1–4 family residential first mortgage loans that qualify for a 50 percent risk weight for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of transfer;

(2) Premium refund clauses that cover assets guaranteed, in whole or in part, by the U.S. Government, a U.S. Government agency or a GSE, provided the premium refund clauses are for a period not to exceed 120 days from the date of transfer; or

(3) 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 as calculated under § 324.131;

(2) Risk-weighted assets for securitization exposures as calculated under § 324.142; and

(3) Risk-weighted assets for equity exposures as calculated under § 324.151.

Credit union means an insured credit union as defined under the Federal Credit Union Act (12 U.S.C. 1751 *et seq.*).

Current exposure means, with respect to a netting set, the larger of zero or the fair 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.

Current exposure methodology means the method of calculating the exposure amount for over-the-counter derivative contracts in § 324.34(a) and exposure at default (EAD) in § 324.132(c)(5) or (6), as applicable.

Custodian means a financial institution that has legal custody of collateral provided to a CCP.

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 an FDIC-supervised institution, where:

(1) The FDIC-supervised institution 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 FDIC-supervised institution 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.

Distribution means:

(1) A reduction of tier 1 capital through the repurchase of a tier 1 capital instrument or by other means, except when an FDIC-supervised institution, within the same quarter when the repurchase is announced, fully replaces a tier 1 capital instrument it has repurchased by issuing another capital instrument that meets the eligibility criteria for:

(i) A common equity tier 1 capital instrument if the instrument being repurchased was part of the FDIC-supervised institution's common equity tier 1 capital, or

(ii) A common equity tier 1 or additional tier 1 capital instrument if the instrument being repurchased was part of the FDIC-supervised institution's tier 1 capital;

(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, except when an FDIC-supervised institution, within the same quarter when the repurchase or redemption is announced, fully replaces a tier 2 capital instrument it has repurchased by issuing another capital instrument that meets the eligibility criteria for a tier 1 or tier 2 capital instrument;

(3) A dividend declaration or payment on any tier 1 capital instrument;

(4) A dividend declaration or interest payment on any tier 2 capital instrument if the FDIC-supervised institution has full discretion to permanently or temporarily suspend such payments without triggering an event of default; or

(5) Any similar transaction that the FDIC determines to be in substance a distribution of capital.

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 FDIC-supervised institution (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 (or EAD for purposes of subpart E of this part) of the hedged exposure, multiplied by the percentage coverage of the credit risk mitigant.

Eligible 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 FDIC-supervised institution 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 FDIC, 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 FDIC-supervised institution records net payments received on the swap as net income, the FDIC-supervised institution 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 cover estimated credit losses associated with on- or off-balance sheet wholesale and retail exposures, including the 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 FDIC-supervised institution, unless the affiliate is an insured depository institution, foreign bank, securities broker or dealer, or insurance company that:

(i) Does not control the FDIC-supervised institution; 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, a foreign bank, or a qualifying central counterparty; 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:

(1) An extension of credit where:

(i) The extension of credit is collateralized exclusively by liquid and readily marketable debt or equity securities, or gold;

(ii) The collateral is marked to fair value daily, and the transaction is subject to daily margin maintenance requirements; and

(iii) The extension of credit is conducted under an agreement that provides the FDIC-supervised institution 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, 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.[4]

(2) In order to recognize an exposure as an eligible margin loan for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 324.3(b) with respect to that exposure.

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.

Employee stock ownership plan has the same meaning as in 29 CFR 2550.407d-6.

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 FDIC-supervised institution under GAAP;

(ii) The FDIC-supervised institution 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. 1001 *et seq.*).

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

[4] 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).

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 FDIC-supervised institution 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 FDIC-supervised institution'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 FDIC-supervised institution has applied the double default treatment in § 324.135.

Exposure amount means:

(1) For the on-balance sheet component of an exposure (other than an available-for-sale or held-to-maturity security, if the FDIC-supervised institution has made an AOCI opt-out election (as defined in § 324.22(b)(2)); an OTC derivative contract; a repo-style transaction or an eligible margin loan for which the FDIC-supervised institution determines the exposure amount under § 324.37; a cleared transaction; a default fund contribution; or a securitization exposure), the FDIC-supervised institution's carrying value of the exposure.

(2) For a security (that is not a securitization exposure, an equity exposure, or preferred stock classified as an equity security under GAAP) classified as available-for-sale or held-to-maturity if the FDIC-supervised institution has made an AOCI opt-out election (as defined in § 324.22(b)(2)), the FDIC-supervised institution's carrying value (including net accrued but unpaid interest and fees) for the exposure less any net unrealized gains on the exposure and plus any net unrealized losses on the exposure.

(3) For available-for-sale preferred stock classified as an equity security under GAAP if the FDIC-supervised institution has made an AOCI opt-out election (as defined in § 324.22(b)(2)), the FDIC-supervised institution's carrying value of the exposure less any net unrealized gains on the exposure that are reflected in such carrying value but excluded from the FDIC-supervised institution's regulatory capital components.

(4) 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 FDIC-supervised institution calculates the exposure amount under § 324.37; a cleared transaction; a default fund contribution; or a securitization exposure), the notional amount of the off-balance sheet component multiplied by the appropriate credit conversion factor (CCF) in § 324.33.

(5) For an exposure that is an OTC derivative contract, the exposure amount determined under § 324.34;

(6) For an exposure that is a cleared transaction, the exposure amount determined under § 324.35.

(7) For an exposure that is an eligible margin loan or repo-style transaction for which the FDIC-supervised institution calculates the exposure amount as provided in § 324.37, the exposure amount determined under § 324.37.

(8) For an exposure that is a securitization exposure, the exposure amount determined under § 324.42.

FDIC-supervised institution means any bank or state savings association.

Federal Deposit Insurance Act means the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

Federal Deposit Insurance Corporation Improvement Act means the Federal Deposit Insurance Corporation Improvement Act of 1991 ((Pub. L. 102–242, 105 Stat. 2236).

Federal Reserve means the Board of Governors of the Federal Reserve System.

Financial collateral means collateral:

(1) In the form of:

(i) Cash on deposit with the FDIC-supervised institution (including cash held for the FDIC-supervised institution 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 FDIC-supervised institution 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) A bank holding company; savings and loan holding company; nonbank financial institution supervised by the Federal Reserve under Title I of the Dodd-Frank Act; depository institution; foreign bank; credit union; industrial loan company, industrial bank, or other similar institution described in section 2 of the Bank Holding Company Act; national association, state member bank, or state non-member bank that is not a depository institution; insurance company; securities holding company as defined in section 618 of the Dodd-Frank Act; broker or dealer registered with the SEC under section 15 of the Securities Exchange Act; futures commission merchant as defined in section 1a of the Commodity Exchange Act; swap dealer as defined in section 1a of the Commodity Exchange Act; or security-based swap dealer as defined in section 3 of the Securities Exchange Act;

(2) Any designated financial market utility, as defined in section 803 of the Dodd-Frank Act;

(3) Any entity not domiciled in the United States (or a political subdivision thereof) that is supervised and regulated in a manner similar to entities described in paragraphs (1) or (2) of this definition; or

(4) Any other company:

(i) Of which the FDIC-supervised institution owns:

(A) An investment in GAAP equity instruments of the company with an adjusted carrying value or exposure amount equal to or greater than $10 million; or

(B) More than 10 percent of the company's issued and outstanding common shares (or similar equity interest), and

(ii) Which is 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; or

(D) Asset management activities (not including investment or financial advisory activities).

(5) 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 is 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.

(6) Any other company that the FDIC may determine is a financial institution based on activities similar in scope, nature, or operation to those of the entities included in (1) through (4).

(7) For purposes of this part, ''financial institution'' does not include the following entities:

(i) GSEs;

(ii) Small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(iii) Entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805;

(iv) Entities registered with the SEC under the Investment Company Act or foreign equivalents thereof;

(v) Entities to the extent that the FDIC-supervised institution's investment in such entities would qualify as a community development investment under section 24 (Eleventh) of the National Bank Act; and

(vi) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of ERISA, a ''governmental plan'' (as defined in 29 U.S.C. 1002(32)) that complies with the tax deferral qualification requirements provided in the Internal Revenue Code, or any similar employee benefit plan established under the laws of a foreign jurisdiction.

First-lien residential mortgage exposure means a residential mortgage exposure secured by a first lien.

Foreign bank means a foreign bank as defined in § 211.2 of the Federal Reserve'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 an FDIC-supervised institution (as reported on Schedule RC of the Call Report) resulting from a traditional securitization (other than an increase in equity capital resulting from the FDIC-supervised institution's receipt of cash in connection with the securitization or reporting of a mortgage servicing asset on Schedule RC of the Call Report.

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 enterprise (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, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances:

(1) One- to four-family residential properties;

(2) Real property that:

(i) Would qualify as an investment in community development under 12 U.S.C. 338a or 12 U.S.C. 24 (Eleventh), as applicable, or as a ''qualified investment'' under 12 CFR part 345, and

(ii) Is not an ADC loan to any entity described in 12 CFR 345.12(g)(3), unless it is otherwise described in paragraph (1), (2)(i), (3) or (4) of this definition;

(3) The purchase or development of agricultural land, which includes all land known to be used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for non-agricultural commercial development or residential development; or

(4) 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 FDIC's real estate lending standards at 12 CFR part 365, subpart A (state nonmember banks), 12 CFR 390.264 and 390.265 (state savings associations);

(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 (4)(ii) of this definition before the FDIC-supervised institution 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 FDIC-supervised institution that provided the ADC facility as long as the permanent financing is subject to the FDIC-supervised institution's underwriting criteria for long-term mortgage loans.

Home country means the country where an entity is incorporated, chartered, or similarly established.

Identified losses means:

(1) When measured as of the date of examination of an FDIC-supervised institution, those items that have been determined by an evaluation made by a state or Federal examiner as of that date to be chargeable against income, capital and/or general valuation allowances such as the allowance for loan and lease losses (examples of identified losses would be assets classified loss, off-balance sheet items classified loss, any provision expenses that are necessary for the FDIC-supervised institution to record in order to replenish its general valuation allowances to an adequate level, liabilities not shown on the FDIC-supervised institution's books, estimated losses in contingent liabilities, and differences in accounts which represent shortages); and

(2) When measured as of any other date, those items:

(i) That have been determined—

(A) By an evaluation made by a state or Federal examiner at the most recent examination of an FDIC-supervised institution to be chargeable against income, capital and/or general valuation allowances; or

(B) By evaluations made by the FDIC-supervised institution since its most recent examination to be chargeable against income, capital and/or general valuation allowances; and

(ii) For which the appropriate accounting entries to recognize the loss have not yet been made on the FDIC-supervised institution's books nor has the item been collected or otherwise settled.

Indirect exposure means an exposure that arises from the FDIC-supervised institution's investment in an investment fund which holds an investment in the FDIC-supervised institution's own capital instrument or an investment in the capital of an unconsolidated financial institution.

Insurance company means an insurance company as defined in section 201 of the Dodd-Frank Act (12 U.S.C. 5381).

Insurance underwriting company means an insurance company as defined in section 201 of the Dodd-Frank Act (12 U.S.C. 5381) that engages in insurance underwriting activities.

Insured depository institution means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act.

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. 3901 *et seq.*).

Investing bank means, with respect to a securitization, an FDIC-supervised institution that assumes the credit risk of a securitization exposure (other than an originating FDIC-supervised institution of the securitization). In the typical synthetic securitization, the investing FDIC-supervised institution sells credit protection on a pool of underlying exposures to the originating FDIC-supervised institution.

Investment Company Act means the Investment Company Act of 1940 (15 U.S.C. 80 a–1 *et seq.*)

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 FDIC-supervised institution 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 calculated in accordance with § 324.22(h) in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution and is 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 FDIC-supervised institution for five or fewer business days.

Investment in the FDIC-supervised institution's own capital instrument means a net long position calculated in accordance with § 324.22(h) in the FDIC-supervised institution's own common stock instrument, own additional tier 1 capital instrument or own tier 2 capital instrument, including direct, indirect, or synthetic exposures to such capital instruments. An investment in the FDIC-supervised institution's own capital instrument includes any contractual obligation to purchase such capital instrument.

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 FDIC-supervised institution can demonstrate to the satisfaction of the FDIC 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 FDIC-supervised institution means an FDIC-supervised institution that is described in § 324.201(b).

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 an FDIC-supervised institution 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 other multilateral lending institution or regional development bank in which the U.S. government is a shareholder or contributing member or which the FDIC determines poses comparable credit risk.

National Bank Act means the National Bank Act (12 U.S.C. 1 *et seq.*).

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 of this part, this term does not cover a transaction:

(1) That is not subject to such a master netting agreement, or

(2) Where the FDIC-supervised institution has identified specific wrong-way risk.

Non-significant investment in the capital of an unconsolidated financial institution means an investment in the capital of an unconsolidated financial institution where the FDIC-supervised institution owns 10 percent or less of the issued and outstanding common stock 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.

OCC means the Office of the Comptroller of the Currency, U.S. Treasury.

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 FDIC-supervised institution can, at its option, unconditionally cancel the commitment.

Originating FDIC-supervised institution, with respect to a securitization, means an FDIC-supervised institution 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 an FDIC-supervised institution that is a clearing member and a counterparty where the FDIC-supervised institution 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 an FDIC-supervised institution 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 an FDIC-supervised institution 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 (Pub. L. 102–233, 105 Stat. 1761) and the following criteria:

(1) The loan is made in accordance with prudent underwriting standards, meaning that the FDIC-supervised institution has obtained sufficient documentation that the buyer of the home has a legally binding written sales contract and has a firm written commitment for permanent financing of the home upon completion;

(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;

(5) 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;

(6) The earnest money deposit must be held in escrow by the FDIC-supervised institution or an independent party in a fiduciary capacity, and the escrow agreement must provide that in an event of default arising from the cancellation of the sales contract by the purchaser of the residence, the escrow funds shall be used to defray any cost incurred by the FDIC-supervised institution;

(7) 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;

(8) The loan may not exceed 80 percent of the sales price of the presold residence; and

(9) The loan is not more than 90 days past due, or on nonaccrual.

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 § 324.36 or § 324.134, as appropriate).

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)(i) Is a designated financial market utility (FMU) under Title VIII of the Dodd-Frank Act;

(ii) If not located in the United States, is regulated and supervised in a manner equivalent to a designated FMU; or

(iii) Meets the following standards:

(A) The central counterparty requires all parties to contracts cleared by the counterparty to be fully collateralized on a daily basis;

(B) The FDIC-supervised institution demonstrates to the satisfaction of the FDIC that the central counterparty:

(*1*) Is in sound financial condition;

(*2*) Is subject to supervision by the Federal Reserve, 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

(*3*) Meets or exceeds the risk-management standards for central counterparties set forth in regulations established by the Federal Reserve, the CFTC, or the SEC under Title VII or Title VIII of the Dodd-Frank Act; or if the central counterparty is not located in the United States, meets or exceeds 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; and

(2)(i) Provides the FDIC-supervised institution with the central counterparty's hypothetical capital requirement or the information necessary to calculate such hypothetical capital requirement, and other information the FDIC-supervised institution is required to obtain under §§ 324.35(d)(3) and 324.133(d)(3);

(ii) Makes available to the FDIC and the CCP's regulator the information described in paragraph (2)(i) of this definition; and

(iii) Has not otherwise been determined by the FDIC to not be a 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 §§ 324.35 and 324.133.

(3) *Exception.* A QCCP that fails to meet the requirements of a QCCP in the future may still be treated as a QCCP under the conditions specified in § 324.3(f).

Qualifying master netting agreement means a 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 upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the FDIC-supervised institution 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 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); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 324.3(d) with respect to that 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 Federal Reserve, 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 FDIC-supervised institution 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-fair value 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'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 FDIC-supervised institution 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 FDIC-supervised institution; and

(*2*) Executed under an agreement that provides the FDIC-supervised institution 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) In order to recognize an exposure as a repo-style transaction for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 324.3(e) of this part with respect to that exposure.

Resecuritization means a securitization which has more than one underlying exposure and 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 of this part, 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. 78a *et seq.*).

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.

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 as a separate account 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 insurance 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.

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 an unconsolidated financial institution means an investment in the capital of an unconsolidated financial institution where the FDIC-supervised institution owns more than 10 percent of the issued and outstanding common stock of the unconsolidated financial institution.

Small Business Act means the Small Business Act (15 U.S.C. 631 *et seq.*).

Small Business Investment Act means the Small Business Investment Act of 1958 (15 U.S.C. 681 *et seq.*).

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 § 324.204 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 § 324.31;

(ii) Total risk-weighted assets for cleared transactions and default fund contributions as calculated under § 324.35;

(iii) Total risk-weighted assets for unsettled transactions as calculated under § 324.38;

(iv) Total risk-weighted assets for securitization exposures as calculated under § 324.42;

(v) Total risk-weighted assets for equity exposures as calculated under §§ 324.52 and 324.53; and

(vi) For a market risk FDIC-supervised institution only, standardized market risk-weighted assets; minus

(2) Any amount of the FDIC-supervised institution's allowance for loan and lease losses that is not included in tier 2 capital and any amount of allocated transfer risk reserves.

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.

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: [5]

(1) The loan is made in accordance with prudent underwriting standards;

(2) The principal amount of the loan at origination does not exceed 80 percent of the value of the property (or 75 percent of the value of the property if the loan is based on an interest rate that changes over the term of the loan) where the value of the property is the lower of the acquisition cost of the property or the appraised (or, if appropriate, evaluated) value of the property;

(3) All principal and interest payments on the loan must have been made on a timely basis in accordance with the terms of the loan 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 a timely basis in accordance with the terms of the loan 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 making any payment 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 FDIC-supervised institution; 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 exposure means an exposure whose value is linked to the value of an investment in the FDIC-supervised institution's own capital instrument or to the value of an investment in the capital of an unconsolidated financial institution.

Synthetic securitization means a transaction in which:

(1) All or a portion of the credit risk of one or more underlying exposures is retained or 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);

[5] The types of loans that qualify as loans secured by multifamily residential properties are listed in the instructions for preparation of the Call Report.

(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).

Tangible capital means the amount of core capital (Tier 1 capital), as defined in accordance with § 324.2, 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, plus the amount of outstanding perpetual preferred stock (including related surplus) not included in Tier 1 capital.

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 an FDIC-supervised institution that is not owned by the FDIC-supervised institution.

Tier 2 capital is defined in § 324.20(d).

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 an FDIC-supervised institution that is not owned by the FDIC-supervised institution.

Total leverage exposure means the sum of the following:

(1) The balance sheet carrying value of all of the FDIC-supervised institution's on-balance sheet assets, *less* amounts deducted from tier 1 capital under § 324.22(a), (c), and (d);

(2) The potential future credit exposure (PFE) amount for each derivative contract to which the FDIC-supervised institution is a counterparty (or each single-product netting set of such transactions) determined in accordance with § 324.34, but without regard to § 324.34(b);

(3) 10 percent of the notional amount of unconditionally cancellable commitments made by the FDIC-supervised institution; and

(4) The notional amount of all other off-balance sheet exposures of the FDIC-supervised institution (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 defined 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 FDIC 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 FDIC 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 344.3 (state nonmember bank), and 12 CFR 390.203 (state savings association);

(iii) An employee benefit plan (as defined in paragraphs (3) and (32) of section 3 of ERISA), a ''governmental plan'' (as defined in 29 U.S.C. 1002(32)) that complies with the tax deferral qualification requirements provided in the Internal Revenue Code, or any similar employee benefit plan established under the laws of a foreign jurisdiction;

(iv) A synthetic exposure to the capital of a financial institution to the extent deducted from capital under § 324.22; or

(v) Registered with the SEC under the Investment Company Act or foreign equivalents 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 an FDIC-supervised institution 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.

Unregulated financial institution means, for purposes of § 324.131, a financial institution that is not a regulated financial institution, including any financial institution that would meet the definition of ''financial institution'' under this section but for the ownership interest thresholds set forth in paragraph (4)(i) of that definition.

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.

§ 324.3 Operational requirements for counterparty credit risk.

For purposes of calculating risk-weighted assets under subparts D and E of this part:

(a) *Cleared transaction.* In order to recognize certain exposures as cleared transactions pursuant to paragraphs

(1)(ii), (iii), or (iv) of the definition of ''cleared transaction'' in § 324.2, the exposures must meet the applicable requirements set forth in this paragraph.

(1) The offsetting transaction must be identified by the CCP as a transaction for the clearing member client.

(2) The collateral supporting the transaction must be held in a manner that prevents the FDIC-supervised institution from facing any loss due to an event of default, including from a liquidation, receivership, insolvency, or similar proceeding of either the clearing member or the clearing member's other clients. Omnibus accounts established under 17 CFR parts 190 and 300 satisfy the requirements of this paragraph (a).

(3) The FDIC-supervised institution must conduct sufficient legal review to conclude with a well-founded basis (and maintain 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 (a)(2) of this section to be legal, valid, binding and enforceable under the law of the relevant jurisdictions.

(4) The offsetting transaction with a clearing member must be transferable under the transaction documents and 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 proceedings.

(b) *Eligible margin loan.* In order to recognize an exposure as an eligible margin loan as defined in § 324.2, an FDIC-supervised institution must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement underlying the exposure:

(1) Meets the requirements of paragraph (1)(iii) of the definition of eligible margin loan in § 324.2, and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(c) *Qualifying cross-product master netting agreement.* In order to recognize an agreement as a qualifying cross-product master netting agreement as defined in § 324.101, an FDIC-supervised institution must obtain 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.

(d) *Qualifying master netting agreement.* In order to recognize an agreement as a qualifying master netting agreement as defined in § 324.2, an FDIC-supervised institution must:

(1) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of paragraph (2) of the definition of qualifying master netting agreement in § 324.2; 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; and

(2) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of qualifying master netting agreement in § 324.2.

(e) *Repo-style transaction.* In order to recognize an exposure as a repo-style transaction as defined in § 324.2, an FDIC-supervised institution must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement underlying the exposure:

(1) Meets the requirements of paragraph (3) of the definition of repo-style transaction in § 324.2, and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(f) *Failure of a QCCP to satisfy the rule's requirements.* If an FDIC-supervised institution 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 in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP in § 324.2, the FDIC-supervised institution 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 (2)(i) through (2)(iii) of the definition of a QCCP continuously for a three-month period after remedying the relevant deficiency, an FDIC-supervised institution may not treat the CCP as a QCCP for the purposes of this part until after the FDIC-supervised institution has determined that the CCP has satisfied the requirements in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP for three continuous months.

§ 324.4 Inadequate capital as an unsafe or unsound practice or condition.

(a) *General.* As a condition of Federal deposit insurance, all insured depository institutions must remain in a safe and sound condition.

(b) *Unsafe or unsound practice.* Any insured depository institution which has less than its minimum leverage capital requirement is deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(1) and/or 1818(c)). Except that such an insured depository institution which has entered into and is in compliance with a written agreement with the FDIC or has submitted to the FDIC and is in compliance with a plan approved by the FDIC to increase its leverage capital ratio to such level as the FDIC deems appropriate and to take such other action as may be necessary for the insured depository institution to be operated so as not to be engaged in such an unsafe or unsound practice will not be deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(1) and/or 1818(c)) on account of its capital ratios. The FDIC is not precluded from taking action under section 8(b)(1), section 8(c) or any other enforcement action against an insured depository institution with capital above the minimum requirement if the specific circumstances deem such action to be appropriate.

(c) *Unsafe or unsound condition.* Any insured depository institution with a ratio of tier 1 capital to total assets [6] that is less than two percent is deemed to be operating in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)).

(1) An insured depository institution with a ratio of tier 1 capital to total assets of less than two percent which has entered into and is in compliance with a written agreement with the FDIC (or any other insured depository institution with a ratio of tier 1 capital to total assets of less than two percent which has entered into and is in compliance with a written agreement with its primary Federal regulator and

[6] For purposes of this paragraph (c), until January 1, 2015, the term total assets shall have the same meaning as provided in 12 CFR 325.2(x). As of January 1, 2015, the term total assets shall have the same meaning as provided in 12 CFR 324.401(g).

to which agreement the FDIC is a party) to increase its tier 1 leverage capital ratio to such level as the FDIC deems appropriate and to take such other action as may be necessary for the insured depository institution to be operated in a safe and sound manner, will not be subject to a proceeding by the FDIC pursuant to 12 U.S.C. 1818(a) on account of its capital ratios.

(2) An insured depository institution with a ratio of tier 1 capital to total assets that is equal to or greater than two percent may be operating in an unsafe or unsound condition. The FDIC is not precluded from bringing an action pursuant to 12 U.S.C. 1818(a) where an insured depository institution has a ratio of tier 1 capital to total assets that is equal to or greater than two percent.

§ 324.5 Issuance of directives.

(a) *General.* A directive is a final order issued to an FDIC-supervised institution that fails to maintain capital at or above the minimum leverage capital requirement as set forth in §§ 324.4 and 324.10. A directive issued pursuant to this section, including a plan submitted under a directive, is enforceable in the same manner and to the same extent as a final cease-and-desist order issued under section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)).

(b) *Issuance of directives.* If an FDIC-supervised institution is operating with less than the minimum leverage capital requirement established by this regulation, the FDIC Board of Directors, or its designee(s), may issue and serve upon any FDIC-supervised institution a directive requiring the FDIC-supervised institution to restore its capital to the minimum leverage capital requirement within a specified time period. The directive may require the FDIC-supervised institution to submit to the appropriate FDIC regional director, or other specified official, for review and approval, a plan describing the means and timing by which the FDIC-supervised institution shall achieve the minimum leverage capital requirement. After the FDIC has approved the plan, the FDIC-supervised institution may be required under the terms of the directive to adhere to and monitor compliance with the plan. The directive may be issued during the course of an examination of the FDIC-supervised institution, or at any other time that the FDIC deems appropriate, if the FDIC-supervised institution is found to be operating with less than the minimum leverage capital requirement.

(c) *Notice and opportunity to respond to issuance of a directive.* (1) If the FDIC makes an initial determination that a directive should be issued to an FDIC-supervised institution pursuant to paragraph (b) of this section, the FDIC, through the appropriate designated official(s), shall serve written notification upon the FDIC-supervised institution of its intent to issue a directive. The notice shall include the current leverage capital ratio, the basis upon which said ratio was calculated, the proposed capital injection, the proposed date for achieving the minimum leverage capital requirement and any other relevant information concerning the decision to issue a directive. When deemed appropriate, specific requirements of a proposed plan for meeting the minimum leverage capital requirement may be included in the notice.

(2) Within 14 days of receipt of notification, the FDIC-supervised institution may file with the appropriate designated FDIC official(s) a written response, explaining why the directive should not be issued, seeking modification of its terms, or other appropriate relief. The FDIC-supervised institution's response shall include any information, mitigating circumstances, documentation, or other relevant evidence which supports its position, and may include a plan for attaining the minimum leverage capital requirement.

(3)(i) After considering the FDIC-supervised institution's response, the appropriate designated FDIC official(s) shall serve upon the FDIC-supervised institution a written determination addressing the FDIC-supervised institution's response and setting forth the FDIC's findings and conclusions in support of any decision to issue or not to issue a directive. The directive may be issued as originally proposed or in modified form. The directive may order the FDIC-supervised institution to:

(A) Achieve the minimum leverage capital requirement established by this regulation by a certain date;

(B) Submit for approval and adhere to a plan for achieving the minimum leverage capital requirement;

(C) Take other action as is necessary to achieve the minimum leverage capital requirement; or

(D) A combination of the above actions.

(ii) If a directive is to be issued, it may be served upon the FDIC-supervised institution along with the final determination.

(4) Any FDIC-supervised institution, upon a change in circumstances, may request the FDIC to reconsider the terms of a directive and may propose changes in the plan under which it is operating to meet the minimum leverage capital requirement. The directive and plan continue in effect while such request is pending before the FDIC.

(5) All papers filed with the FDIC must be postmarked or received by the appropriate designated FDIC official(s) within the prescribed time limit for filing.

(6) Failure by the FDIC-supervised institution to file a written response to notification of intent to issue a directive within the specified time period shall constitute consent to the issuance of such directive.

(d) *Enforcement of a directive.* (1) Whenever an FDIC-supervised institution fails to follow the directive or to submit or adhere to its capital adequacy plan, the FDIC may seek enforcement of the directive in the appropriate United States district court, pursuant to 12 U.S.C. 3907(b)(2)(B)(ii), in the same manner and to the same extent as if the directive were a final cease-and-desist order. In addition to enforcement of the directive, the FDIC may seek assessment of civil money penalties for violation of the directive against any FDIC-supervised institution, any officer, director, employee, agent, or other person participating in the conduct of the affairs of the FDIC-supervised institution, pursuant to 12 U.S.C. 3909(d).

(2) The directive may be issued separately, in conjunction with, or in addition to, any other enforcement mechanisms available to the FDIC, including cease-and-desist orders, orders of correction, the approval or denial of applications, or any other actions authorized by law. In addition to addressing an FDIC-supervised institution's minimum leverage capital requirement, the capital directive may also address minimum risk-based capital requirements that are to be maintained and calculated in accordance with § 324.10, and, for state savings associations, the minimum tangible capital requirements set for in § 324.10.

§§ 324.6 through 324.9 [Reserved]

Subpart B—Capital Ratio Requirements and Buffers

§ 324.10 Minimum capital requirements.

(a) *Minimum capital requirements.* An FDIC-supervised institution 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 FDIC-supervised institutions, a

supplementary leverage ratio of 3 percent.

(6) For state savings associations, a tangible capital ratio of 1.5 percent.

(b) *Standardized capital ratio calculations.* Other than as provided in paragraph (c) of this section:

(1) *Common equity tier 1 capital ratio.* An FDIC-supervised institution's common equity tier 1 capital ratio is the ratio of the FDIC-supervised institution's common equity tier 1 capital to standardized total risk-weighted assets;

(2) *Tier 1 capital ratio.* An FDIC-supervised institution's tier 1 capital ratio is the ratio of the FDIC-supervised institution's tier 1 capital to standardized total risk-weighted assets;

(3) *Total capital ratio.* An FDIC-supervised institution's total capital ratio is the ratio of the FDIC-supervised institution's total capital to standardized total risk-weighted assets; and

(4) *Leverage ratio.* An FDIC-supervised institution's leverage ratio is the ratio of the FDIC-supervised institution's tier 1 capital to the FDIC-supervised institution's average total consolidated assets as reported on the FDIC-supervised institution's Call Report minus amounts deducted from tier 1 capital under §§ 324.22(a), (c), and (d).

(5) *State savings association tangible capital ratio.* (i) Until January 1, 2015, a state savings association shall determine its tangible capital ratio in accordance with 12 CFR 390.468.

(ii) As of January 1, 2015, a state savings association's tangible capital ratio is the ratio of the state savings association's core capital (tier 1 capital) to total assets. For purposes of this paragraph, the term total assets shall have the meaning provided in § 324.401(g).

(c) *Advanced approaches capital ratio calculations.* An advanced approaches FDIC-supervised institution that has completed the parallel run process and received notification from the FDIC pursuant to § 324.121(d) must determine its regulatory capital ratios as described in this paragraph (c).

(1) *Common equity tier 1 capital ratio.* The FDIC-supervised institution's common equity tier 1 capital ratio is the lower of:

(i) The ratio of the FDIC-supervised institution's common equity tier 1 capital to standardized total risk-weighted assets; and

(ii) The ratio of the FDIC-supervised institution's common equity tier 1 capital to advanced approaches total risk-weighted assets.

(2) *Tier 1 capital ratio.* The FDIC-supervised institution's tier 1 capital ratio is the lower of:

(i) The ratio of the FDIC-supervised institution's tier 1 capital to standardized total risk-weighted assets; and

(ii) The ratio of the FDIC-supervised institution's tier 1 capital to advanced approaches total risk-weighted assets.

(3) *Total capital ratio.* The FDIC-supervised institution's total capital ratio is the lower of:

(i) The ratio of the FDIC-supervised institution's total capital to standardized total risk-weighted assets; and

(ii) The ratio of the FDIC-supervised institution's advanced-approaches-adjusted total capital to advanced approaches total risk-weighted assets. An FDIC-supervised institution's advanced-approaches-adjusted total capital is the FDIC-supervised institution's total capital after being adjusted as follows:

(A) An advanced approaches FDIC-supervised institution must deduct from its total capital any allowance for loan and lease losses included in its tier 2 capital in accordance with § 324.20(d)(3); and

(B) An advanced approaches FDIC-supervised institution must add to its total capital any eligible credit reserves that exceed the FDIC-supervised institution's total expected credit losses to the extent that the excess reserve amount does not exceed 0.6 percent of the FDIC-supervised institution's credit risk-weighted assets.

(4) *Supplementary leverage ratio.* An advanced approaches FDIC-supervised institution'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.

(5) *State savings association tangible capital ratio.* (i) Until January 1, 2014, a state savings association shall determine its tangible capital ratio in accordance with 12 CFR 390.468.

(ii) As of January 1, 2014, a state savings association's tangible capital ratio is the ratio of the state savings association's core capital (tier 1 capital) to total assets. For purposes of this paragraph, the term total assets shall have the meaning provided in 12 CFR 324.401(g).

(d) *Capital adequacy.* (1) Notwithstanding the minimum requirements in this part, An FDIC-supervised institution must maintain capital commensurate with the level and nature of all risks to which the FDIC-supervised institution is exposed.

(2) An FDIC-supervised institution 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.

(3) *Insured depository institutions with less than the minimum leverage capital requirement.* (i) An insured depository institution making an application to the FDIC operating with less than the minimum leverage capital requirement does not have adequate capital and therefore has inadequate financial resources.

(ii) Any insured depository institution operating with an inadequate capital structure, and therefore inadequate financial resources, will not receive approval for an application requiring the FDIC to consider the adequacy of its capital structure or its financial resources.

(iii) In any merger, acquisition, or other type of business combination where the FDIC must give its approval, where it is required to consider the adequacy of the financial resources of the existing and proposed institutions, and where the resulting entity is either insured by the FDIC or not otherwise federally insured, approval will not be granted when the resulting entity does not meet the minimum leverage capital requirement.

(iv) Exceptions. Notwithstanding the provisions of paragraphs (d)(3)(i), (ii) and (iii) of this section:

(A) The FDIC, in its discretion, may approve an application pursuant to the Federal Deposit Insurance Act where it is required to consider the adequacy of capital if it finds that such approval must be taken to prevent the closing of a depository institution or to facilitate the acquisition of a closed depository institution, or, when severe financial conditions exist which threaten the stability of an insured depository institution or of a significant number of depository institutions insured by the FDIC or of insured depository institutions possessing significant financial resources, if such action is taken to lessen the risk to the FDIC posed by an insured depository institution under such threat of instability.

(B) The FDIC, in its discretion, may approve an application pursuant to the Federal Deposit Insurance Act where it is required to consider the adequacy of capital or the financial resources of the insured depository institution where it finds that the applicant has committed to and is in compliance with a reasonable plan to meet its minimum leverage capital requirements within a reasonable period of time.

§ 324.11 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 an FDIC-supervised institution is the FDIC-supervised institution's net income for the four calendar quarters preceding the current calendar quarter, based on the FDIC-supervised institution's quarterly Call Reports, net of any distributions and associated tax effects not already reflected in net income.

(ii) *Maximum payout ratio.* The maximum payout ratio is the percentage of eligible retained income that an FDIC-supervised institution can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum payout ratio is based on the FDIC-supervised institution's capital conservation buffer, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to § 324.11.

(iii) *Maximum payout amount.* An FDIC-supervised institution's maximum payout amount for the current calendar quarter is equal to the FDIC-supervised institution's eligible retained income, multiplied by the applicable maximum payout ratio, as set forth in Table 1 to § 324.11.

(iv) *Private sector credit exposure.* Private sector credit exposure means an exposure to a company or an individual 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 PSE, or a GSE.

(3) *Calculation of capital conservation buffer.* (i) An FDIC-supervised 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 FDIC-supervised institution's most recent Call Report:

(A) The FDIC-supervised institution's common equity tier 1 capital ratio minus the FDIC-supervised institution's minimum common equity tier 1 capital ratio requirement under § 324.10;

(B) The FDIC-supervised institution's tier 1 capital ratio minus the FDIC-supervised institution's minimum tier 1 capital ratio requirement under § 324.10; and

(C) The FDIC-supervised institution's total capital ratio minus the FDIC-supervised institution's minimum total capital ratio requirement under § 324.10; or

(ii) Notwithstanding paragraphs (a)(3)(i)(A)–(C) of this section, if the FDIC-supervised institution's common equity tier 1, tier 1 or total capital ratio is less than or equal to the FDIC-supervised institution's minimum common equity tier 1, tier 1 or total capital ratio requirement under § 324.10, respectively, the FDIC-supervised institution's capital conservation buffer is zero.

(4) *Limits on distributions and discretionary bonus payments.* (i) An FDIC-supervised institution shall not make 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) An FDIC-supervised institution with a capital conservation buffer that is greater than 2.5 percent plus 100 percent of its applicable countercyclical capital 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) of this section, an FDIC-supervised institution may not make distributions or discretionary bonus payments during the current calendar quarter if the FDIC-supervised institution'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 FDIC may permit an FDIC-supervised institution to make a distribution or discretionary bonus payment upon a request of the FDIC-supervised institution, if the FDIC determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the FDIC-supervised institution. In making such a determination, the FDIC will consider the nature and extent of the request and the particular circumstances giving rise to the request.

TABLE 1 TO § 324.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT

Capital conservation buffer	Maximum payout ratio (as a percentage of eligible retained income)
Greater than 2.5 percent plus 100 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount.	No payout ratio limitation applies.
Less than or equal to 2.5 percent plus 100 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount, and greater than 1.875 percent plus 75 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount.	60 percent.
Less than or equal to 1.875 percent plus 75 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount, and greater than 1.25 percent plus 50 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount.	40 percent.
Less than or equal to 1.25 percent plus 50 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount, and greater than 0.625 percent plus 25 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount.	20 percent.
Less than or equal to 0.625 percent plus 25 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount.	0 percent.

(v) *Other limitations on distributions.* Additional limitations on distributions may apply to an FDIC-supervised institution under 12 CFR 303.241 and subpart H of this part.

(b) *Countercyclical capital buffer amount*—(1) *General.* An advanced approaches FDIC-supervised institution must calculate a countercyclical capital buffer amount in accordance with the following paragraphs for purposes of determining its maximum payout ratio under Table 1 to § 324.11.

(i) *Extension of capital conservation buffer.* The countercyclical capital

buffer amount is an extension of the capital conservation buffer as described in paragraph (a) of this section.

(ii) *Amount.* An advanced approaches FDIC-supervised institution 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 FDIC-supervised institution'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 FDIC-supervised institution's private sector credit exposures located in the jurisdiction by the total risk-weighted assets for all of the FDIC-supervised institution's private sector credit exposures. The methodology an FDIC-supervised institution uses for determining risk-weighted assets for purposes of this paragraph (b) must be the methodology that determines its risk-based capital ratios under § 324.10. Notwithstanding the previous sentence, the risk-weighted asset amount for a private sector credit exposure that is a covered position under subpart F of this part is its specific risk add-on as determined under § 324.210 multiplied by 12.5.

(iv) *Location.* (A) Except as provided in paragraphs (b)(1)(iv)(B) and (b)(1)(iv)(C) of this section, the location of a private sector credit 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 subparts D or E of this part, the FDIC-supervised institution 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 underlying exposures, or, if the underlying exposures are located in more than one national jurisdiction, the national jurisdiction where the underlying exposures with the largest aggregate unpaid principal balance are located. For purposes of this paragraph, the location of an underlying exposure shall be the location of the borrower, determined consistent with paragraph (b)(1)(iv)(A) of this section.

(2) *Countercyclical capital buffer amount for credit exposures in the United States*—(i) *Initial countercyclical capital 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 capital buffer amount.* The FDIC will adjust the countercyclical capital buffer amount for credit exposures in the United States in accordance with applicable law.[7]

(iii) *Range of countercyclical capital buffer amount.* The FDIC will adjust the countercyclical capital buffer amount for credit exposures in the United States between zero percent and 2.5 percent of risk-weighted assets.

(iv) *Adjustment determination.* The FDIC 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 FDIC 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 FDIC establishes an earlier effective date and includes a statement articulating the reasons for the earlier effective date.

(B) *Decrease adjustment.* A determination by the FDIC to decrease the established countercyclical capital buffer amount under paragraph (b)(2)(ii) of this section will be effective on the day following announcement of the final determination or the earliest date permissible under applicable law or regulation, whichever is later.

(vi) *Twelve month sunset.* The countercyclical capital buffer amount will return to zero percent 12 months after the effective date that the adjusted countercyclical capital buffer amount is announced, unless the FDIC announces a decision to maintain the adjusted countercyclical capital buffer amount or adjust it again before the expiration of the 12-month period.

[7] The FDIC expects that any adjustment will be based on a determination made jointly by the Board, OCC, and FDIC.

(3) *Countercyclical capital buffer amount for foreign jurisdictions.* The FDIC 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.

§§ 324.12 through 324.19 [Reserved]

Subpart C—Definition of Capital

§ 324.20 Capital components and eligibility criteria for regulatory capital instruments.

(a) *Regulatory capital components.* An FDIC-supervised institution'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 in this paragraph (b), minus regulatory adjustments and deductions in § 324.22. The common equity tier 1 capital elements are:

(1) Any common stock instruments (plus any related surplus) issued by the FDIC-supervised institution, net of treasury stock, and any capital instruments issued by mutual banking organizations, that meet all the following criteria:

(i) The instrument is paid-in, issued directly by the FDIC-supervised institution, and represents the most subordinated claim in a receivership, insolvency, liquidation, or similar proceeding of the FDIC-supervised institution;

(ii) The holder of the instrument is entitled to a claim on the residual assets of the FDIC-supervised institution that is proportional with the holder's share of the FDIC-supervised institution'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 FDIC, and does not contain any term or feature that creates an incentive to redeem;

(iv) The FDIC-supervised institution 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 FDIC-supervised institution's net income and retained earnings and are not subject to

a limit imposed by the contractual terms governing the instrument. An FDIC-supervised institution must obtain prior FDIC approval for any dividend payment involving a reduction or retirement of capital stock in accordance with 12 CFR 303.241;

(vi) The FDIC-supervised institution has full discretion at all times to refrain from paying any dividends and making any other 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 FDIC-supervised institution;

(vii) Dividend payments and any other distributions on the instrument may be paid only after all legal and contractual obligations of the FDIC-supervised institution 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 FDIC-supervised institution with greater priority in a receivership, insolvency, liquidation, or similar proceeding;

(ix) The paid-in amount is classified as equity under GAAP;

(x) The FDIC-supervised institution, or an entity that the FDIC-supervised institution 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 FDIC-supervised institution or of an affiliate of the FDIC-supervised institution, 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; and

(xiii) The instrument is reported on the FDIC-supervised institution's regulatory financial statements separately from other capital instruments.

(2) Retained earnings.

(3) Accumulated other comprehensive income (AOCI) as reported under GAAP.[8]

(4) Any common equity tier 1 minority interest, subject to the limitations in § 324.21(c).

(5) Notwithstanding the criteria for common stock instruments referenced above, an FDIC-supervised institution's common stock issued and held in trust for the benefit of its employees as part of an employee stock ownership plan does not violate any of the criteria in paragraph (b)(1)(iii), paragraph (b)(1)(iv) or paragraph (b)(1)(xi) of this section, provided that any repurchase of the stock is required solely by virtue of ERISA for an instrument of an FDIC-supervised institution that is not publicly-traded. In addition, an instrument issued by an FDIC-supervised institution to its employee stock ownership plan does not violate the criterion in paragraph (b)(1)(x) of this section.

(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 § 324.22. 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 FDIC-supervised institution in a receivership, insolvency, liquidation, or similar proceeding;

(iii) The instrument is not secured, not covered by a guarantee of the FDIC-supervised institution or of an affiliate of the FDIC-supervised institution, 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; and

(v) If callable by its terms, the instrument may be called by the FDIC-supervised institution 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, a tax event, or if the issuing entity is required to register as an investment company pursuant to the Investment Company Act. In addition:

(A) The FDIC-supervised institution must receive prior approval from the FDIC to exercise a call option on the instrument.

(B) The FDIC-supervised institution 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 FDIC-supervised institution must either: Replace the instrument to be called with an equal amount of instruments that meet the criteria under paragraph (b) of this section or this paragraph (c);[9] or demonstrate to the satisfaction of the FDIC that following redemption, the FDIC-supervised institution will continue to hold capital commensurate with its risk.

(vi) Redemption or repurchase of the instrument requires prior approval from the FDIC.

(vii) The FDIC-supervised institution has full discretion at all times to cancel dividends or other 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 FDIC-supervised institution except in relation to any distributions to holders of common stock or instruments that are pari passu with the instrument.

(viii) Any cash dividend payments on the instrument are paid out of the FDIC-supervised institution's net income and retained earnings and are not subject to a limit imposed by the contractual terms governing the instrument. An FDIC-supervised institution must obtain prior FDIC approval for any dividend payment involving a reduction or retirement of capital stock in accordance with 12 CFR 303.241.

(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 FDIC-supervised institution's credit quality, but may have a dividend rate that is adjusted periodically independent of the FDIC-supervised institution'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 FDIC-supervised institution, or an entity that the FDIC-supervised institution 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 FDIC-supervised institution, such as provisions that require the FDIC-supervised institution 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 FDIC-supervised institution or by a subsidiary of the FDIC-supervised institution that is an operating entity, the only asset of the issuing entity is its investment in the

[8] *See* § 324.22 for specific adjustments related to AOCI.

[9] Replacement can be concurrent with redemption of existing additional tier 1 capital instruments.

capital of the FDIC-supervised institution, and proceeds must be immediately available without limitation to the FDIC-supervised institution or to the FDIC-supervised institution's top-tier holding company in a form which meets or exceeds all of the other criteria for additional tier 1 capital instruments.[10]

(xiv) For an advanced approaches FDIC-supervised institution, the governing agreement, offering circular, or prospectus of an instrument issued after the date upon which the FDIC-supervised institution becomes subject to this part as set forth in § 324.1(f) 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 FDIC-supervised institution enters into a receivership, insolvency, liquidation, or similar proceeding.

(2) Tier 1 minority interest, subject to the limitations in § 324.21(d), that is not included in the FDIC-supervised institution's common equity tier 1 capital.

(3) Any and all instruments that qualified as tier 1 capital under the FDIC's general risk-based capital rules under 12 CFR part 325, appendix A (state nonmember banks) and 12 CFR part 390, subpart Z (state savings associations) as then in effect, that were issued under the Small Business Jobs Act of 2010 [11] or prior to October 4, 2010, under the Emergency Economic Stabilization Act of 2008.[12]

(4) Notwithstanding the criteria for additional tier 1 capital instruments referenced above:

(i) An instrument issued by an FDIC-supervised institution and held in trust for the benefit of its employees as part of an employee stock ownership plan does not violate any of the criteria in paragraph (c)(1)(iii) of this section, provided that any repurchase is required solely by virtue of ERISA for an instrument of an FDIC-supervised institution that is not publicly-traded. In addition, an instrument issued by an FDIC-supervised institution to its employee stock ownership plan does not violate the criteria in paragraph (c)(1)(v) or paragraph (c)(1)(xi) of this section; and

(ii) An instrument with terms that provide that the instrument may be called earlier than five years upon the occurrence of a rating agency event does not violate the criterion in paragraph (c)(1)(v) of this section provided that the instrument was issued and included in an FDIC-supervised institution's tier 1 capital prior to the January 1, 2014, and that such instrument satisfies all other criteria under this paragraph (c).

(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 § 324.22. 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 FDIC-supervised institution;

(iii) The instrument is not secured, not covered by a guarantee of the FDIC-supervised institution or of an affiliate of the FDIC-supervised institution, 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 the 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 FDIC-supervised institution to redeem the instrument prior to maturity; [13] and

(v) The instrument, by its terms, may be called by the FDIC-supervised institution 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, a tax event, or if the issuing entity is required to register as an investment company pursuant to the Investment Company Act. In addition:

(A) The FDIC-supervised institution must receive the prior approval of the FDIC to exercise a call option on the instrument.

(B) The FDIC-supervised institution 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 FDIC-supervised institution must either: Replace any amount called with an equivalent amount of an instrument that meets the criteria for regulatory capital under this section; [14] or demonstrate to the satisfaction of the FDIC that following redemption, the FDIC-supervised institution 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 FDIC-supervised institution.

(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 FDIC-supervised institution's credit standing, but may have a dividend rate that is adjusted periodically independent of the FDIC-supervised institution's credit standing, in relation to general market interest rates or similar adjustments.

(viii) The FDIC-supervised institution, or an entity that the FDIC-supervised institution 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 FDIC-supervised institution or by a subsidiary of the FDIC-supervised institution that is an operating entity, the only asset of the issuing entity is its investment in the capital of the FDIC-supervised institution, and proceeds must be immediately available without limitation to the FDIC-supervised institution or the FDIC-supervised institution's top-tier holding company in a form that meets or exceeds all the other criteria for tier 2 capital instruments under this section.[15]

(x) Redemption of the instrument prior to maturity or repurchase requires the prior approval of the FDIC.

(xi) For an advanced approaches FDIC-supervised institution, the governing agreement, offering circular, or prospectus of an instrument issued after the date on which the advanced approaches FDIC-supervised institution becomes subject to this part under § 324.1(f) 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 FDIC-supervised institution enters into a receivership, insolvency, liquidation, or similar proceeding.

[10] See 77 FR 52856 (August 30, 2012).

[11] Public Law 111–240; 124 Stat. 2504 (2010).

[12] Public Law 110–343, 122 Stat. 3765 (2008).

[13] An instrument that by its terms automatically converts into a tier 1 capital instrument prior to five years after issuance complies with the five-year maturity requirement of this criterion.

[14] A FDIC-supervised institution may replace tier 2 capital instruments concurrent with the redemption of existing tier 2 capital instruments.

[15] A FDIC-supervised institution may disregard *de minimis* assets related to the operation of the issuing entity for purposes of this criterion.

(2) Total capital minority interest, subject to the limitations set forth in § 324.21(e), that is not included in the FDIC-supervised institution's tier 1 capital.

(3) ALLL up to 1.25 percent of the FDIC-supervised institution's standardized total risk-weighted assets not including any amount of the ALLL (and excluding in the case of a market risk FDIC-supervised institution, its standardized market risk-weighted assets).

(4) Any instrument that qualified as tier 2 capital under the FDIC's general risk-based capital rules under 12 CFR part 325, appendix A (state nonmember banks) and 12 CFR part 390, appendix Z (state saving associations) as then in effect, that were issued under the Small Business Jobs Act of 2010,[16] or prior to October 4, 2010, under the Emergency Economic Stabilization Act of 2008.[17]

(5) For an FDIC-supervised institution that makes an AOCI opt-out election (as defined in § 324.22(b)(2), 45 percent of pretax net unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures.

(6) Notwithstanding the criteria for tier 2 capital instruments referenced above, an instrument with terms that provide that the instrument may be called earlier than five years upon the occurrence of a rating agency event does not violate the criterion in paragraph (d)(1)(v) of this section provided that the instrument was issued and included in an FDIC-supervised institution's tier 1 or tier 2 capital prior to January 1, 2014, and that such instrument satisfies all other criteria under this paragraph (d).

(e) *FDIC approval of a capital element.* (1) An FDIC-supervised institution must receive FDIC 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 an FDIC-supervised institution's tier 1 capital or tier 2 capital prior to May 19, 2010, in accordance with the FDIC's risk-based capital rules that were effective as of that date and the underlying instrument may continue to be included under the criteria set forth in this section; or

(ii) Is equivalent, in terms of capital quality and ability to absorb losses with respect to all material terms, to a regulatory capital element the FDIC determined may be included in regulatory capital pursuant to paragraph (e)(3) of this section.

(2) When considering whether an FDIC-supervised institution may include a regulatory capital element in its common equity tier 1 capital, additional tier 1 capital, or tier 2 capital, the FDIC will consult with the OCC and the Federal Reserve.

(3) After determining that a regulatory capital element may be included in an FDIC-supervised institution's common equity tier 1 capital, additional tier 1 capital, or tier 2 capital, the FDIC 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.

§ 324.21 Minority interest.

(a) *Applicability.* For purposes of § 324.20, an FDIC-supervised institution is subject to the minority interest limitations in this section if:

(1) A consolidated subsidiary of the FDIC-supervised institution has issued regulatory capital that is not owned by the FDIC-supervised institution; and

(2) For each relevant regulatory capital ratio of the consolidated subsidiary, the ratio exceeds the sum of the subsidiary's minimum regulatory capital requirements plus its capital conservation buffer.

(b) *Difference in capital adequacy standards at the subsidiary level.* For purposes of the minority interest calculations in this section, if the consolidated subsidiary issuing the capital is not subject to capital adequacy standards similar to those of the FDIC-supervised institution, the FDIC-supervised institution must assume that the capital adequacy standards of the FDIC-supervised institution apply to the subsidiary.

(c) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the FDIC-supervised institution.* For each consolidated subsidiary of an FDIC-supervised institution, the amount of common equity tier 1 minority interest the FDIC-supervised institution 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 FDIC-supervised institution, 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, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under § 324.11 or equivalent standards established by the subsidiary's home country supervisor, or

(ii)(A) The standardized total risk-weighted assets of the FDIC-supervised institution that relate to the subsidiary multiplied by

(B) The common equity tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under § 324.11 or equivalent standards established by the subsidiary's home country supervisor.

(d) *Tier 1 minority interest includable in the tier 1 capital of the FDIC-supervised institution.* For each consolidated subsidiary of the FDIC-supervised institution, the amount of tier 1 minority interest the FDIC-supervised institution 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 FDIC-supervised institution 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, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under § 324.11 or equivalent standards established by the subsidiary's home country supervisor, or

(ii)(A) The standardized total risk-weighted assets of the FDIC-supervised institution that relate to the subsidiary multiplied by

(B) The tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under § 324.11 or equivalent standards established by the subsidiary's home country supervisor.

(e) *Total capital minority interest includable in the total capital of the FDIC-supervised institution.* For each consolidated subsidiary of the FDIC-supervised institution, the amount of total capital minority interest the FDIC-supervised institution 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 FDIC-supervised institution 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, or would be

[16] Public Law 111–240; 124 Stat. 2504 (2010)

[17] Public Law 110–343, 122 Stat. 3765 (2008)

required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under § 324.11 or equivalent standards established by the subsidiary's home country supervisor, or

(ii)(A) The standardized total risk-weighted assets of the FDIC-supervised institution that relate to the subsidiary multiplied by

(B) The total capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under § 324.11 or equivalent standards established by the subsidiary's home country supervisor.

§ 324.22 Regulatory capital adjustments and deductions.

(a) *Regulatory capital deductions from common equity tier 1 capital.* An FDIC-supervised institution must deduct from the sum of its common equity tier 1 capital elements the items set forth in this paragraph:

(1) Goodwill, net of associated deferred tax liabilities (DTLs) in accordance with paragraph (e) of this section, including goodwill that is embedded in the valuation of a significant investment in the capital of an unconsolidated financial institution in the form of common stock (and that is reflected in the consolidated financial statements of the FDIC-supervised institution), 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 net 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 in connection with a securitization exposure;

(5)(i) Any defined benefit pension fund net asset, net of any associated DTL in accordance with paragraph (e) of this section, held by a depository institution holding company. With the prior approval of the FDIC, this deduction is not required for any defined benefit pension fund net asset to the extent the depository institution holding company has unrestricted and unfettered access to the assets in that fund.

(ii) For an insured depository institution, no deduction is required.

(iii) An FDIC-supervised institution must risk weight any portion of the defined benefit pension fund asset that is not deducted under paragraphs (a)(5)(i) or (a)(5)(ii) of this section as if the FDIC-supervised institution directly holds a proportional ownership share of each exposure in the defined benefit pension fund.

(6) For an advanced approaches FDIC-supervised institution that has completed the parallel run process and that has received notification from the FDIC pursuant to § 324.121(d), the amount of expected credit loss that exceeds its eligible credit reserves; and

(7) With respect to a financial subsidiary, the aggregate amount of the FDIC-supervised institution's outstanding equity investment, including retained earnings, in its financial subsidiaries (as defined in 12 CFR 362.17). An FDIC-supervised institution must not consolidate the assets and liabilities of a financial subsidiary with those of the parent bank, and no other deduction is required under paragraph (c) of this section for investments in the capital instruments of financial subsidiaries.

(8) (i) A state savings association must deduct the aggregate amount of its outstanding investments, (both equity and debt) in, and extensions of credit to, subsidiaries that are not includable subsidiaries as defined in paragraph (a)(8)(iv) of this section and may not consolidate the assets and liabilities of the subsidiary with those of the state savings association. Any such deductions shall be from assets and common equity tier 1 capital, except as provided in paragraphs (a)(8)(ii) and (iii) of this section.

(ii) If a state savings association has any investments (both debt and equity) in, or extensions of credit to, 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 and extensions of credit from assets and, thus, common equity tier 1 capital in accordance with paragraph (a)(8)(i) of this section.

(iii) If a state savings association holds a subsidiary (either directly or through a subsidiary) that is itself a 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 (a)(8)(i) and (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 (a)(8)(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.

(9) *Identified losses.* An FDIC-supervised institution must deduct identified losses (to the extent that common equity tier 1 capital would have been reduced if the appropriate accounting entries to reflect the identified losses had been recorded on the FDIC-supervised institution's books).

(b) *Regulatory adjustments to common equity tier 1 capital.* (1) An FDIC-supervised institution must adjust the sum of common equity tier 1 capital elements pursuant to the requirements set forth in this paragraph. Such adjustments to common equity tier 1 capital must be made net of the associated deferred tax effects.

(i) An FDIC-supervised institution that makes an AOCI opt-out election (as defined in paragraph (b)(2) of this section) must make the adjustments required under § 324.22(b)(2)(i).

(ii) An FDIC-supervised institution that is an advanced approaches FDIC-supervised institution, and an FDIC-supervised institution that has not made an AOCI opt-out election (as defined in paragraph (b)(2) of this section), must deduct any accumulated net gains and add any accumulated net 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.

(iii) An FDIC-supervised institution must deduct any net gain and add any net loss related to changes in the fair value of liabilities that are due to changes in the FDIC-supervised institution's own credit risk. An advanced approaches FDIC-supervised institution also must deduct the credit spread premium over the risk free rate for derivatives that are liabilities.

(2) *AOCI opt-out election.* (i) An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution may make a one-time election to opt out of the requirement to include all components of AOCI (with the exception of accumulated net gains and losses on cash flow hedges related to items that are not fair-valued on the balance sheet) in common equity tier 1 capital (AOCI opt-out election). An FDIC-supervised institution that makes an AOCI opt-out election in accordance with this paragraph (b)(2) must adjust common equity tier 1 capital as follows:

(A) Subtract any net unrealized gains and add any net unrealized losses on available-for-sale securities;

(B) Subtract any net unrealized losses on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures;

(C) Subtract any accumulated net gains and add any accumulated net losses on cash flow hedges;

(D) Subtract any amounts recorded in AOCI attributed to defined benefit postretirement plans resulting from the initial and subsequent application of the relevant GAAP standards that pertain to such plans (excluding, at the FDIC-supervised institution's option, the portion relating to pension assets deducted under paragraph (a)(5) of this section); and

(E) Subtract any net unrealized gains and add any net unrealized losses on held-to-maturity securities that are included in AOCI.

(ii) An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution must make its AOCI opt-out election in its Call Report filed for the first reporting period after the date required for such FDIC-supervised institution to comply with subpart A of this part as set forth in § 324.1(f).

(iii) With respect to an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, each of its subsidiary banking organizations that is subject to regulatory capital requirements issued by the Federal Reserve, the FDIC, or the OCC [18] must elect the same option as the FDIC-supervised institution pursuant to this paragraph (b)(2).

(iv) With prior notice to the FDIC, an FDIC-supervised institution resulting from a merger, acquisition, or purchase transaction and that is not an advanced approaches FDIC-supervised institution may change its AOCI opt-out election in its Call Report filed for the first reporting period after the date required for such FDIC-supervised institution to comply with subpart A of this part as set forth in § 324.1(f) if:

(A) Other than as set forth in paragraph (b)(2)(iv)(C) of this section, the merger, acquisition, or purchase transaction involved the acquisition or purchase of all or substantially all of either the assets or voting stock of another banking organization that is subject to regulatory capital requirements issued by the Federal Reserve, the FDIC, or the OCC;

(B) Prior to the merger, acquisition, or purchase transaction, only one of the banking organizations involved in the transaction made an AOCI opt-out election under this section; and

(C) An FDIC-supervised institution may, with the prior approval of the FDIC, change its AOCI opt-out election under this paragraph in the case of a merger, acquisition, or purchase transaction that meets the requirements set forth at paragraph (b)(2)(iv)(B) of this section, but does not meet the requirements of paragraph (b)(2)(iv)(A). In making such a determination, the FDIC may consider the terms of the merger, acquisition, or purchase transaction, as well as the extent of any changes to the risk profile, complexity, and scope of operations of the FDIC-supervised institution resulting from the merger, acquisition, or purchase transaction.

(c) *Deductions from regulatory capital related to investments in capital instruments*—[19] (1) *Investment in the FDIC-supervised institution's own capital instruments.* An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own capital instruments as follows:

(i) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under § 324.20(b)(1);

(ii) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own additional tier 1 capital instruments from its additional tier 1 capital elements; and

(iii) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own tier 2 capital instruments from its tier 2 capital elements.

(2) *Corresponding deduction approach.* For purposes of subpart C of this part, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to reciprocal cross holdings (as described in paragraph (c)(3) of this section), non-significant investments in the capital of unconsolidated financial institutions (as described in paragraph (c)(4) of this section), and non-common stock significant investments in the capital of unconsolidated financial institutions (as described in paragraph (c)(5) of this section). Under the corresponding deduction approach, an FDIC-supervised institution must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the FDIC-supervised institution itself, as described in paragraphs (c)(2)(i)–(iii) of this section. If the FDIC-supervised institution does not have a sufficient amount of a specific component of capital to effect the required deduction, the shortfall must be deducted according to paragraph (f) of this section.

(i) If an investment is in the form of an instrument issued by a financial institution that is not a regulated financial institution, the FDIC-supervised institution 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 senior in liquidation only to common shareholders.

(ii) If an 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 § 324.20, the FDIC-supervised institution must treat the instrument as:

[18] These rules include the regulatory capital requirements set forth at 12 CFR part 3 (OCC); 12 CFR part 225 (Board); 12 CFR part 325, and 12 CFR part 390 (FDIC).

[19] The FDIC-supervised institution must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL includable in tier 2 capital under § 324.20(d)(3).

(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 supervisor of the financial institution.

(iii) If an investment is in the form of a non-qualifying capital instrument (as defined in § 324.300(c)), the FDIC-supervised institution must treat the instrument as:

(A) An additional tier 1 capital instrument if such instrument was included in the issuer's tier 1 capital prior to May 19, 2010; or

(B) A tier 2 capital instrument if such instrument was included in the issuer's tier 2 capital (but not includable in tier 1 capital) prior to May 19, 2010.

(3) *Reciprocal cross holdings in the capital of financial institutions.* An FDIC-supervised institution must deduct investments in the capital of other financial institutions it holds reciprocally, where such reciprocal cross holdings 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) An FDIC-supervised institution must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in § 324.2) that, in the aggregate, exceed 10 percent of the sum of the FDIC-supervised institution'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.[20] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, an FDIC-supervised institution that underwrites a failed underwriting, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph to the extent the investment is related to the failed underwriting.[21]

(ii) The amount to be deducted under this section from a specific capital component is equal to:

(A) The FDIC-supervised institution's non-significant investments in the capital of unconsolidated financial institutions exceeding the 10 percent threshold for non-significant investments, multiplied by

(B) The ratio of the FDIC-supervised institution's non-significant investments in the capital of unconsolidated financial institutions in the form of such capital component to the FDIC-supervised institution's total non-significant investments in unconsolidated financial institutions.

(5) *Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.* An FDIC-supervised institution 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.[22] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an FDIC-supervised institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph if such investment is related to such failed underwriting.

(d) *Items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds.* (1) An FDIC-supervised institution must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph that, individually, exceeds 10 percent of the sum of the FDIC-supervised institution'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).

(i) DTAs arising from temporary differences that the FDIC-supervised institution 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. An FDIC-supervised institution is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with § 324.22(e)) arising from timing differences that the FDIC-supervised institution could realize through net operating loss carrybacks. The FDIC-supervised institution must risk weight these assets at 100 percent. For an FDIC-supervised institution 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 FDIC-supervised institution could reasonably expect to have refunded by its parent holding company.

(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.[23] Significant investments in the capital of unconsolidated financial institutions in the form of common stock subject to the 10 percent common equity tier 1 capital deduction threshold may be reduced by any goodwill embedded in the valuation of such investments deducted by the FDIC-supervised institution pursuant to paragraph (a)(1) of this section. In addition, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an FDIC-supervised institution that underwrites

[20] With the prior written approval of the FDIC, for the period of time stipulated by the FDIC, a FDIC-supervised institution is not required to deduct a non-significant investment in the capital instrument of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the FDIC.

[21] 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 subparts D, E, or F of this part, as applicable.

[22] With prior written approval of the FDIC, for the period of time stipulated by the FDIC, a FDIC-supervised institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress which is not in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the FDIC.

[23] With the prior written approval of the FDIC, for the period of time stipulated by the FDIC, a FDIC-supervised institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the FDIC.

a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to this paragraph (d) if such investment is related to such failed underwriting.

(2) An FDIC-supervised institution must deduct from common equity tier 1 capital elements 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, exceed 17.65 percent of the sum of the FDIC-supervised institution'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). Any goodwill that has been deducted under paragraph (a)(1) of this section can be excluded from the significant investments in the capital of unconsolidated financial institutions in the form of common stock.[24]

(3) For purposes of calculating the amount of DTAs subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds, an FDIC-supervised institution may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under § paragraph (b) of this section. An FDIC-supervised institution that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An FDIC-supervised institution may change its exclusion preference only after obtaining the prior approval of the FDIC.

(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 this section is permitted, but not required, if the following conditions are met:

(i) The DTL is associated with the asset; and

(ii) The DTL would be extinguished if the associated asset becomes impaired or is derecognized under GAAP.

(2) A DTL may only be netted against a single asset.

(3) For purposes of calculating the amount of DTAs subject to the threshold deduction in paragraph (d) of this section, the amount of DTAs that arise from net operating loss and tax credit carryforwards, net of any related valuation allowances, and of DTAs arising from temporary differences that the FDIC-supervised institution could not realize through net operating loss carrybacks, net of any related valuation allowances, may be offset by DTLs (that have not been netted against assets subject to deduction pursuant to paragraph (e)(1) of this section) subject to the conditions set forth in this paragraph.

(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 FDIC-supervised institution nets against DTAs that arise from net operating loss and tax credit carryforwards, net of any related valuation allowances, and against DTAs arising from temporary differences that the FDIC-supervised institution 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 net 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 FDIC-supervised institution could not realize through net operating loss carrybacks (net of any related valuation allowances, but before any offsetting of DTLs), respectively.

(4) An FDIC-supervised institution may offset DTLs embedded in the carrying value of a leveraged lease portfolio acquired in a business combination that are not recognized under GAAP against DTAs that are subject to paragraph (d) of this section in accordance with this paragraph (e).

(5) An FDIC-supervised institution must net DTLs against assets subject to deduction under this section in a consistent manner from reporting period to reporting period. An FDIC-supervised institution may change its preference regarding the manner in which it nets DTLs against specific assets subject to deduction under § 324.22 only after obtaining the prior approval of the FDIC.

(f) *Insufficient amounts of a specific regulatory capital component to effect deductions.* Under the corresponding deduction approach, if an FDIC-supervised institution does not have a sufficient amount of a specific component of capital to effect the required deduction after completing the deductions required under paragraph (d) of this section, the FDIC-supervised institution must deduct the shortfall from the next higher (that is, more subordinated) component of regulatory capital.

(g) *Treatment of assets that are deducted.* An FDIC-supervised institution must exclude from standardized total risk-weighted assets and, as applicable, advanced approaches total risk-weighted assets any item deducted from regulatory capital under paragraphs (a), (c), and (d) of this section.

(h) *Net long position.* (1) For purposes of calculating an investment in the FDIC-supervised institution's own capital instrument and an investment in the capital of an unconsolidated financial institution under this section, the net long position is the gross long position in the underlying instrument determined in accordance with paragraph (h)(2) of this section, as adjusted to recognize a short position in the same instrument calculated in accordance with paragraph (h)(3) of this section.

(2) *Gross long position.* The gross long position is determined as follows:

(i) For an equity exposure that is held directly, the adjusted carrying value as that term is defined in § 324.51(b);

(ii) For an exposure that is held directly and is not an equity exposure or a securitization exposure, the exposure amount as that term is defined in § 324.2;

(iii) For an indirect exposure, the FDIC-supervised institution's carrying value of the investment in the investment fund, provided that, alternatively:

(A) An FDIC-supervised institution may, with the prior approval of the FDIC, use a conservative estimate of the amount of its investment in its own capital instruments or the capital of an unconsolidated financial institution held through a position in an index; or

(B) An FDIC-supervised institution may calculate the gross long position for the FDIC-supervised institution's own capital instruments or the capital of an unconsolidated financial institution by multiplying the FDIC-supervised institution's carrying value of its investment in the investment fund by either:

(*1*) The highest stated investment limit (in percent) for investments in the FDIC-supervised institution's own capital instruments or the capital of unconsolidated financial institutions as stated in the prospectus, partnership agreement, or similar contract defining

[24] The amount of the items in paragraph (d) 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 FDIC-supervised institution and assigned a 250 percent risk weight.

permissible investments of the investment fund or

(*2*) The investment fund's actual holdings of own capital instruments or the capital of unconsolidated financial institutions.

(iv) For a synthetic exposure, the amount of the FDIC-supervised institution's loss on the exposure if the reference capital instrument were to have a value of zero.

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument, the following criteria must be met:

(i) The maturity of the short position must match the maturity of the long position, or the short position has a residual maturity of at least one year (maturity requirement), or

(ii) For a position that is a trading asset or trading liability (whether on- or off-balance sheet) as reported on the FDIC-supervised institution's Call Report, if the FDIC-supervised institution has a contractual right or obligation to sell the long position at a specific point in time and the counterparty to the contract has an obligation to purchase the long position if the FDIC-supervised institution exercises its right to sell, this point in time may be treated as the maturity of the long position such that the maturity of the long position and short position are deemed to match for purposes of the maturity requirement, even if the maturity of the short position is less than one year; and

(iii) For an investment in the FDIC-supervised institution's own capital instrument under paragraph (c)(1) of this section or an investment in a capital of an unconsolidated financial institution under paragraphs (c)(4), (c)(5), and (d)(1)(iii) of this section:

(A) An FDIC-supervised institution may only net a short position against a long position in the FDIC-supervised institution's own capital instrument under paragraph (c)(1) if the short position involves no counterparty credit risk.

(B) A gross long position in an FDIC-supervised institution's own capital instrument or in a capital instrument of an unconsolidated financial institution resulting from a position in an index may be netted against a short position in the same index. Long and short positions in the same index without maturity dates are considered to have matching maturities.

(C) A short position in an index that is hedging a long cash or synthetic position in an FDIC-supervised institution's own capital instrument or in a capital instrument of an unconsolidated financial institution can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying instrument that is being hedged may be used to offset the long position if both the long position being hedged and the short position in the index are reported as a trading asset or trading liability (whether on- or off-balance sheet) on the FDIC-supervised institution's Call Report, and the hedge is deemed effective by the FDIC-supervised institution's internal control processes, which have not been found to be inadequate by the FDIC.

§§ 324.23 through 324.29 [Reserved]

Subpart D—Risk-Weighted Assets—Standardized Approach

§ 324.30 Applicability.

(a) This subpart sets forth methodologies for determining risk-weighted assets for purposes of the generally applicable risk-based capital requirements for all FDIC-supervised institutions.

(b) Notwithstanding paragraph (a) of this section, a market risk FDIC-supervised institution 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, OTC derivative positions, cleared transactions, and unsettled transactions).

Risk-Weighted Assets for General Credit Risk

§ 324.31 Mechanics for calculating risk-weighted assets for general credit risk.

(a) *General risk-weighting requirements.* An FDIC-supervised institution must apply risk weights to its exposures as follows:

(1) An FDIC-supervised institution 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 § 324.38;

(ii) A cleared transaction subject to § 324.35;

(iii) A default fund contribution subject to § 324.35;

(iv) A securitization exposure subject to §§ 324.41 through 324.45; or

(v) An equity exposure (other than an equity OTC derivative contract) subject to §§ 324.51 through 324.53.

(2) The FDIC-supervised institution 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.

§ 324.32 General risk weights.

(a) *Sovereign exposures*—(1) *Exposures to the U.S. government.* (i) Notwithstanding any other requirement in this subpart, an FDIC-supervised institution 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. This includes a deposit or other exposure, or the portion of a deposit or other exposure, that is insured or otherwise unconditionally guaranteed by the FDIC or National Credit Union Administration.

(ii) An FDIC-supervised institution 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. This includes an exposure, or the portion of an exposure, that is conditionally guaranteed by the FDIC or National Credit Union Administration.

(2) *Other sovereign exposures.* In accordance with Table 1 to § 324.32, an FDIC-supervised institution must assign a risk weight to a sovereign exposure based on the CRC applicable to the sovereign or the sovereign's OECD membership status if there is no CRC applicable to the sovereign.

TABLE 1 TO § 324.32—RISK WEIGHTS FOR SOVEREIGN EXPOSURES

		Risk Weight (in percent)
CRC	0–1	0
	2	20
	3	50
	4–6	100
	7	150
OECD Member with No CRC		0
Non-OECD Member with No CRC		100

TABLE 1 TO § 324.32—RISK WEIGHTS FOR SOVEREIGN EXPOSURES—Continued

Sovereign Default	150

(3) *Certain sovereign exposures.* Notwithstanding paragraph (a)(2) of this section, an FDIC-supervised institution may assign to a sovereign exposure a risk weight that is lower than the applicable risk weight in Table 1 to § 324.32 if:

(i) The exposure is denominated in the sovereign's currency;

(ii) The FDIC-supervised institution 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 home country supervisor allows FDIC-supervised institutions under its jurisdiction to assign to the same exposures to the sovereign.

(4) *Exposures to a non-OECD member sovereign with no CRC.* Except as provided in paragraphs (a)(3), (a)(5) and (a)(6) of this section, an FDIC-supervised institution must assign a 100 percent risk weight to an exposure to a sovereign if the sovereign does not have a CRC.

(5) *Exposures to an OECD member sovereign with no CRC.* Except as provided in paragraph (a)(6) of this section, an FDIC-supervised institution must assign a 0 percent risk weight to an exposure to a sovereign that is a member of the OECD if the sovereign does not have a CRC.

(6) *Sovereign default.* An FDIC-supervised institution must assign a 150 percent risk weight to a 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).* An FDIC-supervised institution 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 GSEs.* (1) An FDIC-supervised institution must assign a 20 percent risk weight to an exposure to a GSE other than an equity exposure or preferred stock.

(2) An FDIC-supervised institution 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.* An FDIC-supervised institution 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)(iv) and (d)(3) of this section, an FDIC-supervised institution must assign a risk weight to an exposure to a foreign bank, in accordance with Table 2 to § 324.32, based on the CRC that corresponds to the foreign bank's home country or the OECD membership status of the foreign bank's home country if there is no CRC applicable to the foreign bank's home country.

TABLE 2 TO § 324.32—RISK WEIGHTS FOR EXPOSURES TO FOREIGN BANKS

		Risk Weight (in percent)
CRC	0–1	20
	2	50
	3	100
	4–7	150
OECD Member with No CRC		20
Non-OECD Member with No CRC		100
Sovereign Default		150

(ii) An FDIC-supervised institution must assign a 20 percent risk weight to an exposure to a foreign bank whose home country is a member of the OECD and does not have a CRC.

(iii) An FDIC-supervised institution must assign a 100 percent risk weight to an exposure to a foreign bank whose home country is not a member of the OECD and 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.

(iv) An FDIC-supervised institution 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) An FDIC-supervised institution must assign a 100 percent risk weight to an exposure to a financial institution if the exposure may be included 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 § 324.22(d)(iii);

(iii) Deducted from regulatory capital under § 324.22; or

(iv) Subject to a 150 percent risk weight under paragraph (d)(2)(iv) or Table 2 of paragraph (d)(2) of this section.

(e) *Exposures to public sector entities (PSEs)*—(1) *Exposures to U.S. PSEs.* (i) An FDIC-supervised institution 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) An FDIC-supervised institution 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, an FDIC-supervised institution must assign a risk weight to a general obligation exposure to a PSE, in accordance with Table 3 to § 324.32, based on the CRC that corresponds to the PSE's home country or the OECD membership status of the PSE's home country if there is no CRC applicable to the PSE's home country.

(ii) Except as provided in paragraphs (e)(1) and (e)(3) of this section, an FDIC-supervised institution must assign a risk weight to a revenue obligation exposure to a PSE, in accordance with Table 4 to § 324.32, based on the CRC that corresponds to the PSE's home country; or the OECD membership status of the PSE's home country if there is no CRC applicable to the PSE's home country.

(3) An FDIC-supervised institution may assign a lower risk weight than would otherwise apply under Tables 3 or 4 to § 324.32 to an exposure to a foreign PSE if:

(i) The PSE's home country supervisor 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 to § 324.32.

TABLE 3 TO § 324.32—RISK WEIGHTS FOR NON-U.S. PSE GENERAL OBLIGATIONS

		Risk Weight (in percent)
CRC	0–1	20
	2	50
	3	100

TABLE 3 TO § 324.32—RISK WEIGHTS FOR NON-U.S. PSE GENERAL OBLIGATIONS—Continued

	4–7	150
OECD Member with No CRC		20
Non-OECD Member with No CRC		100
Sovereign Default		150

TABLE 4 TO § 324.32—RISK WEIGHTS FOR NON-U.S. PSE REVENUE OBLIGATIONS

		Risk Weight (in percent)
CRC	0–1	50
	2–3	50
	4–7	150
OECD Member with No CRC		50
Non-OECD Member with No CRC		100
Sovereign Default		150

(4) *Exposures to PSEs from an OECD member sovereign with no CRC.* (i) An FDIC-supervised institution must assign a 20 percent risk weight to a general obligation exposure to a PSE whose home country is an OECD member sovereign with no CRC.

(ii) An FDIC-supervised institution must assign a 50 percent risk weight to a revenue obligation exposure to a PSE whose home country is an OECD member sovereign with no CRC.

(5) *Exposures to PSEs whose home country is not an OECD member sovereign with no CRC.* An FDIC-supervised institution must assign a 100 percent risk weight to an exposure to a PSE whose home country is not a member of the OECD and does not have a CRC.

(6) An FDIC-supervised institution 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.* An FDIC-supervised institution must assign a 100 percent risk weight to all its corporate exposures.

(g) *Residential mortgage exposures.* (1) An FDIC-supervised institution must assign a 50 percent risk weight to a first-lien residential mortgage exposure that:

(i) Is secured by a property that is either owner-occupied or rented;

(ii) Is made in accordance with prudent underwriting standards, including standards relating to the loan amount as a percent of the appraised value of the property;

(iii) Is not 90 days or more past due or carried in nonaccrual status; and

(iv) Is not restructured or modified.

(2) An FDIC-supervised institution must assign a 100 percent risk weight to a first-lien residential mortgage exposure that does not meet the criteria in paragraph (g)(1) of this section, and to junior-lien residential mortgage exposures.

(3) For the purpose of this paragraph (g), if an FDIC-supervised institution holds the first-lien and junior-lien(s) residential mortgage exposures, and no other party holds an intervening lien, the FDIC-supervised institution must combine the exposures and treat them as a single first-lien residential mortgage exposure.

(4) A loan modified or restructured 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 construction loans.* An FDIC-supervised institution must assign a 50 percent risk weight to a pre-sold construction loan unless the purchase contract is cancelled, in which case an FDIC-supervised institution must assign a 100 percent risk weight.

(i) *Statutory multifamily mortgages.* An FDIC-supervised institution must assign a 50 percent risk weight to a statutory multifamily mortgage.

(j) *High-volatility commercial real estate (HVCRE) exposures.* An FDIC-supervised institution 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, an FDIC-supervised institution must determine a risk weight for an exposure that is 90 days or more past due or on nonaccrual according to the requirements set forth in this paragraph.

(1) An FDIC-supervised institution must assign a 150 percent risk weight to the portion of the exposure that is not guaranteed or that is unsecured.

(2) An FDIC-supervised institution may assign a risk weight to the guaranteed portion of a past due exposure based on the risk weight that applies under § 324.36 if the guarantee or credit derivative meets the requirements of that section.

(3) An FDIC-supervised institution may assign a risk weight to the collateralized portion of a past due exposure based on the risk weight that applies under § 324.37 if the collateral meets the requirements of that section.

(l) *Other assets.* (1) An FDIC-supervised institution must assign a zero percent risk weight to cash owned and held in all offices of the FDIC-supervised institution or in transit; to gold bullion held in the FDIC-supervised 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; 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) An FDIC-supervised institution must assign a 20 percent risk weight to cash items in the process of collection.

(3) An FDIC-supervised institution must assign a 100 percent risk weight to DTAs arising from temporary differences that the FDIC-supervised institution could realize through net operating loss carrybacks.

(4) An FDIC-supervised institution must assign a 250 percent risk weight to the portion of each of the following items that is not deducted from common equity tier 1 capital pursuant to § 324.22(d):

(i) MSAs; and

(ii) DTAs arising from temporary differences that the FDIC-supervised institution could not realize through net operating loss carrybacks.

(5) An FDIC-supervised institution must assign a 100 percent risk weight to all assets not specifically assigned a different risk weight under this subpart and that are not deducted from tier 1 or tier 2 capital pursuant to § 324.22.

(6) Notwithstanding the requirements of this section, an FDIC-supervised institution 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 FDIC-supervised institution 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.

§ 324.33 Off-balance sheet exposures.

(a) *General.* (1) An FDIC-supervised institution 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 an FDIC-supervised institution commits to provide a commitment, the FDIC-supervised institution may apply the lower of the two applicable CCFs.

(3) Where an FDIC-supervised institution provides a commitment structured as a syndication or participation, the FDIC-supervised institution is only required to calculate the exposure amount for its pro rata share of the commitment.

(4) Where an FDIC-supervised institution provides a commitment, enters into a repurchase agreement, or provides a credit-enhancing representation and warranty, and such commitment, repurchase agreement, or credit-enhancing representation and warranty is not a securitization exposure, the exposure amount shall be no greater than the maximum contractual amount of the commitment, repurchase agreement, or credit-enhancing representation and warranty, as applicable.

(b) *Credit conversion factors*—(1) *Zero percent CCF.* An FDIC-supervised institution must apply a zero percent CCF to the unused portion of a commitment that is unconditionally cancelable by the FDIC-supervised institution.

(2) *20 percent CCF.* An FDIC-supervised institution must apply a 20 percent CCF to the amount of:

(i) Commitments with an original maturity of one year or less that are not unconditionally cancelable by the FDIC-supervised institution; and

(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.* An FDIC-supervised institution must apply a 50 percent CCF to the amount of:

(i) Commitments with an original maturity of more than one year that are not unconditionally cancelable by the FDIC-supervised institution; and

(ii) Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit.

(4) *100 percent CCF.* An FDIC-supervised institution must apply a 100 percent CCF to the amount of 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 fair values of all positions the FDIC-supervised institution has sold subject to repurchase);

(iii) Credit-enhancing representations and warranties that are not securitization exposures;

(iv) Off-balance sheet securities lending transactions (the off-balance sheet component of which equals the sum of the current fair values of all positions the FDIC-supervised institution has lent under the transaction);

(v) Off-balance sheet securities borrowing transactions (the off-balance sheet component of which equals the sum of the current fair values of all non-cash positions the FDIC-supervised institution has posted as collateral under the transaction);

(vi) Financial standby letters of credit; and

(vii) Forward agreements.

§ 324.34 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 FDIC-supervised institution'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-fair 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-fair value, is calculated by multiplying the notional principal amount of the OTC derivative contract by the appropriate conversion factor in Table 1 to § 324.34.

(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 1 to § 324.34, the PFE must be calculated using the appropriate ''other'' conversion factor.

(D) An FDIC-supervised institution 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 1 TO § 324.34—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 fair 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] An FDIC-supervised institution 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. An FDIC-supervised institution 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-fair 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 × Agross) + (0.6 × NGR × Agross), where:

(A) Agross equals 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) equals 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) An FDIC-supervised institution 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 § 324.37(b).

(2) As an alternative to the simple approach, an FDIC-supervised institution 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-fair value on a daily basis and subject to a daily margin maintenance requirement by applying a risk weight to the exposure as if it were uncollateralized and adjusting the exposure amount calculated under paragraph (a)(1) or (2) of this section using the collateral haircut approach in § 324.37(c). The FDIC-supervised institution must substitute the exposure amount calculated under paragraph (a)(1) or (2) of this section for **Σ**E in the equation in § 324.37(c)(2).

(c) *Counterparty credit risk for OTC credit derivatives*—(1) *Protection purchasers.* An FDIC-supervised institution that purchases an OTC credit derivative that is recognized under § 324.36 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 § 324.32 provided that the FDIC-supervised institution does so consistently for all such credit derivatives. The FDIC-supervised institution 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) An FDIC-supervised institution 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 FDIC-supervised institution is not required to compute a counterparty credit risk capital requirement for the OTC credit derivative under § 324.32, provided that this treatment is applied consistently for all such OTC credit derivatives. The FDIC-supervised institution 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 this paragraph (c)(2) apply to all relevant counterparties for risk-based capital purposes unless the FDIC-supervised institution is treating the OTC credit derivative as a covered position under subpart F, in which case the FDIC-supervised institution must compute a supplemental counterparty credit risk capital requirement under this section.

(d) *Counterparty credit risk for OTC equity derivatives.* (1) An FDIC-supervised institution 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 §§ 324.51 through 324.53 (unless the FDIC-supervised institution is treating the contract as a covered position under subpart F of this part).

(2) In addition, the FDIC-supervised institution must also calculate a risk-based capital requirement for the counterparty credit risk of an OTC equity derivative contract under this section if the FDIC-supervised institution is treating the contract as a covered position under subpart F of this part.

(3) If the FDIC-supervised institution risk weights the contract under the Simple Risk-Weight Approach (SRWA) in § 324.52, the FDIC-supervised institution 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, an FDIC-supervised institution using the SRWA must either include all or exclude all of the contracts from any measure used to determine counterparty credit risk exposure.

(e) *Clearing member FDIC-supervised institution's exposure amount.* A clearing member FDIC-supervised institution's exposure amount for an OTC derivative contract or netting set of OTC derivative contracts where the FDIC-supervised institution is either acting as a financial intermediary and enters into an offsetting transaction with a QCCP or where the FDIC-supervised institution provides a guarantee to the QCCP on the performance of the client equals the exposure amount calculated according to paragraph (a)(1) or (2) of this section multiplied by the scaling factor 0.71. If the FDIC-supervised institution determines that a longer period is appropriate, the FDIC-supervised institution must use a larger scaling factor to adjust for a longer holding period as follows:

$$\text{Scaling factor} = \sqrt{\frac{H}{10}}$$

where H equals the holding period greater than five days. Additionally, the FDIC may require the FDIC-supervised institution to set a longer holding period if the FDIC determines that a longer period is appropriate due to the nature, structure, or characteristics of the transaction or is commensurate with the risks associated with the transaction.

§ 324.35 Cleared transactions.

(a) *General requirements*—(1) *Clearing member clients.* An FDIC-supervised institution 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) *Clearing members.* An FDIC-supervised institution that is a clearing member must use the methodologies described in paragraph (c) of this section to calculate its risk-weighted assets for a cleared transaction and paragraph (d) of this section to calculate its risk-weighted assets for its default fund contribution to a CCP.

(b) *Clearing member client FDIC-supervised institutions*—(1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, an FDIC-supervised institution 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 FDIC-supervised institution'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 either a derivative contract or a 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 § 324.34, plus

(B) The fair value of the collateral posted by the clearing member client FDIC-supervised institution and held by the CCP, clearing member, or custodian in a manner that is not bankruptcy remote.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, the trade exposure amount equals:

(A) The exposure amount for the repo-style transaction calculated using the methodologies under § 324.37(c), plus

(B) The fair value of the collateral posted by the clearing member client FDIC-supervised institution and held by the CCP, clearing member, or custodian 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 FDIC-supervised institution must apply a risk weight of:

(A) 2 percent if the collateral posted by the FDIC-supervised institution to the QCCP or clearing member is subject to an arrangement that prevents any losses to the clearing member client FDIC-supervised institution 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 FDIC-supervised institution 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 an event of default or from liquidation, insolvency, or receivership proceedings) 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 if the requirements of § 324.35(b)(3)(A) are not met.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client FDIC-supervised institution must apply the risk weight appropriate for the CCP according to § 324.32.

(4) *Collateral.* (i) Notwithstanding any other requirements in this section, collateral posted by a clearing member client FDIC-supervised institution that is held by a custodian (in its capacity as custodian) in a manner that is bankruptcy remote from the CCP, the custodian, clearing member and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

(ii) A clearing member client FDIC-supervised institution must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or custodian in connection with a cleared transaction in accordance with the requirements under § 324.32.

(c) *Clearing member FDIC-supervised institutions*—(1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, a clearing member FDIC-supervised institution 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 FDIC-supervised institution'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 FDIC-supervised institution must calculate its trade exposure amount for a cleared transaction as follows:

(i) For a cleared transaction that is either a derivative contract or a netting set of derivative contracts, 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 § 324.34, plus

(B) The fair value of the collateral posted by the clearing member FDIC-supervised institution and held by the CCP in a manner that is not bankruptcy remote.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals:

(A) The exposure amount for repo-style transactions calculated using methodologies under § 324.37(c), plus

(B) The fair value of the collateral posted by the clearing member FDIC-supervised institution and held by the CCP in a manner that is not bankruptcy remote.

(3) *Cleared transaction risk weight.* (i) A clearing member FDIC-supervised institution must apply a risk weight of 2 percent to the trade exposure amount for a cleared transaction with a QCCP.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member FDIC-supervised institution must apply the risk weight appropriate for the CCP according to § 324.32.

(4) *Collateral.* (i) Notwithstanding any other requirement in this section, collateral posted by a clearing member FDIC-supervised institution 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 clearing member FDIC-supervised institution 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 § 324.32.

(d) *Default fund contributions*—(1) *General requirement.* A clearing member FDIC-supervised institution 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 FDIC-supervised institution or the FDIC, 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 FDIC-supervised institution'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, or an amount determined by the FDIC, based on factors such as size, structure and membership characteristics of the CCP and riskiness of its transactions, in cases where such default fund contributions may be unlimited.

(3) *Risk-weighted asset amount for default fund contributions to QCCP*s. A clearing member FDIC-supervised institution'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 the methodology set forth in paragraphs (d)(3)(i) through (iii) of this section (Method 1), multiplied by

1,250 percent or in paragraph (d)(3)(iv) of this section (Method 2).

(i) *Method 1.* 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) $EBRM_i$ equals the exposure amount for each transaction cleared through the QCCP by clearing member i, calculated in accordance with § 324.34 for OTC derivative contracts and § 324.37(c)(2) for repo-style transactions, provided that:

(*1*) For purposes of this section, in calculating the exposure amount the FDIC-supervised institution may replace the formula provided in § 324.34(a)(2)(ii) with the following: Anet = (0.15 × Agross) + (0.85 × NGR × Agross); and

(*2*) For option derivative contracts that are cleared transactions, the PFE described in § 324.34(a)(1)(ii) must be adjusted by multiplying the notional principal amount of the derivative contract by the appropriate conversion factor in Table 1 to § 324.34 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.

(*3*) For repo-style transactions, when applying § 324.37(c)(2), the FDIC-supervised institution must use the methodology in § 324.37(c)(3);

(B) VM_i equals 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 has actually received from clearing member i;

(C) IM_i equals the collateral posted as initial margin by clearing member i to the QCCP;

(D) DF_i equals 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;

(E) RW equals 20 percent, except when the FDIC has determined that a higher risk weight is more appropriate based on the specific characteristics of the QCCP and its clearing members; and

(F) Where a QCCP has provided its K_{CCP}, an FDIC-supervised institution must rely on such disclosed figure instead of calculating K_{CCP} under this paragraph, unless the FDIC-supervised institution determines that a more conservative figure is appropriate based on the nature, structure, or characteristics of the QCCP.

(ii) For an FDIC-supervised institution that is a clearing member of a QCCP with a default fund supported by funded commitments, K_{CM} equals:

$$K_{CM_i} = \left(1 + \beta \cdot \frac{N}{N-2}\right) \cdot \frac{DF_i}{DF_{CM}} \cdot K^*_{CM}$$

$$K^*_{CM} = \begin{cases} c_2 \cdot \mu \cdot \left(K_{CCP} - DF'\right) + c_2 \cdot DF'_{CM} & if \quad DF' < K_{CCP} \quad (i) \\ c_2 \cdot (K_{CCP} - DF_{CCP}) + c_1 \cdot \left(DF' - K_{CCP}\right) & if \quad DF_{CCP} < K_{CCP} \le DF' \quad (ii) \\ c_1 \cdot DF'_{CM} & if \quad K_{CCP} \le DF_{CCP} \quad (iii) \end{cases}$$

Where

(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 § 324.34(a)(2)(ii) and for repo-style transactions, A_{Net} means the exposure amount as defined in § 324.37(c)(2) using the methodology in § 324.37(c)(3);

(B) N equals the number of clearing members in the QCCP;

(C) DF_{CCP} equals 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} equals 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 1.6 percent and 0.16 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 an FDIC-supervised institution 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 equals the FDIC-supervised institution's unfunded commitment to the default fund;

(*2*) DF_{CM} equals 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 an FDIC-supervised institution 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 FDIC-supervised institution's initial margin posted to the QCCP;

(*2*) IM_{CM} equals the total of initial margin posted to the QCCP; and

(*3*) K^*_{CM} as defined in paragraph (d)(3)(ii) of this section.

(iv) *Method 2.* A clearing member FDIC-supervised institution's risk-weighted asset amount for its default fund contribution to a QCCP, RWA_{DF}, equals:

RWA_{DF} = Min {12.5 * DF; 0.18 * TE}

Where

(A) TE equals the FDIC-supervised institution's trade exposure amount to the QCCP, calculated according to § 324.35(c)(2);

(B) DF equals the funded portion of the FDIC-supervised institution's default fund contribution to the QCCP.

(4) *Total risk-weighted assets for default fund contributions.* Total risk-weighted assets for default fund contributions is the sum of a clearing member FDIC-supervised institution's risk-weighted assets for all of its default fund contributions to all CCPs of which the FDIC-supervised institution is a clearing member.

§ 324.36 Guarantees and credit derivatives: Substitution treatment.

(a) *Scope.* (1) *General.* An FDIC-supervised institution 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 FDIC-supervised institution 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 §§ 324.41 through 324.45.

(4) If multiple eligible guarantees or eligible credit derivatives cover a single exposure described in this section, an FDIC-supervised institution 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, an FDIC-supervised institution 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) An FDIC-supervised institution may only recognize the credit risk mitigation benefits of eligible guarantees and eligible credit derivatives.

(2) An FDIC-supervised institution 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, an FDIC-supervised institution 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 § 324.32 for the risk weight assigned to the exposure.

(2) *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 exposure amount of the hedged exposure, the FDIC-supervised institution 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 FDIC-supervised institution may calculate the risk-weighted asset amount for the protected exposure under § 324.32, where the applicable risk weight is the risk weight applicable to the guarantor or credit derivative protection provider.

(ii) The FDIC-supervised institution must calculate the risk-weighted asset amount for the unprotected exposure under § 324.32, where the applicable risk weight is that of the unprotected portion of the hedged exposure.

(iii) 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) An FDIC-supervised institution 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 FDIC-supervised institution (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 FDIC-supervised institution (protection purchaser), but the terms of the arrangement at origination of the credit risk mitigant contain a positive incentive for the FDIC-supervised institution 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 FDIC-supervised institution 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 equals effective notional amount of the credit risk mitigant, adjusted for maturity mismatch;

(ii) E equals effective notional amount of the credit risk mitigant;

(iii) t equals the lesser of T or the residual maturity of the credit risk mitigant, expressed in years; and

(iv) T equals 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 an FDIC-supervised institution 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 FDIC-supervised institution must apply the following adjustment to reduce the effective notional amount of the credit derivative: $Pr = Pm \times 0.60$, where:

(1) Pr equals effective notional amount of the credit risk mitigant, adjusted for lack of restructuring event (and maturity mismatch, if applicable); and

(2) Pm equals effective notional amount of the credit risk mitigant (adjusted for maturity mismatch, if applicable).

(f) *Currency mismatch adjustment.* (1) If an FDIC-supervised institution 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 FDIC-supervised institution 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 equals effective notional amount of the credit risk mitigant, adjusted for currency mismatch (and maturity mismatch and lack of restructuring event, if applicable);

(ii) Pr equals effective notional amount of the credit risk mitigant (adjusted for maturity mismatch and lack of restructuring event, if applicable); and

(iii) H_{FX} equals haircut appropriate for the currency mismatch between the credit risk mitigant and the hedged exposure.

(2) An FDIC-supervised institution 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. An FDIC-supervised institution 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 § 324.37(c)(4).

(3) An FDIC-supervised institution must adjust H_{FX} calculated in paragraph (f)(2) of this section upward if the FDIC-supervised institution revalues the guarantee or credit derivative less frequently than once every 10 business days using the following square root of time formula:

$$H_{FX} = 8\% \sqrt{\frac{T_M}{10}}$$, where T_M equals the greater of 10 or the number of days between revaluation.

§ 324.37 Collateralized transactions.

(a) *General.* (1) To recognize the risk-mitigating effects of financial collateral, an FDIC-supervised institution may use:

(i) The simple approach in paragraph (b) of this section for any exposure; or

(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) An FDIC-supervised institution 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) An FDIC-supervised institution may recognize the credit risk mitigation benefits of financial collateral that secures any exposure.

(ii) To qualify for the simple approach, the financial 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) An FDIC-supervised institution may apply a risk weight to the portion of an exposure that is secured by the fair value of financial collateral (that meets the requirements of paragraph (b)(1) of this section) based on the risk weight assigned to the collateral under § 324.32. For repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions, the collateral is the instruments, gold, and cash the FDIC-supervised institution 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) An FDIC-supervised institution must apply a risk weight to the unsecured portion of the exposure based on the risk weight applicable 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) An FDIC-supervised institution 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) An FDIC-supervised institution 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 § 324.32.

(iii) An FDIC-supervised institution 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 § 324.32, and the FDIC-supervised institution has discounted the fair value of the collateral by 20 percent.

(c) *Collateral haircut approach*—(1) *General.* An FDIC-supervised institution 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 FDIC-supervised institution's VaR-based measure under subpart F of this part by using the collateral haircut approach in this section. An FDIC-supervised

institution may use the standard supervisory haircuts in paragraph (c)(3) of this section or, with prior written approval of the FDIC, its own estimates of haircuts according to paragraph (c)(4) of this section.

(2) *Exposure amount equation.* An FDIC-supervised institution 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, [(**Σ**E − **Σ**C) + **Σ**(Es × Hs) + **Σ**(Efx × Hfx)]}, where:

(i)(A) For eligible margin loans and repo-style transactions and netting sets thereof, **Σ**E equals the value of the exposure (the sum of the current fair values of all instruments, gold, and cash the FDIC-supervised institution 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, **Σ**E equals the exposure amount of the OTC derivative contract (or netting set) calculated under § 324.34 (a)(1) or (2).

(ii) **Σ**C equals the value of the collateral (the sum of the current fair values of all instruments, gold and cash the FDIC-supervised institution 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 fair values of the instrument or gold the FDIC-supervised institution has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current fair values of that same instrument or gold the FDIC-supervised institution 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 fair values of any instruments or cash in the currency the FDIC-supervised institution has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current fair values of any instruments or cash in the currency the FDIC-supervised institution 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) An FDIC-supervised institution must use the haircuts for market price volatility (Hs) provided in Table 1 to § 324.37, as adjusted in certain circumstances in accordance with the requirements of paragraphs (c)(3)(iii) and (iv) of this section.

TABLE 1 TO § 324.37—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS[1]

Residual maturity	Haircut (in percent) assigned based on:						Investment grade securitization exposures (in percent)
	Sovereign issuers risk weight under § 324.32 (in percent)[2]			Non-sovereign issuers risk weight under § 324.32 (in percent)			
	Zero	20 or 50	100	20			
Less than or equal to 1 year	0.5	1.0	15.0	1.0	2.0	4.0	4.0
Greater than 1 year and less than or equal to 5 years	2.0	3.0	15.0	4.0	6.0	8.0	12.0
Greater than 5 years	4.0	6.0	15.0	8.0	12.0	16.0	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						
Other exposure types	25.0						

[1] The market price volatility haircuts in Table 1 to § 324.37 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, an FDIC-supervised institution 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, an FDIC-supervised institution 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, an FDIC-supervised institution 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 § 324.35. If a netting set contains one or more trades involving illiquid collateral or an OTC derivative that cannot be easily replaced, an FDIC-supervised institution 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 FDIC-supervised institution 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. An FDIC-

supervised institution 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 an FDIC-supervised institution has lent, sold subject to repurchase, or posted as collateral does not meet the definition of financial collateral, the FDIC-supervised institution 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 FDIC, an FDIC-supervised institution may calculate haircuts (Hs and Hfx) using its own internal estimates of the volatilities of market prices and foreign exchange rates:

(i) To receive FDIC approval to use its own internal estimates, an FDIC-supervised institution must satisfy the following minimum standards:

(A) An FDIC-supervised institution 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 an FDIC-supervised institution 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 FDIC-supervised institution 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, an FDIC-supervised institution 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 § 324.35. If a netting set contains one or more trades involving illiquid collateral or an OTC derivative that cannot be easily replaced, an FDIC-supervised institution 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 FDIC-supervised institution 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) An FDIC-supervised institution 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) An FDIC-supervised institution must have policies and procedures that describe how it determines the period of significant financial stress used to calculate the FDIC-supervised institution's own internal estimates for haircuts under this section and must be able to provide empirical support for the period used. The FDIC-supervised institution must obtain the prior approval of the FDIC for, and notify the FDIC if the FDIC-supervised institution makes any material changes to, these policies and procedures.

(F) Nothing in this section prevents the FDIC from requiring an FDIC-supervised institution to use a different period of significant financial stress in the calculation of own internal estimates for haircuts.

(G) An FDIC-supervised institution 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, an FDIC-supervised institution may calculate haircuts for categories of securities. For a category of securities, the FDIC-supervised institution 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 FDIC-supervised institution has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. In determining relevant categories, the FDIC-supervised institution 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, an FDIC-supervised institution 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 FDIC-supervised institution 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) An FDIC-supervised institution'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

§ 324.38 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) 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 an FDIC-supervised institution 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 FDIC-supervised institution 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 § 324.34).

(c) *System-wide failures.* In the case of a system-wide failure of a settlement, clearing system or central counterparty, the FDIC 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.* An FDIC-supervised institution must hold risk-based capital against any DvP or PvP transaction with a normal settlement period if the FDIC-supervised institution's counterparty has not made delivery or payment within five business days after the settlement date. The FDIC-supervised institution must determine its risk-weighted asset amount for such a transaction by multiplying the positive current exposure of the transaction for the FDIC-supervised institution by the appropriate risk weight in Table 1 to § 324.38.

TABLE 1 TO § 324.38—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) An FDIC-supervised institution must hold risk-based capital against any non-DvP/non-PvP transaction with a normal settlement period if the FDIC-supervised institution 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 FDIC-supervised institution must continue to hold risk-based capital against the transaction until the FDIC-supervised institution has received its corresponding deliverables.

(2) From the business day after the FDIC-supervised institution has made its delivery until five business days after the counterparty delivery is due, the FDIC-supervised institution must calculate the risk-weighted asset amount for the transaction by treating the current fair value of the deliverables owed to the FDIC-supervised institution as an exposure to the counterparty and using the applicable counterparty risk weight under § 324.32.

(3) If the FDIC-supervised institution has not received its deliverables by the fifth business day after counterparty delivery was due, the FDIC-supervised institution must assign a 1,250 percent risk weight to the current fair value of the deliverables owed to the FDIC-supervised institution.

(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.

§§ 324.39 through 324.40 [Reserved]

Risk-Weighted Assets for Securitization Exposures

§ 324.41 Operational requirements for securitization exposures.

(a) *Operational criteria for traditional securitizations.* An FDIC-supervised institution 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. An FDIC-supervised institution that meets these conditions must hold risk-based capital against any credit risk it retains in connection with the securitization. An FDIC-supervised institution 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 FDIC-supervised institution's consolidated balance sheet under GAAP;

(2) The FDIC-supervised institution has transferred to one or more 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, an FDIC-supervised institution 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. An FDIC-supervised institution that meets these conditions must hold risk-based capital against any credit risk of the exposures it retains in connection with the synthetic securitization. An FDIC-supervised institution 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:

(i) Financial collateral;

(ii) A guarantee that meets all criteria as set forth in the definition of ''eligible guarantee'' in § 324.2, except for the criteria in paragraph (3) of that definition; or

(iii) A credit derivative that meets all criteria as set forth in the definition of ''eligible credit derivative'' in § 324.2, except for the criteria in paragraph (3) of the definition of ''eligible guarantee'' in § 324.2.

(2) The FDIC-supervised institution 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 FDIC-supervised institution to alter or replace the underlying exposures to improve the credit quality of the underlying exposures;

(iii) Increase the FDIC-supervised institution'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 FDIC-supervised institution 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 FDIC-supervised institution after the inception of the securitization;

(3) The FDIC-supervised institution 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 § 324.42(h), if an FDIC-supervised institution is unable to demonstrate to the satisfaction of the FDIC a comprehensive understanding of the features of a securitization exposure that would materially affect the performance of the exposure, the FDIC-supervised institution must assign the securitization exposure a risk weight of 1,250 percent. The FDIC-supervised institution's analysis must be commensurate with the complexity of the securitization exposure and the materiality of the exposure in relation to its capital.

(2) An FDIC-supervised institution must demonstrate its comprehensive understanding of a securitization exposure under paragraph (c)(1) of this section, for each securitization exposure by:

(i) Conducting an analysis of the risk characteristics of a securitization exposure prior to acquiring the exposure, and documenting 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, fair 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) 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; and

(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.

§ 324.42 Risk-weighted assets for securitization exposures.

(a) *Securitization risk weight approaches.* Except as provided elsewhere in this section or in § 324.41:

(1) An FDIC-supervised institution must 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 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, an FDIC-supervised institution may assign a risk weight to the securitization exposure using the simplified supervisory formula approach (SSFA) in accordance with §§ 324.43(a) through 324.43(d) and subject to the limitation under paragraph (e) of this section. Alternatively, an FDIC-supervised institution that is not subject to subpart F of this part may assign a risk weight to the securitization exposure using the gross-up approach in accordance with § 324.43(e), provided, however, that such FDIC-supervised institution must apply either the SSFA or the gross-up approach consistently across all of its securitization exposures, except as provided in paragraphs (a)(1), (a)(3), and (a)(4) of this section.

(3) If a securitization exposure does not require deduction under paragraph (a)(1) of this section and the FDIC-supervised institution cannot, or chooses not to apply the SSFA or the gross-up approach to the exposure, the FDIC-supervised institution must assign a risk weight to the exposure as described in § 324.44.

(4) If a securitization exposure is a derivative contract (other than protection provided by an FDIC-supervised institution in the form of 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), an FDIC-supervised institution 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.* An FDIC-supervised institution's total risk-weighted assets for securitization exposures equals the sum of the risk-weighted asset amount for securitization exposures that the FDIC-supervised institution risk weights under §§ 324.41(c), 324.42(a)(1), and 324.43, 324.44, or 324.45, and paragraphs (e) through (j) of this section, as applicable.

(c) *Exposure amount of a securitization exposure*—(1) *On-balance sheet securitization exposures.* The exposure amount of an on-balance sheet securitization exposure (excluding an available-for-sale or held-to-maturity security where the FDIC-supervised institution has made an AOCI opt-out election under § 324.22(b)(2), a repo-style transaction, eligible margin loan, OTC derivative contract, or cleared transaction) is equal to the carrying value of the exposure.

(2) *On-balance sheet securitization exposures held by an FDIC-supervised institution that has made an AOCI opt-out election.* The exposure amount of an on-balance sheet securitization exposure that is an available-for-sale or held-to-maturity security held by an FDIC-supervised institution that has made an AOCI opt-out election under § 324.22(b)(2) is the FDIC-supervised institution's carrying value (including net accrued but unpaid interest and fees), less any net unrealized gains on the exposure and plus any net unrealized losses on the exposure.

(3) *Off-balance sheet securitization exposures.* (i) Except as provided in paragraph (j) of this section, the exposure amount of an off-balance sheet securitization exposure that is not a repo-style transaction, eligible margin loan, cleared transaction (other than a credit derivative), or an OTC derivative contract (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 FDIC-supervised institution 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) An FDIC-supervised institution 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) An FDIC-supervised institution 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.

(4) *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 § 324.34 or § 324.37, as applicable.

(d) *Overlapping exposures.* If an FDIC-supervised institution has multiple securitization exposures that provide duplicative coverage to the underlying exposures of a securitization (such as when an FDIC-supervised institution provides a program-wide credit enhancement and multiple pool-specific liquidity facilities to an ABCP program), the FDIC-supervised institution is not required to hold duplicative risk-based capital against the overlapping position. Instead, the FDIC-supervised institution 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 an FDIC-supervised institution provides support to a securitization in excess of the FDIC-supervised institution's contractual obligation to provide credit support to the securitization (implicit support):

(1) The FDIC-supervised institution 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 FDIC-supervised institution must disclose publicly:

(i) That it has provided implicit support to the securitization; and

(ii) The risk-based capital impact to the FDIC-supervised institution of providing such implicit support.

(f) *Undrawn portion of a servicer cash advance facility.* (1) Notwithstanding any other provision of this subpart, an FDIC-supervised institution that is a servicer under an eligible servicer cash advance facility is not required to hold risk-based capital against potential future cash advance payments that it may be required to provide under the contract governing the facility.

(2) For an FDIC-supervised institution that acts as a servicer, the exposure amount for a servicer cash advance facility that is not an eligible servicer cash advance facility is equal to the amount of all potential future cash advance payments that the FDIC-supervised institution may be contractually required to provide during the subsequent 12 month period under the contract governing the facility.

(g) *Interest-only mortgage-backed securities.* Regardless of any other provisions in 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 provision of this subpart, an FDIC-supervised institution that has transferred small-business loans and leases on personal property (small-business obligations) with recourse 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 FDIC-supervised institution establishes and maintains, pursuant to GAAP, a non-capital reserve sufficient to meet the FDIC-supervised institution'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 (15 U.S.C. 632 et seq.).

(iv) The FDIC-supervised institution is well capitalized, as defined in subpart H of this part. For purposes of determining whether an FDIC-supervised institution is well capitalized for purposes of this paragraph, the FDIC-supervised institution'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 an FDIC-supervised institution on transfers of small-business obligations receiving the capital treatment specified in paragraph (h)(1) of this section cannot exceed 15 percent of the FDIC-supervised institution's total capital.

(3) If an FDIC-supervised institution ceases to be well capitalized under subpart H of this part 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 FDIC-supervised institution was well capitalized and did not exceed the capital limit.

(4) The risk-based capital ratios of the FDIC-supervised institution 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 an FDIC-supervised institution is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under subpart H of this part; and

(ii) Reclassifying a well-capitalized FDIC-supervised institution to adequately capitalized and requiring an adequately capitalized FDIC-supervised institution to comply with certain mandatory or discretionary supervisory actions as if the FDIC-supervised institution were in the next lower prompt-corrective-action category.

(i) *Nth-to-default credit derivatives*—(1) *Protection provider.* An FDIC-supervised institution may assign a risk weight using the SSFA in § 324.43 to an nth-to-default credit derivative in accordance with this paragraph. An FDIC-supervised institution must determine its exposure in the nth-to-default credit derivative as the largest notional 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 FDIC-supervised institution 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 FDIC-supervised institution's exposure to the total notional amount of all underlying exposures. The ratio is expressed as a decimal value between zero and one. In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the FDIC-supervised institution'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 FDIC-supervised institution's exposure.

(ii) The detachment point (parameter D) equals the sum of parameter A plus the ratio of the notional amount of the FDIC-supervised institution's exposure

in the nth-to-default credit derivative to the total notional amount of all underlying exposures. The ratio is expressed as a decimal value between zero and one.

(3) An FDIC-supervised institution 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.* An FDIC-supervised institution that obtains credit protection on a group of underlying exposures through a first-to-default credit derivative that meets the rules of recognition of § 324.36(b) must determine its risk-based capital requirement for the underlying exposures as if the FDIC-supervised institution synthetically securitized the underlying exposure with the smallest risk-weighted asset amount and had obtained no credit risk mitigant on the other underlying exposures. An FDIC-supervised institution must calculate a risk-based capital requirement for counterparty credit risk according to § 324.34 for a first-to-default credit derivative that does not meet the rules of recognition of § 324.36(b).

(ii) *Second-or-subsequent-to-default credit derivatives.* (A) An FDIC-supervised institution that obtains credit protection on a group of underlying exposures through a nth-to-default credit derivative that meets the rules of recognition of § 324.36(b) (other than a first-to-default credit derivative) may recognize the credit risk mitigation benefits of the derivative only if:

(*1*) The FDIC-supervised institution 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 an FDIC-supervised institution satisfies the requirements of paragraph (i)(4)(ii)(A) of this section, the FDIC-supervised institution must determine its risk-based capital requirement for the underlying exposures as if the FDIC-supervised institution had only synthetically securitized the underlying exposure with the nth smallest risk-weighted asset amount and had obtained no credit risk mitigant on the other underlying exposures.

(C) An FDIC-supervised institution must calculate a risk-based capital requirement for counterparty credit risk according to § 324.34 for a nth-to-default credit derivative that does not meet the rules of recognition of § 324.36(b).

(j) *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 an FDIC-supervised institution that covers the full amount or a pro rata share of a securitization exposure's principal and interest, the FDIC-supervised institution 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) An FDIC-supervised institution that purchases a guarantee or OTC credit derivative (other than an nth-to-default credit derivative) that is recognized under § 324.45 as a credit risk mitigant (including via collateral recognized under § 324.37) is not required to compute a separate counterparty credit risk capital requirement under § 324.31, in accordance with § 324.34(c).

(ii) If an FDIC-supervised institution cannot, or chooses not to, recognize a purchased credit derivative as a credit risk mitigant under § 324.45, the FDIC-supervised institution must determine the exposure amount of the credit derivative under § 324.34.

(A) If the FDIC-supervised institution purchases credit protection from a counterparty that is not a securitization SPE, the FDIC-supervised institution must determine the risk weight for the exposure according to general risk weights under § 324.32.

(B) If the FDIC-supervised institution purchases the credit protection from a counterparty that is a securitization SPE, the FDIC-supervised institution must determine the risk weight for the exposure according to section § 324.42, including § 324.42(a)(4) for a credit derivative that has a first priority claim on the cash flows from the underlying exposures of the securitization SPE (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments).

§ 324.43 Simplified supervisory formula approach (SSFA) and the gross-up approach.

(a) *General requirements for the SSFA.* To use the SSFA to determine the risk weight for a securitization exposure, an FDIC-supervised institution 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; if the contracts governing the underlying exposures of the securitization require payments on a monthly or quarterly basis, the data used to assign the parameters described in paragraph (b) of this section must be no more than 91 calendar days old. An FDIC-supervised institution 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, an FDIC-supervised institution 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 one (that is, an average risk weight of 100 percent represents a value of K_G equal to 0.08).

(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 of the securitization that meet any of the criteria as set forth in paragraphs (b)(2)(i) through (vi) of this section to the 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 payments for 90 days or more, other than principal or interest payments deferred on:

(A) Federally-guaranteed student loans, in accordance with the terms of those guarantee programs; or

(B) Consumer loans, including non-federally-guaranteed student loans, provided that such payments are deferred pursuant to provisions included in the contract at the time funds are disbursed that provide for period(s) of deferral that are not initiated based on changes in the creditworthiness of the borrower; 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. Except as provided in § 324.42(i) for n^{th}-to-default credit derivatives, parameter A equals the ratio of the current dollar amount of underlying exposures that are subordinated to the exposure of the FDIC-supervised institution 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 FDIC-supervised institution'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. Except as provided in § 324.42(i) for n^{th}-to-default credit derivatives, 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 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 securitization exposure, as appropriate, is the larger of the risk weight determined in accordance with this paragraph or 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 FDIC-supervised institution 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. For the purpose of this weighted-average calculation:

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(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:

$$RW = \left[\left(\frac{K_A - A}{D - A}\right) \cdot 1{,}250\ percent\right] + \left[\left(\frac{D - K_A}{D - A}\right) \cdot 1{,}250\ percent \cdot K_{SSFA}\right]$$

(d) SSFA equation. (1) The FDIC-supervised institution must define the following parameters:

$$K_A = (1 - W) \cdot K_G + (0.5 \cdot W)$$

$$a = -\frac{1}{p \cdot K_A}$$

$$u = D - K_A$$

$$l = \max(A - K_A, 0)$$

$e = 2.71828$, the base of the natural logarithms.

(2) Then the FDIC-supervised institution 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 $K_{SSFA} \times 1{,}250$.

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(e) *Gross-up approach*—(1) *Applicability.* An FDIC-supervised institution that is not subject to subpart F of this part 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 to all of its securitization exposures, except as otherwise provided for certain securitization exposures in §§ 324.44 and 324.45.

(2) To use the gross-up approach, an FDIC-supervised institution must calculate the following four inputs:

(i) Pro rata share, which is the par value of the FDIC-supervised institution'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 par value of tranches that are more senior to the tranche in which the FDIC-supervised institution's securitization resides;

(iii) Exposure amount of the FDIC-supervised institution's securitization exposure calculated under § 324.42(c); and

(iv) Risk weight, which is the weighted-average risk weight of underlying exposures of the securitization as calculated under this subpart.

(3) *Credit equivalent amount.* The credit equivalent amount of a securitization exposure under this section equals the sum of:

(i) The exposure amount of the FDIC-supervised institution's securitization exposure and

(ii) 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, an FDIC-supervised institution must apply the risk weight required 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, an FDIC-supervised institution must assign a risk weight of not less than 20 percent to a securitization exposure.

§ 324.44 Securitization exposures to which the SSFA and gross-up approach do not apply.

(a) *General Requirement.* An FDIC-supervised institution must assign a 1,250 percent risk weight to all securitization exposures to which the FDIC-supervised institution does not apply the SSFA or the gross-up approach under § 324.43, except as set forth in this section.

(b) *Eligible ABCP liquidity facilities.* An FDIC-supervised institution 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.* An FDIC-supervised institution 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 FDIC-supervised institution holding the exposure must not retain or provide protection to the first loss position.

§ 324.45 Recognition of credit risk mitigants for securitization exposures.

(a) *General.* (1) An originating FDIC-supervised institution that has obtained a credit risk mitigant to hedge its exposure to a synthetic or traditional securitization that satisfies the operational criteria provided in § 324.41 may recognize the credit risk mitigant under §§ 324.36 or 324.37, but only as provided in this section.

(2) An investing FDIC-supervised institution that has obtained a credit risk mitigant to hedge a securitization exposure may recognize the credit risk mitigant under §§ 324.36 or 324.37, but only as provided in this section.

(b) *Mismatches.* An FDIC-supervised institution must make any applicable adjustment to the protection amount of an eligible guarantee or credit derivative as required in § 324.36(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 FDIC-supervised institution must use the longest residual maturity of any of the hedged exposures as the residual maturity of all hedged exposures.

§§ 324.46 through 324.50 [Reserved]

Risk-Weighted Assets for Equity Exposures

§ 324.51 Introduction and exposure measurement.

(a) *General.* (1) To calculate its risk-weighted asset amounts for equity exposures that are not equity exposures to an investment fund, an FDIC-supervised institution must use the Simple Risk-Weight Approach (SRWA) provided in § 324.52. An FDIC-supervised institution must use the look-through approaches provided in § 324.53 to calculate its risk-weighted asset amounts for equity exposures to investment funds.

(2) An FDIC-supervised institution must treat an investment in a separate account (as defined in § 324.2) as if it were an equity exposure to an investment fund as provided in § 324.53.

(3) *Stable value protection.* (i) Stable value protection means a contract where the provider of the contract is obligated to pay:

(A) The policy owner of a separate account an amount equal to the shortfall between the fair value and cost basis of the separate account when the policy owner of the separate account surrenders the policy, or

(B) The beneficiary of the contract an amount equal to the shortfall between the fair value and book value of a specified portfolio of assets.

(ii) An FDIC-supervised institution that purchases stable value protection on its investment in a separate account must treat the portion of the carrying value of its investment in the separate account attributable to the stable value protection as an exposure to the provider of the protection and the remaining portion of the carrying value of its separate account as an equity exposure to an investment fund.

(iii) An FDIC-supervised institution that provides stable value protection must treat the exposure as an equity derivative with an adjusted carrying value determined as the sum of paragraphs (b)(1) and (3) of this section.

(b) *Adjusted carrying value.* For purposes of §§ 324.51 through 324.53, the adjusted carrying value of an equity exposure is:

(1) For the on-balance sheet component of an equity exposure (other than an equity exposure that is classified as available-for-sale where the FDIC-supervised institution has made an AOCI opt-out election under § 324.22(b)(2)), the FDIC-supervised institution's carrying value of the exposure;

(2) For the on-balance sheet component of an equity exposure that is classified as available-for-sale where the FDIC-supervised institution has made an AOCI opt-out election under § 324.22(b)(2), the FDIC-supervised institution's carrying value of the exposure less any net unrealized gains on the exposure that are reflected in such carrying value but excluded from the FDIC-supervised institution's regulatory capital components;

(3) 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; and

(4) 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.

§ 324.52 Simple risk-weight approach (SRWA).

(a) *General.* Under the SRWA, an FDIC-supervised institution's total risk-weighted assets for equity exposures equals the sum of the risk-weighted asset amounts for each of the FDIC-supervised institution'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 FDIC-supervised institution's individual equity exposures to an investment fund as determined under § 324.53.

(b) *SRWA computation for individual equity exposures.* An FDIC-supervised institution 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 (b).

(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 § 324.32 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 equity exposures set forth in this paragraph (b)(3) must be 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 significant investments in the capital of an unconsolidated financial institution in the form of common stock and 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 § 324.2 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 FDIC-supervised institution's total capital.

(A) To compute the aggregate adjusted carrying value of an FDIC-supervised institution's equity exposures for purposes of this section, the FDIC-supervised institution 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 an FDIC-supervised institution does not know the actual holdings of the investment fund, the FDIC-supervised institution 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 FDIC-supervised institution 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 an FDIC-supervised institution's equity exposures qualify for a 100 percent risk weight under this paragraph (b), an FDIC-supervised institution 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 in the form of common stock that are not deducted from capital pursuant to § 324.22(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 FDIC-supervised institution acquires at least one of the equity exposures); the documentation specifies the measure of effectiveness (E) the FDIC-supervised institution 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. An FDIC-supervised institution must measure E at least quarterly and must use one of three alternative measures of E as set forth in this paragraph (c).

(i) Under the dollar-offset method of measuring effectiveness, the FDIC-supervised institution 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.

§ 324.53 Equity exposures to investment funds.

(a) *Available approaches.* (1) Unless the exposure meets the requirements for a community development equity exposure under § 324.52(b)(3)(i), an FDIC-supervised institution 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, provided, however, that the minimum risk weight that may be assigned to an equity exposure under this section is 20 percent.

(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 § 324.52(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 FDIC-supervised institution does not use the full look-through approach, the FDIC-supervised institution must use the ineffective portion of the hedge pair as determined under § 324.52(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.* An FDIC-supervised institution 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 the adjusted carrying value of each exposure were held directly by the FDIC-supervised institution) may set the risk-weighted asset amount of the FDIC-supervised institution'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 FDIC-supervised institution; and

(2) The FDIC-supervised institution'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 an FDIC-supervised institution'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, an FDIC-supervised institution 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 FDIC-supervised institution'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 FDIC-supervised institution 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 FDIC-supervised institution must use the highest applicable risk weight. An FDIC-supervised institution 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.

§§ 324.54 through 324.60 [Reserved]

Disclosures

§ 324.61 Purpose and scope.

Sections 324.61–324.63 of this subpart establish public disclosure requirements related to the capital requirements described in subpart B of this part for an FDIC-supervised institution with total consolidated assets of $50 billion or more as reported on the FDIC-supervised institution's most recent year-end Call Report that is not an advanced approaches FDIC-supervised institution making public disclosures pursuant to § 324.172. An advanced approaches FDIC-supervised institution that has not received approval from the FDIC to exit parallel run pursuant to § 324.121(d) is subject to the disclosure requirements described in §§ 324.62 and 324.63. Such an FDIC-supervised institution must comply with § 324.62 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 FDIC-supervised institution's total consolidated assets in the four most recent quarters as reported on the Call Report; or the average of the FDIC-supervised institution's total consolidated assets in the most recent consecutive quarters as reported quarterly on the FDIC-supervised institution's Call Report if the FDIC-supervised institution has not filed such a report for each of the most recent four quarters.

§ 324.62 Disclosure requirements.

(a) An FDIC-supervised institution described in § 324.61 must provide timely public disclosures each calendar quarter of the information in the applicable tables in § 324.63. If a significant change occurs, such that the most recent reported amounts are no longer reflective of the FDIC-supervised institution'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 FDIC-supervised institution's risk management objectives and policies, reporting system, and definitions) may be disclosed annually after the end of the fourth calendar quarter, provided that any significant changes are disclosed in the interim. The FDIC-supervised institution's management may provide all of the disclosures required by §§ 324.61 through 324.63 in one place on the FDIC-supervised institution's public Web site or may provide the disclosures in more than one public financial report or other regulatory reports, provided that the FDIC-supervised institution publicly provides a summary table specifically indicating the location(s) of all such disclosures.

(b) An FDIC-supervised institution described in § 324.61 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 FDIC-supervised institution must attest that the disclosures meet the requirements of this subpart.

(c) If an FDIC-supervised institution described in § 324.61 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 FDIC under the Freedom of Information Act (5 U.S.C. 552), then the FDIC-supervised institution 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.

§ 324.63 Disclosures by FDIC-supervised institutions described in § 324.61.

(a) Except as provided in § 324.62, an FDIC-supervised institution described in § 324.61 must make the disclosures described in Tables 1 through 10 of this section. The FDIC-supervised institution must make these disclosures publicly available for each of the last three years (that is, twelve quarters) or such shorter period beginning on January 1, 2014.

(b) An FDIC-supervised institution 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 1 TO § 324.63—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 [1] 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.

TABLE 1 TO § 324.63—SCOPE OF APPLICATION—Continued

	(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.

[1] Entities include securities, insurance and other financial subsidiaries, commercial subsidiaries (where permitted), and significant minority equity investments in insurance, financial and commercial entities.

TABLE 2 TO § 324.63—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 adjustments and deductions 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 adjustments and deductions 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 adjustments and deductions made to total capital.

TABLE 3 TO § 324.63—CAPITAL ADEQUACY

Qualitative disclosures	(a)	A summary discussion of the FDIC-supervised institution'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.
	(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 standardized risk-weighted assets.

TABLE 4 TO § 324.63—CAPITAL CONSERVATION BUFFER

Quantitative Disclosures	(a)	At least quarterly, the FDIC-supervised institution must calculate and publicly disclose the capital conservation buffer as described under § 324.11.
	(b)	At least quarterly, the FDIC-supervised institution must calculate and publicly disclose the eligible retained income of the FDIC-supervised institution, as described under § 324.11.
	(c)	At least quarterly, the FDIC-supervised institution must calculate and publicly disclose any limitations it has on distributions and discretionary bonus payments resulting from the capital conservation buffer framework described under § 324.11, including the maximum payout amount for the quarter.

(c) *General qualitative disclosure requirement.* For each separate risk area described in Tables 5 through 10, the FDIC-supervised institution 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 5 TO § 324.63—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 6 to § 324.63), 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 FDIC-supervised institution uses to estimate its allowance for loan and lease losses, including statistical methods used where applicable; (6) Policy for charging-off uncollectible amounts; and (7) Discussion of the FDIC-supervised institution'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, FDIC-supervised institutions 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.[2]
	(c)	Geographic distribution of exposures, categorized in significant areas by major types of credit exposure.[3]
	(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;[4] (5) The balance in the allowance for loan and lease losses at the end of each period, disaggregated on the basis of the FDIC-supervised institution'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[5], further categorized as required by GAAP.
	(g)	Reconciliation of changes in ALLL.[6]
	(h)	Remaining contractual maturity delineation (for example, one year or less) of the whole portfolio, categorized by credit exposure.

[1] Table 5 to § 324.63 does not cover equity exposures, which should be reported in Table 9 to § 324.63.

[2] *See,* for example, ASC Topic 815–10 and 210, as they may be amended from time to time.

[3] Geographical areas may consist of individual countries, groups of countries, or regions within countries. An FDIC-supervised institution might choose to define the geographical areas based on the way the FDIC-supervised institution's portfolio is geographically managed. The criteria used to allocate the loans to geographical areas must be specified.

[4] An FDIC-supervised institution is encouraged also to provide an analysis of the aging of past-due loans.

[5] The portion of the general allowance that is not allocated to a geographical area should be disclosed separately.

[6] 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 6 TO § 324.63—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 FDIC-supervised institution would have to provide given a deterioration in the FDIC-supervised institution'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.[1] An FDIC-supervised institution 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.[2]
	(c)	Notional amount of purchased and sold credit derivatives, segregated between use for the FDIC-supervised institution'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.

[1] 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.

[2] 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 7 TO § 324.63—CREDIT RISK MITIGATION [1] [2]

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 FDIC-supervised institution; (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.

[1] At a minimum, an FDIC-supervised institution must provide the disclosures in Table 7 in relation to credit risk mitigation that has been recognized for the purposes of reducing capital requirements under this subpart. Where relevant, FDIC-supervised institutions are encouraged to give further information about mitigants that have not been recognized for that purpose.

[2] 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 8 to § 324.63).

TABLE 8 TO § 324.63—SECURITIZATION

Qualitative Disclosures	(a)	The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of: (1) The FDIC-supervised institution's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the FDIC-supervised institution to other entities and including the type of risks assumed and retained with resecuritization activity;[1] (2) The nature of the risks (e.g. liquidity risk) inherent in the securitized assets; (3) The roles played by the FDIC-supervised institution in the securitization process[2] and an indication of the extent of the FDIC-supervised institution'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 FDIC-supervised institution's policy for mitigating the credit risk retained through securitization and resecuritization exposures; and (6) The risk-based capital approaches that the FDIC-supervised institution follows for its securitization exposures including the type of securitization exposure to which each approach applies.

TABLE 8 TO § 324.63—SECURITIZATION—Continued

	(b)	A list of: (1) The type of securitization SPEs that the FDIC-supervised institution, as sponsor, uses to securitize third-party exposures. The FDIC-supervised institution must indicate whether it has exposure to these SPEs, either on- or off-balance sheet; and (2) Affiliated entities: (i) That the FDIC-supervised institution manages or advises; and (ii) That invest either in the securitization exposures that the FDIC-supervised institution has securitized or in securitization SPEs that the FDIC-supervised institution sponsors.[3]
	(c)	Summary of the FDIC-supervised institution'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; (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 of this part; and (7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the FDIC-supervised institution 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 FDIC-supervised institution in securitizations that meet the operational criteria provided in § 324.41 (categorized into traditional and synthetic securitizations), by exposure type, separately for securitizations of third-party exposures for which the FDIC-supervised institution acts only as sponsor.[4]
	(f)	For exposures securitized by the FDIC-supervised institution in securitizations that meet the operational criteria in § 324.41: (1) Amount of securitized assets that are impaired/past due categorized by exposure type;[5] and (2) Losses recognized by the FDIC-supervised institution during the current period categorized by exposure type.[6]
	(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, CEIOs deducted from total capital (as described in § 324.42(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 creditworthiness categories or guarantor name.

[1] The FDIC-supervised institution 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 FDIC-supervised institution is active.

[2] For example, these roles may include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.

[3] Such affiliated entities may include, for example, money market funds, to be listed individually, and personal and private trusts, to be noted collectively.

[4] "Exposures securitized" include underlying exposures originated by the FDIC-supervised institution, 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 FDIC-supervised institution's balance sheet and underlying exposures acquired by the FDIC-supervised institution 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. FDIC-supervised institutions are required to disclose exposures regardless of whether there is a capital charge under this part.

[5] Include credit-related other than temporary impairment (OTTI).

[6] For example, charge-offs/allowances (if the assets remain on the FDIC-supervised institution's balance sheet) or credit-related OTTI of interest-only strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the FDIC-supervised institution with respect to securitized assets.

TABLE 9 TO § 324.63—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).[1] (2) Total latent revaluation gains (losses).[2] (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 FDIC-supervised institution's methodology, as well as the aggregate amounts and the type of equity investments subject to any supervisory transition regarding regulatory capital requirements.

[1] Unrealized gains (losses) recognized on the balance sheet but not through earnings.

[2] Unrealized gains (losses) not recognized either on the balance sheet or through earnings.

TABLE 10 TO § 324.63—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).

§§ 324.64 through 324.99 [Reserved]

Subpart E—Risk-Weighted Assets—Internal Ratings-Based and Advanced Measurement Approaches

§ 324.100 Purpose, applicability, and principle of conservatism.

(a) *Purpose.* This subpart E establishes:

(1) Minimum qualifying criteria for FDIC-supervised institutions using institution-specific internal risk measurement and management processes for calculating risk-based capital requirements; and

(2) Methodologies for such FDIC-supervised institutions to calculate their total risk-weighted assets.

(b) *Applicability.* (1) This subpart applies to an FDIC-supervised institution that:

(i) Has consolidated total assets, as reported on its most recent year-end Call Report equal to $250 billion or more;

(ii) Has consolidated total on-balance sheet foreign exposure on its most recent year-end Call Report 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 this subpart or the advanced approaches pursuant to subpart E of 12 CFR part 3 (OCC), or 12 CFR part 217 (Federal Reserve) 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) An FDIC-supervised institution that is subject to this subpart shall remain subject to this subpart unless the FDIC determines in writing that application of this subpart is not appropriate in light of the FDIC-supervised institution's asset size, level of complexity, risk profile, or scope of operations. In making a determination under this paragraph (b), the FDIC will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in § 324.5.

(3) A market risk FDIC-supervised institution 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, an FDIC-supervised institution may choose not to apply a provision of this subpart to one or more exposures provided that:

(1) The FDIC-supervised institution can demonstrate on an ongoing basis to the satisfaction of the FDIC 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 FDIC-supervised institution appropriately manages the risk of each such exposure;

(3) The FDIC-supervised institution notifies the FDIC in writing prior to applying this principle to each such exposure; and

(4) The exposures to which the FDIC-supervised institution applies this principle are not, in the aggregate, material to the FDIC-supervised institution.

§ 324.101 Definitions.

(a) Terms that are set forth in § 324.2 and used in this subpart have the definitions assigned thereto in § 324.2.

(b) For the purposes of this subpart, the following terms are defined as follows:

Advanced internal ratings-based (IRB) systems means an advanced approaches FDIC-supervised institution'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 FDIC-supervised institution'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 FDIC-supervised institution, 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 an FDIC-supervised institution'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 an FDIC-supervised institution'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 an FDIC-supervised institution's operational risk profile that reflect a current and forward-looking assessment of the FDIC-supervised institution'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 OTC derivative contracts.

Default—For the purposes of calculating capital requirements under this subpart:

(1) *Retail.* (i) A retail exposure of an FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC-supervised institution may elect to use the definition of default that is used in that jurisdiction, provided that the FDIC-supervised institution has obtained prior approval from the FDIC to use the definition of default in that jurisdiction.

(iii) A retail exposure in default remains in default until the FDIC-supervised institution has reasonable assurance of repayment and performance for all contractual principal and interest payments on the exposure.

(2) *Wholesale.* (i) An FDIC-supervised institution's wholesale obligor is in default if:

(A) The FDIC-supervised institution determines that the obligor is unlikely to pay its credit obligations to the FDIC-supervised institution in full, without recourse by the FDIC-supervised institution 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 FDIC-supervised institution.[25]

(ii) An obligor in default remains in default until the FDIC-supervised institution has reasonable assurance of repayment and performance for all contractual principal and interest payments on all exposures of the FDIC-supervised institution 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 FDIC-supervised institution, 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 FDIC-supervised

[25] Overdrafts are past due once the obligor has breached an advised limit or been advised of a limit smaller than the current outstanding balance.

institution) in the exposure's national jurisdiction (or subdivision of such jurisdiction selected by the FDIC-supervised institution) are significantly higher than average.

Effective maturity (M) of a wholesale exposure means:

(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 FDIC-supervised institution does not apply the internal models approach in § 324.132(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 FDIC-supervised institution applies the internal models approach in § 324.132(d), the value determined in § 324.132(d)(4).

Eligible double default guarantor, with respect to a guarantee or credit derivative obtained by an FDIC-supervised institution, 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 FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC-supervised institution 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 fair values in the probability distribution of fair values to a counterparty at a specified future date are set to zero to convert the probability distribution of fair 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 FDIC-supervised institution'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 FDIC-supervised institution determines EAD under § 324.132, a cleared transaction, or default fund contribution), EAD means the FDIC-supervised institution'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 FDIC-supervised institution determines EAD under § 324.132, 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 FDIC-supervised institution's best estimate of net additions to the outstanding amount owed the FDIC-supervised institution, 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 FDIC-supervised institution determines EAD under § 324.132, 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 § 324.132. An FDIC-supervised institution also may determine EAD for repo-style transactions and eligible margin loans as described in § 324.132.

Exposure category means any of the wholesale, retail, securitization, or equity exposure categories.

External operational loss event data means, with respect to an FDIC-supervised institution, gross operational loss amounts, dates, recoveries, and relevant causal information for operational loss events occurring at organizations other than the FDIC-supervised institution.

IMM exposure means a repo-style transaction, eligible margin loan, or OTC derivative for which an FDIC-supervised institution calculates its EAD using the internal models methodology of § 324.132(d).

Internal operational loss event data means, with respect to an FDIC-supervised institution, gross operational loss amounts, dates, recoveries, and relevant causal information for operational loss events occurring at the FDIC-supervised institution.

Loss given default (LGD) means:

(1) For a wholesale exposure, the greatest of:

(i) Zero;

(ii) The FDIC-supervised institution's empirically based best estimate of the long-run default-weighted average economic loss, per dollar of EAD, the FDIC-supervised institution would expect to incur if the obligor (or a typical obligor in the loss severity grade assigned by the FDIC-supervised institution to the exposure) were to default within a one-year horizon over a mix of economic conditions, including economic downturn conditions; or

(iii) The FDIC-supervised institution's empirically based best estimate of the economic loss, per dollar of EAD, the FDIC-supervised institution would expect to incur if the obligor (or a typical obligor in the loss severity grade assigned by the FDIC-supervised institution 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 FDIC-supervised institution's empirically based best estimate of the long-run default-weighted average economic loss, per dollar of EAD, the FDIC-supervised institution 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 FDIC-supervised institution's empirically based best estimate of the economic loss, per dollar of EAD, the FDIC-supervised institution 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 an FDIC-supervised institution 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 FDIC-supervised institution, 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 FDIC-supervised institution'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 FDIC-supervised institution'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 FDIC-supervised institution's empirically based best estimate of the long-run average one-year default rate for the rating grade assigned by the FDIC-supervised institution 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 FDIC-supervised institution'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 the underlying financial transactions are OTC derivative contracts, eligible margin loans, or repo-style transactions. In order to treat an agreement as a qualifying cross-product master netting agreement for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 324.3(c) of this part with respect to that agreement.

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 a borrower's decision to borrow and repay up to a pre-established maximum amount, except for an outstanding amount that the borrower is required to pay in full every month);

(2) Is unsecured and unconditionally cancelable by the FDIC-supervised institution to the fullest extent permitted by Federal law; and

(3)(i) Has a maximum contractual exposure amount (drawn plus undrawn) of up to $100,000; or

(ii) With respect to a product with an outstanding amount that the borrower is required to pay in full every month, the total outstanding amount does not in practice exceed $100,000.

(4) A segment of exposures that contains one or more exposures that fails to meet paragraph (3)(ii) of this definition must be treated as a segment of other retail exposures for the 24 month period following the month in which the total outstanding amount of one or more exposures individually exceeds $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 an FDIC-supervised institution's operational risk profile and control structure.

Total wholesale and retail risk-weighted assets means the sum of:

(1) 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;

(2) Risk-weighted assets for wholesale exposures to defaulted obligors and segments of defaulted retail exposures;

(3) Risk-weighted assets for assets not defined by an exposure category;

(4) Risk-weighted assets for non-material portfolios of exposures;

(5) Risk-weighted assets for IMM exposures (as determined in § 324.132(d));

(6) Risk-weighted assets for cleared transactions and risk-weighted assets for default fund contributions (as determined in § 324.133); and

(7) Risk-weighted assets for unsettled transactions (as determined in § 324.136).

Unexpected operational loss (UOL) means the difference between the FDIC-supervised institution's operational risk exposure and the FDIC-supervised institution's expected operational loss.

Unit of measure means the level (for example, organizational unit or operational loss event type) at which the FDIC-supervised institution'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, pre-sold construction loan, or equity exposure).

Wholesale exposure subcategory means the HVCRE or non-HVCRE wholesale exposure subcategory.

§§ 324.102 through 324.120 [Reserved]

Qualification

§ 324.121 Qualification process.

(a) *Timing.* (1) An FDIC-supervised institution that is described in § 324.100(b)(1)(i) through (iv) must adopt a written implementation plan no later than six months after the date the FDIC-supervised 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 FDIC-supervised institution meets at least one criterion under § 324.100(b)(1)(i) through (iv). The FDIC may extend the start date.

(2) An FDIC-supervised institution that elects to be subject to this subpart under § 324.100(b)(1)(v) must adopt a written implementation plan.

(b) *Implementation plan.* (1) The FDIC-supervised institution's implementation plan must address in detail how the FDIC-supervised institution complies, or plans to comply, with the qualification requirements in § 324.122. The FDIC-supervised institution 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 § 324.122 for the FDIC-supervised institution and each consolidated subsidiary (U.S. and foreign-based) of the FDIC-supervised institution with respect to all portfolios and exposures of the FDIC-supervised institution 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 FDIC-supervised institution);

(iii) Include the FDIC-supervised institution's self-assessment of:

(A) The FDIC-supervised institution's current status in meeting the qualification requirements in § 324.122; and

(B) The consistency of the FDIC-supervised institution's current practices with the FDIC's supervisory guidance on the qualification requirements;

(iv) Based on the FDIC-supervised institution's self-assessment, identify and describe the areas in which the FDIC-supervised institution proposes to undertake additional work to comply with the qualification requirements in § 324.122 or to improve the consistency of the FDIC-supervised institution's current practices with the FDIC's supervisory guidance on the qualification requirements (gap analysis);

(v) Describe what specific actions the FDIC-supervised institution 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 FDIC-supervised institution'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 FDIC-supervised institution's board of directors.

(2) The FDIC-supervised institution must submit the implementation plan, together with a copy of the minutes of the board of directors' approval, to the FDIC at least 60 days before the FDIC-supervised institution proposes to begin its parallel run, unless the FDIC waives prior notice.

(c) *Parallel run.* Before determining its risk-weighted assets under this subpart and following adoption of the implementation plan, the FDIC-supervised institution must conduct a satisfactory parallel run. A satisfactory parallel run is a period of no less than four consecutive calendar quarters during which the FDIC-supervised institution complies with the qualification requirements in § 324.122 to the satisfaction of the FDIC. During the parallel run, the FDIC-supervised institution must report to the FDIC on a calendar quarterly basis its risk-based capital ratios determined in accordance with § 324.10(b)(1) through (3) and § 324.10(c)(1) through (3). During this period, the FDIC-supervised institution'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 FDIC will notify the FDIC-supervised institution of the date that the FDIC-supervised institution must begin to use this subpart for purposes of § 324.10 if the FDIC determines that:

(1) The FDIC-supervised institution fully complies with all the qualification requirements in § 324.122;

(2) The FDIC-supervised institution has conducted a satisfactory parallel run under paragraph (c) of this section; and

(3) The FDIC-supervised institution has an adequate process to ensure ongoing compliance with the qualification requirements in § 324.122.

§ 324.122 Qualification requirements.

(a) *Process and systems requirements.* (1) An FDIC-supervised institution 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 an FDIC-supervised institution for risk-based capital purposes under this subpart must be consistent with the FDIC-supervised institution's internal risk management processes and management information reporting systems.

(3) Each FDIC-supervised institution must have an appropriate infrastructure with risk measurement and management processes that meet the qualification requirements of this section and are appropriate given the FDIC-supervised institution's size and level of complexity. Regardless of whether the systems and models that generate the risk parameters necessary for calculating an FDIC-supervised institution's risk-based capital requirements are located at any affiliate of the FDIC-supervised institution, the FDIC-supervised institution 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) An FDIC-supervised institution must have an internal risk rating and segmentation system that accurately and reliably differentiates among degrees of credit risk for the FDIC-supervised institution's wholesale and retail exposures.

(2) For wholesale exposures:

(i) An FDIC-supervised institution 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). An FDIC-supervised institution may elect, however, not to assign to a rating grade an obligor to whom the FDIC-supervised institution extends credit based solely on the financial strength of a guarantor, provided that all of the FDIC-supervised institution's exposures to the obligor are fully covered by eligible guarantees, the FDIC-supervised institution applies the PD substitution approach in § 324.134(c)(1) to all exposures to that obligor, and the FDIC-supervised institution immediately assigns the obligor to a rating grade if a guarantee can no longer be recognized under this part. The FDIC-supervised institution'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 FDIC-supervised institution has chosen to directly assign LGD estimates to each wholesale exposure, the FDIC-supervised institution must have an internal risk rating system that accurately and reliably assigns each wholesale exposure to a loss severity rating grade (reflecting the FDIC-supervised institution's estimate of the LGD of the exposure). An FDIC-supervised institution 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, an FDIC-supervised institution 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 FDIC-supervised institution's system must identify and group in separate segments by subcategories exposures identified in § 324.131(c)(2)(ii) and (iii).

(4) The FDIC-supervised institution's internal risk rating policy for wholesale exposures must describe the FDIC-supervised institution's rating philosophy (that is, must describe how wholesale obligor rating assignments are affected by the FDIC-supervised institution's choice of the range of economic, business, and industry conditions that are considered in the obligor rating process).

(5) The FDIC-supervised institution'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 FDIC-supervised institution receives new material information, but no less frequently than annually. The FDIC-supervised institution's retail exposure segmentation system must provide for the review and update (as appropriate) of assignments of retail exposures to segments whenever the FDIC-supervised institution receives new material information, but generally no less frequently than quarterly.

(c) *Quantification of risk parameters for wholesale and retail exposures.* (1) The FDIC-supervised institution must have a comprehensive risk parameter quantification process that produces accurate, timely, and reliable estimates of the risk parameters for the FDIC-supervised institution's wholesale and retail exposures.

(2) Data used to estimate the risk parameters must be relevant to the FDIC-supervised institution's actual wholesale and retail exposures, and of sufficient quality to support the determination of risk-based capital requirements for the exposures.

(3) The FDIC-supervised institution's risk parameter quantification process must produce appropriately conservative risk parameter estimates where the FDIC-supervised institution 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 FDIC-supervised institution'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 FDIC-supervised institution'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 FDIC-supervised institution 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 FDIC-supervised institution must adjust its estimates of risk parameters to compensate for the lack of data from periods of economic downturn conditions.

(8) The FDIC-supervised institution's PD, LGD, and EAD estimates must be based on the definition of default in § 324.101.

(9) The FDIC-supervised institution must review and update (as appropriate) its risk parameters and its risk parameter quantification process at least annually.

(10) The FDIC-supervised institution must, at least annually, conduct a comprehensive review and analysis of reference data to determine relevance of reference data to the FDIC-supervised institution's exposures, quality of reference data to support PD, LGD, and EAD estimates, and consistency of reference data to the definition of default in § 324.101.

(d) *Counterparty credit risk model.* An FDIC-supervised institution must obtain the prior written approval of the FDIC under § 324.132 to use the internal models methodology for counterparty credit risk and the advanced CVA approach for the CVA capital requirement.

(e) *Double default treatment.* An FDIC-supervised institution must obtain the prior written approval of the FDIC under § 324.135 to use the double default treatment.

(f) *Equity exposures model.* An FDIC-supervised institution must obtain the prior written approval of the FDIC under § 324.153 to use the internal models approach for equity exposures.

(g) *Operational risk.* (1) Operational risk management processes. An FDIC-supervised institution 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 FDIC-supervised institution'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 FDIC-supervised institution's operational risk profile) to identify, measure, monitor, and control operational risk in the FDIC-supervised institution's 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.* An FDIC-supervised institution must have operational risk data and assessment systems that capture operational risks to which the FDIC-supervised institution is exposed. The FDIC-supervised institution's operational risk data and assessment systems must:

(i) Be structured in a manner consistent with the FDIC-supervised institution'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 FDIC-supervised institution must have a systematic process for capturing and using internal operational loss event data in its operational risk data and assessment systems.

(*1*) The FDIC-supervised institution'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 FDIC to address transitional situations, such as integrating a new business line).

(*2*) The FDIC-supervised institution must be able to map its internal operational loss event data into the seven operational loss event type categories.

(*3*) The FDIC-supervised institution may refrain from collecting internal operational loss event data for individual operational losses below established dollar threshold amounts if the FDIC-supervised institution can demonstrate to the satisfaction of the FDIC that the thresholds are reasonable, do not exclude important internal operational loss event data, and permit the FDIC-supervised institution to capture substantially all the dollar value of the FDIC-supervised institution's operational losses.

(B) *External operational loss event data.* The FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC-supervised institution must incorporate business environment and internal control factors into its operational risk data and assessment systems. The FDIC-supervised institution 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 FDIC-supervised institution's operational risk quantification systems:

(A) Must generate estimates of the FDIC-supervised institution's operational risk exposure using its operational risk data and assessment systems;

(B) Must employ a unit of measure that is appropriate for the FDIC-supervised institution'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 an FDIC-supervised institution 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 FDIC-supervised institution can demonstrate to the satisfaction of the FDIC 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 FDIC-supervised institution 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 FDIC-supervised institution becomes aware of information that may have a material effect on the FDIC-supervised institution'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 FDIC, an FDIC-supervised institution may generate an estimate of its operational risk exposure using an alternative approach to that specified in paragraph (g)(3)(i) of this section. An FDIC-supervised institution proposing to use such an alternative operational risk quantification system must submit a proposal to the FDIC. In determining whether to approve an FDIC-supervised institution's proposal to use an alternative operational risk quantification system, the FDIC 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 FDIC-supervised institution;

(B) The FDIC-supervised institution 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) An FDIC-supervised institution 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) An FDIC-supervised institution 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) An FDIC-supervised institution must retain data using an electronic format that allows timely retrieval of data for analysis, validation, reporting, and disclosure purposes.

(3) An FDIC-supervised institution 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 FDIC-supervised institution's senior management must ensure that all components of the FDIC-supervised institution's advanced systems function effectively and comply with the qualification requirements in this section.

(2) The FDIC-supervised institution's board of directors (or a designated committee of the board) must at least annually review the effectiveness of, and approve, the FDIC-supervised institution's advanced systems.

(3) An FDIC-supervised institution 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 FDIC-supervised institution's advanced systems; and

(iii) Includes adequate governance and project management processes.

(4) The FDIC-supervised institution must validate, on an ongoing basis, its advanced systems. The FDIC-supervised institution'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 FDIC-supervised institution must have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the FDIC-supervised institution's advanced systems and reports its findings to the FDIC-supervised institution's board of directors (or a committee thereof).

(6) The FDIC-supervised institution 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 FDIC-supervised institution must adequately document all material aspects of its advanced systems.

§ 324.123 Ongoing qualification.

(a) *Changes to advanced systems.* An FDIC-supervised institution must meet all the qualification requirements in § 324.122 on an ongoing basis. An FDIC-supervised institution must notify the FDIC when the FDIC-supervised institution makes any change to an advanced system that would result in a material change in the FDIC-supervised institution's advanced approaches total risk-weighted asset amount for an exposure type or when the FDIC-supervised institution makes any significant change to its modeling assumptions.

(b) *Failure to comply with qualification requirements.* (1) If the FDIC determines that an FDIC-supervised institution that uses this subpart and that has conducted a satisfactory parallel run fails to comply with the qualification requirements in § 324.122, the FDIC will notify the FDIC-supervised institution in writing of the FDIC-supervised institution's failure to comply.

(2) The FDIC-supervised institution must establish and submit a plan satisfactory to the FDIC to return to compliance with the qualification requirements.

(3) In addition, if the FDIC determines that the FDIC-supervised institution's advanced approaches total risk-weighted assets are not commensurate with the FDIC-supervised institution's credit, market, operational, or other risks, the FDIC may require such an FDIC-supervised institution to calculate its advanced approaches total risk-weighted assets with any modifications provided by the FDIC.

§ 324.124 Merger and acquisition transitional arrangements.

(a) *Mergers and acquisitions of companies without advanced systems.* If an FDIC-supervised institution merges with or acquires a company that does not calculate its risk-based capital requirements using advanced systems, the FDIC-supervised institution 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 FDIC may extend this transition period for up to an additional 12 months. Within 90 days of consummating the merger or acquisition, the FDIC-supervised institution must submit to the FDIC an implementation plan for using its advanced systems for the acquired company. During the period in which subpart D of this part 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 FDIC-supervised institution'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 FDIC-supervised institution's eligible credit reserves. In addition, the risk-weighted assets of the merged or acquired company are not included in the FDIC-supervised institution's credit-risk-weighted assets but are included in total risk-weighted assets. If an FDIC-supervised institution relies on this paragraph, the FDIC-supervised institution must disclose publicly the amounts of risk-weighted assets and qualifying capital calculated under this subpart for the acquiring FDIC-supervised institution and under subpart D of this part for the acquired company.

(b) *Mergers and acquisitions of companies with advanced systems.* (1) If an FDIC-supervised institution merges with or acquires a company that calculates its risk-based capital requirements using advanced systems, the FDIC-supervised institution 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 FDIC may extend this transition period for up to an additional 12 months. Within 90 days of consummating the merger or acquisition, the FDIC-supervised institution must submit to the FDIC an implementation plan for using its advanced systems for the merged or acquired company.

(2) If the acquiring FDIC-supervised institution 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 FDIC-supervised institution, 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 FDIC-supervised institution's tier 2 capital up to 0.6 percent of the credit-risk-weighted assets associated with those exposures.

§§ 324.125 through 324.130 [Reserved]

Risk-Weighted Assets for General Credit Risk

§ 324.131 Mechanics for calculating total wholesale and retail risk-weighted assets.

(a) *Overview.* An FDIC-supervised institution 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 FDIC-supervised institution must determine which of its exposures are wholesale exposures, retail exposures, securitization exposures, or equity exposures. The FDIC-supervised institution must categorize each retail exposure as a residential mortgage exposure, a QRE, or an other retail exposure. The FDIC-supervised 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, unsettled transactions to which § 324.136 applies, and eligible guarantees or eligible credit derivatives that are used as credit risk mitigants. The FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC-supervised institution must identify which of its wholesale obligors are in default.

(2) *Segmentation of retail exposures.* (i) The FDIC-supervised institution must group the retail exposures in each retail subcategory into segments that have homogeneous risk characteristics.

(ii) The FDIC-supervised institution must identify which of its retail exposures are in default. The FDIC-supervised institution must segment defaulted retail exposures separately from non-defaulted retail exposures.

(iii) If the FDIC-supervised institution determines the EAD for eligible margin loans using the approach in § 324.132(b), the FDIC-supervised institution must identify which of its retail exposures are eligible margin loans for which the FDIC-supervised institution uses this EAD approach and must segment such eligible margin loans separately from other retail exposures.

(3) *Eligible purchased wholesale exposures.* An FDIC-supervised institution may group its eligible purchased wholesale exposures into segments that have homogeneous risk characteristics. An FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC-supervised institution 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 may not be less than 10 percent, except for segments of residential mortgage exposures for which all or substantially all of the principal of each exposure is either:

(i) Directly and unconditionally guaranteed by the full faith and credit of a sovereign entity; or

(ii) Guaranteed by 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).

(4) *Eligible purchased wholesale exposures.* An FDIC-supervised institution must assign a PD, LGD, EAD, and M to each segment of eligible purchased wholesale exposures. If the FDIC-supervised institution can estimate ECL (but not PD or LGD) for a segment of eligible purchased wholesale exposures, the FDIC-supervised institution 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) An FDIC-supervised institution 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 § 324.134 or, if applicable, applying double default treatment to the exposure as provided in § 324.135. An FDIC-supervised institution may decide separately for each wholesale exposure that qualifies for the double default treatment under § 324.135 whether to apply the double default treatment or to use the PD substitution or LGD adjustment treatment without recognizing double default effects.

(ii) An FDIC-supervised institution 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, an FDIC-supervised institution 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.* An FDIC-supervised institution must calculate its EAD for an OTC derivative contract as provided in § 324.132 (c) and (d). An FDIC-supervised institution 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 FDIC-supervised institution's VaR-based measure under subpart F of this part through an adjustment to EAD as provided in § 324.132(b) and (d). An FDIC-supervised institution that takes collateral into account through such an adjustment to EAD under § 324.132 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 an FDIC-supervised institution's ongoing financing of the obligor. An exposure is not part of an FDIC-supervised institution's ongoing financing of the obligor if the FDIC-supervised institution:

(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.* An FDIC-supervised institution 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) An FDIC-supervised institution 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 FDIC-supervised institution applies the double default treatment in § 324.135) 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 to § 324.131 and multiplying the output of the formula (K) by the EAD of the exposure or segment. Alternatively, an FDIC-supervised institution may apply a 300 percent risk weight to the EAD of an eligible margin loan if the FDIC-supervised institution is not able to meet the FDIC's requirements for estimation of PD and LGD for the margin loan.

TABLE 1 TO § 324.131 – IRB RISK-BASED CAPITAL FORMULAS FOR WHOLESALE EXPOSURES TO NON-DEFAULTED OBLIGORS AND SEGMENTS OF NON-DEFAULTED RETAIL EXPOSURES[1]

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:

$$R = 1.25 \times \left(0.12 + 0.12 \times e^{-50 \times PD}\right)$$

For wholesale exposures to regulated financial institutions with total assets greater than or equal to $100 billion:

$$R = 1.25 \times \left(0.12 + 0.12 \times e^{-50 \times PD}\right)$$

For wholesale exposures other than HVCRE exposures, unregulated financial institutions, and regulated financial institutions with total assets greater than or equal to $100 billion:

$$R = 0.12 + 0.12 \times e^{-50 \times PD}$$

Maturity Adjustment (b)

$$b = \left(0.11852 - 0.05478 \times \ln(PD)\right)^2$$

[1]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.

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(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 § 324.135(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) *Not covered by an eligible U.S. government guarantee:* The dollar risk-based capital requirement for each wholesale exposure not covered by an eligible guarantee from the U.S. government to a defaulted obligor and each segment of defaulted retail exposures not covered by an eligible guarantee from the U.S. government equals 0.08 multiplied by the EAD of the exposure or segment.

(ii) *Covered by an eligible U.S. government guarantee:* The dollar risk-based capital requirement for each wholesale exposure to a defaulted obligor covered by an eligible guarantee from the U.S. government and each segment of defaulted retail exposures covered by an eligible guarantee from the U.S. government equals the sum of:

(A) The sum of the EAD of the portion of each wholesale exposure to a defaulted obligor covered by an eligible guarantee from the U.S. government plus the EAD of the portion of each segment of defaulted retail exposures that is covered by an eligible guarantee from the U.S. government and the resulting sum is multiplied by 0.016, and

(B) The sum of the EAD of the portion of each wholesale exposure to a defaulted obligor not covered by an eligible guarantee from the U.S. government plus the EAD of the portion of each segment of defaulted retail exposures that is not covered by an eligible guarantee from the U.S. government and the resulting sum is multiplied by 0.08.

(iii) The sum of all the dollar risk-based capital requirements for each

wholesale exposure to a defaulted obligor and each segment of defaulted retail exposures calculated in paragraph (e)(2)(i) of this section plus the dollar risk-based capital requirements each wholesale exposure to a defaulted obligor and 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) An FDIC-supervised institution may assign a risk-weighted asset amount of zero to cash owned and held in all offices of the FDIC-supervised institution or in transit and for gold bullion held in the FDIC-supervised 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) An FDIC-supervised institution must assign a risk-weighted asset amount equal to 20 percent of the carrying value of cash items in the process of collection.

(iii) An FDIC-supervised institution must assign a risk-weighted asset amount equal to 50 percent of the carrying value to a pre-sold construction loan unless the purchase contract is cancelled, in which case an FDIC-supervised institution must assign a risk-weighted asset amount equal to a 100 percent of the carrying value of the pre-sold construction loan.

(iv) The risk-weighted asset amount for the residual value of a retail lease exposure equals such residual value.

(v) The risk-weighted asset amount for DTAs arising from temporary differences that the FDIC-supervised institution could realize through net operating loss carrybacks equals the carrying value, netted in accordance with § 324.22.

(vi) The risk-weighted asset amount for MSAs, DTAs arising from temporary timing differences that the FDIC-supervised institution 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 § 324.22(a)(7) equals the amount not subject to deduction multiplied by 250 percent.

(vii) 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 and is not subject to deduction under § 324.22(a), (c), or (d) 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 FDIC-supervised institution has demonstrated to the FDIC's satisfaction that the portfolio (when combined with all other portfolios of exposures that the FDIC-supervised institution seeks to treat under this paragraph) is not material to the FDIC-supervised institution 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 § 324.132.

§ 324.132 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, an FDIC-supervised institution 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 an FDIC-supervised institution's VaR-based measure under subpart F of this part:

(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) An FDIC-supervised institution 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) An FDIC-supervised institution must use the methodology in paragraph (c) of this section, or with prior written approval of the FDIC, 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, an FDIC-supervised institution may only use the internal models methodology in paragraph (d) of this section.

(4) An FDIC-supervised institution must also use the methodology in paragraph (e) of this section to calculate the risk-weighted asset amounts for CVA for OTC derivatives.

(b) *EAD for eligible margin loans and repo-style transactions.* (1) *General.* An FDIC-supervised institution 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, an FDIC-supervised institution may estimate an unsecured LGD for the exposure, as well as for any repo-style transaction that is included in the FDIC-supervised institution'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.* An FDIC-supervised institution 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 fair values of all instruments, gold, and cash the FDIC-supervised institution 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 fair values of all instruments, gold, and cash the FDIC-supervised institution 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 fair values of the instrument

or gold the FDIC-supervised institution has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current fair values of that same instrument or gold the FDIC-supervised institution 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 fair values of any instruments or cash in the currency the FDIC-supervised institution has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current fair values of any instruments or cash in the currency the FDIC-supervised institution 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*) An FDIC-supervised institution must use the haircuts for market price volatility (H_s) in Table 1 to § 324.132, as adjusted in certain circumstances as provided in paragraphs (b)(2)(ii)(A)(*3*) and (*4*) of this section;

TABLE 1 TO § 324.132—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS [1]

Residual maturity	Haircut (in percent) assigned based on:						Investment grade securitization exposures (in percent)
	Sovereign issuers risk weight under this section [2] (in percent)			Non-sovereign issuers risk weight under this section (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	4.0	4.0
Greater than 1 year and less than or equal to 5 years	2.0	3.0	15.0	4.0	6.0	8.0	12.0
Greater than 5 years	4.0	6.0	15.0	8.0	12.0	16.0	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						
Other exposure types	25.0						

[1] The market price volatility haircuts in Table 1 to § 324.132 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, an FDIC-supervised institution 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, an FDIC-supervised institution 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*) An FDIC-supervised institution 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, an FDIC-supervised institution must adjust the supervisory haircuts upward on the basis of a holding period of twenty business days for the following quarter (except when an FDIC-supervised institution is calculating EAD for a cleared transaction under § 324.133). If a netting set contains one or more trades involving illiquid collateral or an OTC derivative that cannot be easily replaced, an FDIC-supervised institution 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 FDIC-supervised institution 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. An FDIC-supervised institution must adjust the standard supervisory haircuts upward using the following formula:

$$H_A = H_S\sqrt{\frac{T_M}{T_S}}\text{, where,}$$

(*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 an FDIC-supervised institution has lent, sold subject to repurchase, or posted as collateral does not meet the definition of financial collateral, the FDIC-supervised institution must use a 25.0 percent haircut for market price volatility (Hs).

(iii) *Own internal estimates for haircuts.* With the prior written approval of the FDIC, an FDIC-supervised institution 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 FDIC approval to use its own internal estimates, an FDIC-supervised institution must satisfy the following minimum quantitative standards:

(*1*) An FDIC-supervised institution 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 an FDIC-supervised institution 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:

$$H_M = H_N \sqrt{\frac{T_M}{T_N}}, \text{ where}$$

(*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 FDIC-supervised institution 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, an FDIC-supervised institution must calculate the haircut using a minimum holding period of twenty business days for the following quarter (except when an FDIC-supervised institution is calculating EAD for a cleared transaction under § 324.133). If a netting set contains one or more trades involving illiquid collateral or an OTC derivative that cannot be easily replaced, an FDIC-supervised institution 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 FDIC-supervised institution 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*) An FDIC-supervised institution 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*) An FDIC-supervised institution must have policies and procedures that describe how it determines the period of significant financial stress used to calculate the FDIC-supervised institution's own internal estimates for haircuts under this section and must be able to provide empirical support for the period used. The FDIC-supervised institution must obtain the prior approval of the FDIC for, and notify the FDIC if the FDIC-supervised institution makes any material changes to, these policies and procedures.

(*6*) Nothing in this section prevents the FDIC from requiring an FDIC-supervised institution to use a different period of significant financial stress in the calculation of own internal estimates for haircuts.

(*7*) An FDIC-supervised institution 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, an FDIC-supervised institution may calculate haircuts for categories of securities. For a category of securities, the FDIC-supervised institution 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 FDIC-supervised institution has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. In determining relevant categories, the FDIC-supervised institution 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, an FDIC-supervised institution 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 FDIC-supervised institution 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) An FDIC-supervised institution'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 FDIC, an FDIC-supervised institution 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 FDIC-supervised institution must set EAD equal to max {0, [(ΣE − ΣC) + PFE]}, where:

(i) ΣE equals the value of the exposure (the sum of the current fair values of all instruments, gold, and cash the FDIC-supervised institution 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 fair values of all instruments, gold, and cash the FDIC-supervised institution 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 FDIC-supervised institution's empirically based best estimate of the 99th percentile, one-tailed confidence interval for an increase in the value of (ΣE − ΣC) 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 FDIC-supervised institution has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. The FDIC-supervised institution 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, an FDIC-supervised institution must use a twenty-business-day holding period for the following quarter (except when an FDIC-supervised institution is calculating EAD for a cleared transaction under § 324.133). If a netting set contains one or more trades involving illiquid collateral, an FDIC-supervised institution 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 FDIC-supervised institution 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) *OTC derivative contracts not subject to a qualifying master netting agreement.* An FDIC-supervised institution 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) *OTC derivative contracts subject to a qualifying master netting agreement.* An FDIC-supervised institution must determine the EAD for multiple OTC derivative contracts that are subject to a qualifying master netting agreement using the current exposure methodology in paragraph (c)(6) of this section or using the internal models methodology described in paragraph (d) of this section.

(3) *Credit derivatives.* Notwithstanding paragraphs (c)(1) and (c)(2) of this section:

(i) An FDIC-supervised institution that purchases a credit derivative that is recognized under § 324.134 or § 324.135 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 FDIC-supervised institution 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) An FDIC-supervised institution 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 FDIC-supervised institution is treating the credit derivative as a covered position under subpart F of this part, in which case the FDIC-supervised institution must calculate a supplemental counterparty credit risk capital requirement under this section).

(4) *Equity derivatives.* An FDIC-supervised institution must treat an equity derivative contract as an equity exposure and compute a risk-weighted asset amount for the equity derivative contract under §§ 324.151–324.155 (unless the FDIC-supervised institution is treating the contract as a covered position under subpart F of this part). In addition, if the FDIC-supervised institution is treating the contract as a covered position under subpart F of this part, and under certain other circumstances described in § 324.155, the FDIC-supervised institution 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 FDIC-supervised institution'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-fair value of the derivative contract or zero; and

(ii) *PFE.* The PFE for a single OTC derivative contract, including an OTC derivative contract with a negative mark-to-fair value, is calculated by multiplying the notional principal amount of the derivative contract by the appropriate conversion factor in Table 2 to § 324.132. 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 2 to § 324.132, the PFE must be calculated using the ''other'' conversion factors. An FDIC-supervised institution 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 2 TO § 324.132—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 fair 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] An FDIC-supervised institution 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. An FDIC-supervised institution 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 fair values of the individual OTC derivative contracts subject to the qualifying master netting agreement; or

(B) Zero; and

(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} equals 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 equals 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.* An FDIC-supervised institution 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, an FDIC-supervised institution 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 FDIC-supervised institution 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.

(8) *Clearing member FDIC-supervised institution's EAD.* A clearing member FDIC-supervised institution's EAD for an OTC derivative contract or netting set of OTC derivative contracts where the FDIC-supervised institution is either acting as a financial intermediary and enters into an offsetting transaction with a QCCP or where the FDIC-supervised institution provides a guarantee to the QCCP on the performance of the client equals the exposure amount calculated according to paragraph (c)(5) or (6) of this section multiplied by the scaling factor 0.71. If the FDIC-supervised institution determines that a longer period is appropriate, it must use a larger scaling factor to adjust for a longer holding period as follows:

$$\text{Scaling factor} = \sqrt{\frac{H}{10}}$$

where H equals the holding period greater than five days. Additionally, the FDIC may require the FDIC-supervised institution to set a longer holding period if the FDIC determines that a longer period is appropriate due to the nature, structure, or characteristics of the transaction or is commensurate with the risks associated with the transaction.

(d) *Internal models methodology.* (1)(i) With prior written approval from the FDIC, an FDIC-supervised institution 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.

(ii) An FDIC-supervised institution 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. An FDIC-supervised institution may choose to use the internal models methodology for one or two of these three types of exposures and not the other types.

(iii) An FDIC-supervised institution 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:

(A) The FDIC-supervised institution effectively integrates the risk mitigating effects of cross-product netting into its risk management and other information technology systems; and

(B) The FDIC-supervised institution obtains the prior written approval of the FDIC.

(iv) An FDIC-supervised institution that uses the internal models methodology for a transaction type must receive approval from the FDIC 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, an FDIC-supervised institution uses an internal model to estimate the expected exposure (EE) for a netting set and then calculates EAD based on that EE. An FDIC-supervised institution 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 FDIC-supervised institution's counterparties according to paragraph (d)(3)(viii) of this section;

(iii) The FDIC-supervised institution must use its internal model's probability distribution for changes in the fair value of a netting set that are attributable to changes in market variables to determine EE; and

(iv) Under the internal models methodology, EAD = Max (0, α × effective EPE − CVA), or, subject to the prior written approval of FDIC as provided in paragraph (d)(10) of this section, a more conservative measure of EAD.

(A) CVA equals the credit valuation adjustment that the FDIC-supervised institution 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 FDIC-supervised institution's liabilities that are due to changes in its own credit risk since the inception of the transaction with the counterparty.

$$Effective\ EPE_{t_k} = \sum_{k=1}^{n} Effective\ EE_k \times \Delta t_k$$

(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*) $EffectiveEE_{t_k} = \max(Effective\ EE_{t_{k-1}}, EE_{t_k})$ (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) $\alpha = 1.4$ except as provided in paragraph (d)(5) of this section, or when the FDIC has determined that the FDIC-supervised institution must set α higher based on the FDIC-supervised institution's specific characteristics of counterparty credit risk or model performance.

(v) An FDIC-supervised institution may include financial collateral currently posted by the counterparty as collateral (but may not include other forms of collateral) when calculating EE.

(vi) If an FDIC-supervised institution hedges some or all of the counterparty credit risk associated with a netting set using an eligible credit derivative, the FDIC-supervised institution may take the reduction in exposure to the counterparty into account when estimating EE. If the FDIC-supervised institution 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 FDIC-supervised institution's exposure to the protection provider of the credit derivative.

(3) *Prior approval relating to EAD calculation.* To obtain FDIC approval to calculate the distributions of exposures upon which the EAD calculation is based, the FDIC-supervised institution must demonstrate to the satisfaction of the FDIC that it has been using for at least one year an internal model that broadly meets the following minimum standards, with which the FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC-supervised institution must be able to measure and manage current exposures gross and net of collateral held, where appropriate. The FDIC-supervised institution must estimate expected exposures for OTC derivative contracts both with and without the effect of collateral agreements;

(vi) The FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC-supervised institution should consider using model parameters based on forward-looking measures, where appropriate;

(viii) When estimating model parameters based on a stress period, the FDIC-supervised institution must use at least three years of historical data that include a period of stress to the credit default spreads of the FDIC-supervised institution's counterparties. The FDIC-supervised institution must review the data set and update the data as necessary, particularly for any material changes in its counterparties. The FDIC-supervised institution must demonstrate, at least quarterly, and maintain documentation of such demonstration, that the stress period coincides with increased CDS or other credit spreads of the FDIC-supervised institution's counterparties. The FDIC-supervised institution 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 FDIC-supervised institution's portfolio. The FDIC may require the FDIC-supervised institution to modify its stress calibration to better reflect actual historic losses of the portfolio;

(ix) An FDIC-supervised institution 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 FDIC-supervised institution must have a backtesting program for its model that includes a process by which unacceptable model performance will be determined and remedied;

(x) An FDIC-supervised institution must have policies for the measurement, management and control of collateral and margin amounts; and

(xi) An FDIC-supervised institution 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) *Calculating the maturity of exposures.* (i) If the remaining maturity of the exposure or the longest-dated contract in the netting set is greater than one year, the FDIC-supervised institution 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 FDIC-supervised institution must set M for the exposure or netting set equal to one year, except as provided in § 324.131(d)(7).

(iii) Alternatively, an FDIC-supervised institution 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) *Effects of collateral agreements on EAD.* An FDIC-supervised institution 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, as set forth in paragraphs (d)(5)(i) and (ii) of this section:

(i) With prior written approval from the FDIC, an FDIC-supervised institution may include the effect of a collateral agreement within its internal model used to calculate EAD. The FDIC-supervised institution 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; or

(ii) As an alternative to paragraph (d)(5)(i) of this section, an FDIC-supervised institution 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 FDIC-supervised institution 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 expected increase in the netting set's exposure over the margin period of risk (set in accordance with paragraph (d)(5)(iii) of this section); or

(B) Effective EPE without a collateral agreement plus any collateral the FDIC-supervised institution posts to the counterparty that exceeds the required margin amount.

(iii) For purposes of this part, including paragraphs (d)(5)(i) and (ii) of this section, 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 FDIC-supervised institution is calculating EAD for a cleared transaction under § 324.133). 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 FDIC-supervised institution 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.

(C) Five business days for an OTC derivative contract or netting set of OTC derivative contracts where the FDIC-supervised institution is either acting as a financial intermediary and enters into an offsetting transaction with a CCP or where the FDIC-supervised institution provides a guarantee to the CCP on the performance of the client. An FDIC-supervised institution must use a longer holding period if the FDIC-supervised institution determines that a longer period is appropriate. Additionally, the FDIC may require the FDIC-supervised institution to set a longer holding period if the FDIC determines that a longer period is appropriate due to the nature, structure, or characteristics of the transaction or is commensurate with the risks associated with the transaction.

(6) *Own estimate of alpha.* With prior written approval of the FDIC, an FDIC-supervised institution 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 FDIC-supervised institution must meet the following minimum standards to the satisfaction of the FDIC:

(i) The FDIC-supervised institution's own estimate of alpha must capture in the numerator the effects of:

(A) The material sources of stochastic dependency of distributions of fair 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 FDIC-supervised institution must assess the potential model uncertainty in its estimates of alpha.

(iii) The FDIC-supervised institution must calculate the numerator and denominator of alpha in a consistent fashion with respect to modeling methodology, parameter specifications, and portfolio composition.

(iv) The FDIC-supervised institution 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.* An FDIC-supervised institution must determine if a repo-style transaction, eligible margin loan, bond option, or equity derivative contract or purchased credit derivative to which the FDIC-supervised institution applies the internal models methodology under this paragraph (d) has specific wrong-way risk. If a transaction has specific wrong-

way risk, the FDIC-supervised institution must treat the transaction as its own netting set and exclude it from the model described in paragraph (d)(2) of this section 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 § 324.131 using the PD of the counterparty and LGD equal to 100 percent, by

(B) The maximum amount the FDIC-supervised institution 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 § 324.131 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 § 324.131 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 § 324.131 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 § 324.131(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 an FDIC-supervised institution'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, an FDIC-supervised institution's risk-based capital requirement for equity derivatives with specific wrong-way risk as calculated under paragraph (d)(7)(i) of this section, an FDIC-supervised institution's risk-based capital requirement for bond options with specific wrong-way risk as calculated under paragraph (d)(7)(iii) of this section, and an FDIC-supervised institution'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 FDIC-supervised institution must insert the assigned risk parameters for each counterparty and netting set into the appropriate formula specified in Table 1 of § 324.131 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. An FDIC-supervised institution 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 FDIC-supervised institution must insert the assigned risk parameters for each wholesale obligor and netting set into the appropriate formula specified in Table 1 of § 324.131 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. An FDIC-supervised institution 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 FDIC-supervised institution's dollar risk-based capital requirement under the internal models methodology equals the larger of $K_{unstressed}$ and $K_{stressed}$. An FDIC-supervised institution'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 FDIC, an FDIC-supervised institution 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 FDIC-supervised institution must demonstrate the conservatism of the measure of counterparty credit risk exposure used for EAD. With respect to paragraph (d)(10)(i) of this section:

(A) For material portfolios of new OTC derivative products, the FDIC-supervised institution 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 FDIC-supervised institution 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 for purposes of the approach in paragraph (d)(10)(i) of this section, the FDIC-supervised institution must insert the assigned risk parameters for each counterparty and netting set into the appropriate formula specified in Table 1 of § 324.131, 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, an FDIC-supervised institution must calculate a CVA risk-weighted asset amount for its portfolio of OTC derivative transactions that are subject to the CVA capital requirement using the simple CVA approach described in paragraph (e)(5) of this section or, with prior written approval of the FDIC, the advanced CVA approach described in paragraph (e)(6) of this section. An FDIC-supervised institution that receives prior FDIC 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 FDIC in writing that the FDIC-supervised institution expects to begin calculating its CVA risk-weighted asset amount using the simple CVA approach. Such notice must include an explanation of the FDIC-supervised institution's rationale and the date upon which the FDIC-supervised institution will begin to calculate its CVA risk-weighted asset amount using the simple CVA approach.

(2) *Market risk FDIC-supervised institutions.* Notwithstanding the prior approval requirement in paragraph (e)(1) of this section, a market risk FDIC-supervised institution may calculate its

CVA risk-weighted asset amount using the advanced CVA approach if the FDIC-supervised institution has FDIC 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 § 324.207(b).

(3) *Recognition of hedges.* (i) An FDIC-supervised institution 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 FDIC-supervised institution's hedging policies.

(ii) An FDIC-supervised institution shall not recognize as a CVA hedge any tranched or n^{th}-to-default credit derivative.

(4) *Total CVA risk-weighted assets.* Total CVA risk-weighted assets is the CVA capital requirement, K_{CVA}, calculated for an FDIC-supervised institution's entire portfolio of OTC derivative counterparties that are subject to the CVA capital requirement, 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:

$$K_{CVA} = 2.33 \times \sqrt{\left(\sum_i 0.5 \times w_i \times \left(M_i \times EAD_i^{total} - M_i^{hedge} \times B_i \right) - \sum_{ind} w_{ind} \times M_{ind} \times B_{ind} \right)^2 + A}$$

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 equals the weight applicable to counterparty *i* under Table 3 to § 324.132;

(B) M_i equals the EAD-weighted average of the effective maturity of each netting set with counterparty *i* (where each netting set's effective maturity can be no less than one year.)

(C) EAD_i^{total} equals 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 FDIC-supervised institution calculates EAD under paragraph (c) of this section, such EAD may be adjusted for purposes of calculating EAD_i^{total} by multiplying EAD by $(1\text{-exp}(-0.05 \times M_i))/(0.05 \times M_i)$, where ''exp'' is the exponential function. When the FDIC-supervised institution calculates EAD under paragraph (d) of this section, EAD_i^{total} equals $EAD_{unstressed}$.

(D) M_i^{hedge} equals the notional weighted average maturity of the hedge instrument.

(E) B_i equals 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 $(1\text{-exp}(-0.05 \times M_i^{hedge}))/(0.05 \times M_i^{hedge})$.

(F) M_{ind} 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*.

(G) B_{ind} equals the notional amount of one or more CDS_{ind} purchased to hedge CVA risk for counterparty *i* multiplied by $(1\text{-exp}(-0.05 \times M_{ind}))/(0.05 \times M_{ind})$

(H) w_{ind} equals the weight applicable to the CDS_{ind} based on the average weight of the underlying reference names that comprise the index under Table 3 to § 324.132.

(ii) The FDIC-supervised institution 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}. An FDIC-supervised institution must treat the CDS_{ind} hedge with the notional amount reduced by B_i as a CVA hedge.

TABLE 3 TO § 324.132—ASSIGNMENT OF COUNTERPARTY WEIGHT

Internal PD (in percent)	Weight w_i (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) An FDIC-supervised institution may use the VaR model that it uses to determine specific risk under § 324.207(b) or another VaR model that meets the quantitative requirements of § 324.205(b) and § 324.207(b)(1) to calculate its CVA capital requirement for a counterparty by modeling the impact of changes in the counterparties' credit spreads, together with any recognized CVA hedges, on the CVA for the counterparties, subject to the following requirements:

(A) The VaR model must incorporate only changes in the counterparties' credit spreads, not changes in other risk factors. The VaR model does not need to capture jump-to-default risk;

(B) An FDIC-supervised institution 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; and

(C) An FDIC-supervised institution 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:

$$K_{CVA} = 3 \times \left(VaR^{CVA}_{Unstressed} + VaR^{CVA}_{Stressed}\right)$$

where VaR^{CVA}_{j} is the 99% VaR reflecting changes of CVA_j and fair value of eligible hedges (aggregated across all counterparties and eligible hedges) resulting from simulated changes of credit spreads over a 10-day time horizon. CVA_j for a given counterparty must be calculated according to

$$CVA_j = \left(LGD_{MKT}\right) \times \sum_{i=1}^{T} Max\left(0; \exp\left(-\frac{s_{i-1} \times t_{i-1}}{LGD_{MKT}}\right) - \exp\left(-\frac{s_i \times t_i}{LGD_{MKT}}\right)\right) \times \left(\frac{EE_{i-1} \times D_{i-1} + EE_i \times D_i}{2}\right)$$

Where

(A) t_i equals the time of the i-th revaluation time bucket starting from $t_0 = 0$.

(B) t_T equals the longest contractual maturity across the OTC derivative contracts with the counterparty.

(C) s_i equals 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 FDIC-supervised institution must use a proxy spread based on the credit quality, industry and region of the counterparty.

(D) LGD_{MKT} equals 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. Where no market information and no reliable proxy based on the credit quality, industry, and region of the counterparty are available to determine LGD_{MKT}, an FDIC-supervised institution may use a conservative estimate when determining LGD_{MKT}, subject to approval by the FDIC.

(E) EE_i equals the sum of the expected exposures for all netting sets with the counterparty at revaluation time t_i, calculated according to paragraphs (e)(6)(iv)(A) and (e)(6)(v)(A) of this section.

(F) D_i equals the risk-free discount factor at time t_i, where $D_0 = 1$.

(G) Exp is the exponential function.

(H) The subscript j refers either to a stressed or an unstressed calibration as described in paragraphs (e)(6)(iv) and (v) of this section.

(iii) Notwithstanding paragraphs (e)(6)(i) and (e)(6)(ii) of this section, an FDIC-supervised institution must use the formulas in paragraphs (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 FDIC-supervised institution must calculate each credit spread sensitivity according to the following formula:

$$\text{Regulatory CS01} = 0.0001 \times t_i \times exp\left(-\frac{s_i \times t_i}{LGD_{MKT}}\right) \times \left(\frac{EE_{i-1} \times D_{i-1} - EE_{i+1} \times D_{i+1}}{2}\right)$$

(B) If the VaR model uses credit spread sensitivities to parallel shifts in credit spreads, the FDIC-supervised institution must calculate each credit spread sensitivity according to the following formula:

$$\text{Regulatory CS01} = 0.0001 \times \sum_{i=1}^{T} \left(t_i \times \exp\left(-\frac{s_i \times t_i}{LGD_{MKT}}\right) - t_{i-1} \times \exp\left(-\frac{s_{i-1} \times t_{i-1}}{LGD_{MKT}}\right)\right) \times \left(\frac{EE_{i-1} \times D_{i-1} + EE_i \times D_i}{2}\right)$$

For the final time bucket i = T, the corresponding formula is

$$\text{Regulatory CS01} = 0.0001 \times t_i \times \exp\left(-\frac{s_i \times t_i}{LGD_{MKT}}\right) \times \left(\frac{EE_{i-1} \times D_{i-1} + EE_T \times D_T}{2}\right)$$

(iv) To calculate the $CVA_{Unstressed}$ measure for purposes of paragraph (e)(6)(ii) of this section, the FDIC-supervised institution must:

(A) Use the EE_i calculated using the calibration of paragraph (d)(3)(vii) of this section, except as provided in § 324.132 (e)(6)(vi), and

(B) Use the historical observation period required under § 324.205(b)(2).

(v) To calculate the $CVA_{Stressed}$ measure for purposes of paragraph (e)(6)(ii) of this section, the FDIC-supervised institution must:

(A) Use the EE_i calculated using the stress calibration in paragraph (d)(3)(viii) of this section except as provided in paragraph (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 FDIC may require an FDIC-supervised institution to use a different period of significant financial stress in the calculation of the $CVA_{Stressed}$ measure.

(vi) If an FDIC-supervised institution 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 FDIC-supervised institution 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) For purposes of paragraph (e)(6) of this section, the FDIC-supervised institution'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 environments. If the VaR model does not capture that basis, the FDIC-supervised institution must reflect only 50 percent of the notional amount of the CDS_{ind} hedge in the VaR model.

(viii) If an FDIC-supervised institution 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 FDIC-supervised institution 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.

§ 324.133 Cleared transactions.

(a) *General requirements.* (1) An FDIC-supervised institution 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) An FDIC-supervised institution 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 FDIC-supervised institutions*—(1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, an FDIC-supervised institution 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 FDIC-supervised institution'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 a netting set of derivative contracts, trade exposure amount equals the EAD for the derivative contract or netting set of derivative contracts calculated using the methodology used to calculate EAD for OTC derivative contracts set forth in § 324.132(c) or (d), plus the fair value of the collateral posted by the clearing member client FDIC-supervised institution and held by the CCP or a clearing member in a manner that is not bankruptcy remote. When the FDIC-supervised institution calculates EAD for the cleared transaction using the methodology in § 324.132(d), EAD equals $EAD_{unstressed}$.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals the EAD for the repo-style transaction calculated using the methodology set forth in § 324.132(b)(2), (b)(3), or (d), plus the fair value of the collateral posted by the clearing member client FDIC-supervised institution and held by the CCP or a clearing member in a manner that is not bankruptcy remote. When the FDIC-supervised institution calculates EAD for the cleared transaction under § 324.132(d), EAD equals $EAD_{unstressed}$.

(3) *Cleared transaction risk weights.* (i) For a cleared transaction with a QCCP, a clearing member client FDIC-supervised institution must apply a risk weight of:

(A) 2 percent if the collateral posted by the FDIC-supervised institution to the QCCP or clearing member is subject to an arrangement that prevents any loss to the clearing member client FDIC-supervised institution 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 FDIC-supervised institution 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 an event of default or from liquidation, insolvency or receivership proceedings) 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) 4 percent, if the requirements of § 324.132(b)(3)(i)(A) are not met.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client FDIC-supervised institution must apply the risk weight applicable to the CCP under § 324.32.

(4) *Collateral.* (i) Notwithstanding any other requirement of this section, collateral posted by a clearing member client FDIC-supervised institution that is held by a custodian (in its capacity as custodian) in a manner that is bankruptcy remote from the CCP, the custodian, clearing member, and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

(ii) A clearing member client FDIC-supervised institution 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 § 324.131.

(c) *Clearing member FDIC-supervised institution*—(1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, a clearing member FDIC-supervised institution 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 FDIC-supervised institution'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 FDIC-supervised institution must calculate its trade exposure amount for a cleared transaction as follows:

(i) For a cleared transaction that is a derivative contract or a netting set of derivative contracts, trade exposure amount equals the EAD calculated using the methodology used to calculate EAD for OTC derivative contracts set forth in § 324.132(c) or § 324.132(d), plus the fair value of the collateral posted by the clearing member FDIC-supervised institution and held by the CCP in a manner that is not bankruptcy remote. When the clearing member FDIC-supervised institution calculates EAD for the cleared transaction using the methodology in § 324.132(d), EAD equals $EAD_{unstressed.}$

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals the EAD calculated under §§ 324.132(b)(2), (b)(3), or (d), plus the fair value of the collateral posted by the clearing member FDIC-supervised institution and held by the CCP in a manner that is not bankruptcy remote. When the clearing member FDIC-supervised institution calculates EAD for the cleared transaction under § 324.132(d), EAD equals $EAD_{unstressed.}$

(3) *Cleared transaction risk weights.* (i) A clearing member FDIC-supervised institution must apply a risk weight of 2 percent to the trade exposure amount for a cleared transaction with a QCCP.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member FDIC-supervised institution must apply the risk weight applicable to the CCP according to § 324.32.

(4) *Collateral.* (i) Notwithstanding any other requirement of this section, collateral posted by a clearing member FDIC-supervised institution 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 clearing member FDIC-supervised institution 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 § 324.131

(d) *Default fund contributions*—(1) *General requirement.* A clearing member FDIC-supervised institution 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 FDIC-supervised institution or the FDIC, 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 FDIC-supervised institution'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 or an amount determined by the FDIC, based on factors such as size, structure and membership characteristics of the CCP and riskiness of its transactions, in cases where such default fund contributions may be unlimited.

(3) *Risk-weighted asset amount for default fund contributions to QCCP*s. A clearing member FDIC-supervised institution'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 the methodology set forth in paragraph (d)(3)(i) of this section (Method 1), multiplied by 1,250 percent or paragraph (d)(3)(iv) of this section (Method 2).

(i) *Method* 1. 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) $EBRM_i$ equals 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 § 324.132(c)(5) and § 324.132.(c)(6) or the methodology used to calculate EAD for repo-style transactions set forth in § 324.132(b)(2) for repo-style transactions, provided that:

(*1*) For purposes of this section, when calculating the EAD, the FDIC-supervised institution may replace the formula provided in § 324.132 (c)(6)(ii) with the following formula:

$$Anet = (0.15 \times A_{gross}) + (0.85 \times NGR \times A_{gross}); \text{ and}$$

(*2*) For option derivative contracts that are cleared transactions, the PFE described in § 324.132(c)(5) must be adjusted by multiplying the notional principal amount of the derivative contract by the appropriate conversion factor in Table 2 to § 324.132 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.

(*3*) For repo-style transactions, when applying § 324.132(b)(2), the FDIC-supervised institution must use the methodology in § 324.132(b)(2)(ii).

(B) VM_i equals 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 has actually received from clearing member i;

(C) IM_i equals the collateral posted as initial margin by clearing member i to the QCCP;

(D) DF_i equals 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 equals 20 percent, except when the FDIC has determined that a higher risk weight is more appropriate based on the specific characteristics of the QCCP and its clearing members; and

(F) Where a QCCP has provided its K_{CCP}, an FDIC-supervised institution must rely on such disclosed figure instead of calculating K_{CCP} under this paragraph, unless the FDIC-supervised institution determines that a more conservative figure is appropriate based on the nature, structure, or characteristics of the QCCP.

(ii) For an FDIC-supervised institution that is a clearing member of a QCCP with a default fund supported by funded commitments, K_{CM} equals:

$$K_{CM_i} = \left(1 + \beta \cdot \frac{N}{N-2}\right) \cdot \frac{DF_i}{DF_{CM}} \cdot K^*_{CM}$$

$$K^*_{CM} = \begin{cases} c_2 \cdot \mu \cdot \left(K_{CCP} - DF'\right) + c_2 \cdot DF'_{CM} & if \quad DF' < K_{CCP} \quad (i) \\ c_2 \cdot (K_{CCP} - DF_{CCP}) + c_1 \cdot \left(DF' - K_{CCP}\right) & if \quad DF_{CCP} < K_{CCP} \leq DF' \quad (ii) \\ c_1 \cdot DF'_{CM} & if \quad K_{CCP} \leq DF_{CCP} \quad (iii) \end{cases}$$

Where

(A) $\beta = \dfrac{A_{Net,1} + A_{Net,2}}{\sum_i A_{Net,i}}$

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 § 324.132(c)(6)(ii) and for cleared transactions that are repo-style transactions, A_{Net} is the EAD equation max {0, [(∑E - ∑C) + ∑(E_s x H_s) + ∑(Efx]} from § 324.132(b)(2(i)) using the methodology in § 324.132(b)(2)(ii);

(B) N equals the number of clearing members in the QCCP;

(C) DF_{CCP} equals 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} equals 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 1.6 percent and .16 percent, applied to the excess funded default funds provided by clearing members);

(J) c_2 = 100 percent; and

(K) μ= 1.2; </EXTRACT>

(iii) For an FDIC-supervised institution 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 equals the FDIC-supervised institution's unfunded commitment to the default fund;

(B) DF_{CM} equals the total of all clearing members' unfunded commitments to the default fund; and

(C) K^*_{CM} as defined in paragraph (d)(3)(ii) of this section.

(D) For an FDIC-supervised institution 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 equals the FDIC-supervised institution'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) *Method 2.* A clearing member FDIC-supervised institution's risk-weighted asset amount for its default fund contribution to a QCCP, RWA_{DF}, equals:

RWA_{DF} = Min {12.5 * DF; 0.18 * TE}

Where

(A) TE equals the FDIC-supervised institution's trade exposure amount to the QCCP calculated according to section 133(c)(2);

(B) DF equals the funded portion of the FDIC-supervised institution's default fund contribution to the QCCP.

(v) *Total risk-weighted assets for default fund contributions.* Total risk-weighted assets for default fund contributions is the sum of a clearing member FDIC-supervised institution's risk-weighted assets for all of its default fund contributions to all CCPs of which the FDIC-supervised institution is a clearing member.

§ 324.134 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 FDIC-supervised institution 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 §§ 324.141 through 324.145.

(3) An FDIC-supervised institution 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 § 324.135. An FDIC-supervised institution's PD and LGD for the hedged exposure may not be lower than the PD and LGD floors described in § 324.131(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, an FDIC-supervised institution 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 in 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, an FDIC-supervised institution 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) An FDIC-supervised institution 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) An FDIC-supervised institution may only recognize the credit risk mitigation benefits of eligible guarantees and eligible credit derivatives.

(2) An FDIC-supervised institution 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, an FDIC-supervised institution may recognize the guarantee or credit derivative in determining the FDIC-supervised institution'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 § 324.131 and using the appropriate LGD as described in paragraph (c)(1)(iii) of this section. If the FDIC-supervised institution determines that full substitution of the protection provider's PD leads to an inappropriate degree of risk mitigation, the FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC-supervised institution must calculate its risk-based capital requirement for the protected exposure under § 324.131, 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 FDIC-supervised institution determines that full substitution leads to an inappropriate degree of risk mitigation, the FDIC-supervised institution may use a higher PD than that of the protection provider.

(B) The FDIC-supervised institution must calculate its risk-based capital requirement for the unprotected exposure under § 324.131, 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) of this section 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 FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC-supervised institution'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 § 324.131, 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 § 324.131, 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 FDIC-supervised institution 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 FDIC-supervised institution'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 § 324.131, 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 § 324.131, using the PD for the protection provider, the LGD for the guarantee or credit derivative, and an EAD set equal to P.

(B) The FDIC-supervised institution must calculate its risk-based capital requirement for the unprotected exposure under § 324.131, 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.* For purposes of this paragraph (c), the M of the hedged exposure is the same as the M of the exposure if it were unhedged.

(d) *Maturity mismatch.* (1) An FDIC-supervised institution 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 FDIC-supervised institution (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 FDIC-supervised institution (protection purchaser), but the terms of the arrangement at origination of the credit risk mitigant contain a positive incentive for the FDIC-supervised institution to call the transaction before contractual maturity, the remaining time to the first call date is the residual maturity of the credit risk mitigant.[26]

(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 FDIC-supervised institution 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 equals effective notional amount of the credit risk mitigant, adjusted for maturity mismatch;

(ii) E equals effective notional amount of the credit risk mitigant;

(iii) t equals the lesser of T or the residual maturity of the credit risk mitigant, expressed in years; and

(iv) T equals 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 an FDIC-supervised institution 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 FDIC-supervised institution 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 equals effective notional amount of the credit risk mitigant, adjusted for lack of restructuring event (and maturity mismatch, if applicable); and

(2) P_m equals effective notional amount of the credit risk mitigant adjusted for maturity mismatch (if applicable).

(f) *Currency mismatch.* (1) If an FDIC-supervised institution 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 FDIC-supervised institution 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 equals 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 equals effective notional amount of the credit risk mitigant (adjusted for maturity mismatch and lack of restructuring event, if applicable); and

(iii) H_{FX} equals haircut appropriate for the currency mismatch between the credit risk mitigant and the hedged exposure.

(2) An FDIC-supervised institution 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. An FDIC-supervised institution qualifies for the use of its own internal estimates of foreign exchange volatility if it qualifies for:

(i) The own-estimates haircuts in § 324.132(b)(2)(iii);

(ii) The simple VaR methodology in § 324.132(b)(3); or

(iii) The internal models methodology in § 324.132(d).

(3) An FDIC-supervised institution must adjust H_{FX} calculated in paragraph (f)(2) of this section upward if the FDIC-supervised institution revalues the guarantee or credit derivative less frequently than once every ten business days using the square root of time formula provided in § 324.132(b)(2)(iii)(A)(*2*).

§ 324.135 Guarantees and credit derivatives: Double default treatment.

(a) *Eligibility and operational criteria for double default treatment.* An FDIC-supervised institution may recognize the credit risk mitigation benefits of a guarantee or credit derivative covering an exposure described in § 324.134(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

[26] 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.

(ii) An eligible credit derivative that meets the requirements of § 324.134(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 nth-to-default credit derivative (subject to the requirements of § 324.142(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 FDIC-supervised institution 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 FDIC-supervised institution has implemented a process (which has received the prior, written approval of the FDIC) to detect excessive correlation between the creditworthiness of the obligor of the hedged exposure and the protection provider. If excessive correlation is present, the FDIC-supervised institution may not use the double default treatment for the hedged exposure.

(b) *Full coverage.* If a 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 FDIC-supervised institution may determine its risk-weighted asset amount for the hedged exposure under paragraph (e) of this section.

(c) *Partial coverage.* If a 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 FDIC-supervised institution 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 FDIC-supervised institution must set EAD equal to P and calculate its risk-weighted asset amount as provided in paragraph (e) of this section; and

(2) For the unprotected exposure, the FDIC-supervised institution must set EAD equal to the EAD of the original exposure minus P and then calculate its risk-weighted asset amount as provided in § 324.131.

(d) *Mismatches.* For any hedged exposure to which an FDIC-supervised institution applies double default treatment under this part, the FDIC-supervised institution must make applicable adjustments to the protection amount as required in §§ 324.134(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 an FDIC-supervised institution has applied double default treatment is K_{DD} multiplied by the EAD of the exposure. K_{DD} is calculated according to the following formula: $K_{DD} = K_o \times (0.15 + 160 \times PD_g)$,

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 equals PD of the protection provider.

(3) PD_o equals PD of the obligor of the hedged exposure.

(4) LGD_g equals:

(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 FDIC-supervised institution 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 FDIC-supervised institution with the option to receive immediate payout on triggering the protection; and

(5) ρ_{os} (asset value correlation of the obligor) is calculated according to the appropriate formula for (R) provided in Table 1 in § 324.131, with PD equal to PD_o.

(6) b (maturity adjustment coefficient) is calculated according to the formula for b provided in Table 1 in § 324.131, with PD equal to the lesser of PD_o and PD_g; and

(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.

§ 324.136 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) 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) The positive current exposure of an FDIC-supervised institution 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 FDIC-supervised institution 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 §§ 324.131 and 324.132);

(3) One-way cash payments on OTC derivative contracts (which are addressed in §§ 324.131 and 324.132); 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 §§ 324.131 and 324.132).

(c) *System-wide failures.* In the case of a system-wide failure of a settlement or clearing system, or a central counterparty, the FDIC 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.* An FDIC-supervised institution must hold risk-based capital against any DvP or PvP transaction with a normal settlement period if the FDIC-supervised institution's counterparty has not made delivery or payment within five business days after the settlement date. The FDIC-supervised institution must determine its risk-weighted asset amount for such a transaction by multiplying the positive current exposure of the transaction for the FDIC-supervised institution by the appropriate risk weight in Table 1 to § 324.136.

TABLE 1 TO § 324.136—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) An FDIC-supervised institution must hold risk-based capital against any non-DvP/non-PvP transaction with a normal settlement period if the FDIC-supervised institution 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 FDIC-supervised institution must continue to hold risk-based capital against the transaction until the FDIC-supervised institution has received its corresponding deliverables.

(2) From the business day after the FDIC-supervised institution has made its delivery until five business days after the counterparty delivery is due, the FDIC-supervised institution must calculate its risk-based capital requirement for the transaction by treating the current fair value of the deliverables owed to the FDIC-supervised institution as a wholesale exposure.

(i) An FDIC-supervised institution may use a 45 percent LGD for the transaction rather than estimating LGD for the transaction provided the FDIC-supervised institution uses the 45 percent LGD for all transactions described in § 324.135(e)(1) and (e)(2).

(ii) An FDIC-supervised institution may use a 100 percent risk weight for the transaction provided the FDIC-supervised institution uses this risk weight for all transactions described in §§ 324.135(e)(1) and (e)(2).

(3) If the FDIC-supervised institution has not received its deliverables by the fifth business day after the counterparty delivery was due, the FDIC-supervised institution must apply a 1,250 percent risk weight to the current fair value of the deliverables owed to the FDIC-supervised institution.

(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.

§§ 324.137 through 324.140 [Reserved]

Risk-Weighted Assets for Securitization Exposures

§ 324.141 Operational criteria for recognizing the transfer of risk.

(a) *Operational criteria for traditional securitizations.* An FDIC-supervised institution 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. An FDIC-supervised institution that meets these conditions must hold risk-based capital against any securitization exposures it retains in connection with the securitization. An FDIC-supervised institution 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 FDIC-supervised institution's consolidated balance sheet under GAAP;

(2) The FDIC-supervised institution has transferred to one or more 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, an FDIC-supervised institution may recognize for risk-based capital purposes under this subpart the use of a credit risk mitigant to hedge underlying exposures only if each of the conditions in this paragraph (b) is satisfied. An FDIC-supervised institution that meets these conditions must hold risk-based capital against any credit risk of the exposures it retains in connection with the synthetic securitization. An FDIC-supervised institution that fails to meet these conditions or chooses not to recognize the credit risk mitigant for purposes of this section must hold risk-based capital under this subpart against the underlying exposures as if they had not been synthetically securitized. The conditions are:

(1) The credit risk mitigant is:

(i) Financial collateral; or

(ii) A guarantee that meets all of the requirements of an eligible guarantee in § 324.2 except for paragraph (3) of the definition; or

(iii) A credit derivative that meets all of the requirements of an eligible credit derivative except for paragraph (3) of the definition of eligible guarantee in § 324.2.

(2) The FDIC-supervised institution 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 FDIC-supervised institution to alter or replace the underlying exposures to improve the credit quality of the underlying exposures;

(iii) Increase the FDIC-supervised institution'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 FDIC-supervised institution 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 FDIC-supervised institution after the inception of the securitization;

(3) The FDIC-supervised institution 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 § 324.142(k), if an FDIC-supervised institution is unable to demonstrate to the satisfaction of the FDIC a comprehensive understanding of the features of a securitization exposure that would materially affect the performance of the exposure, the FDIC-supervised institution must assign a 1,250 percent risk weight to the securitization exposure. The FDIC-supervised institution's analysis must be commensurate with the complexity of the securitization exposure and the materiality of the position in relation to regulatory capital according to this part.

(2) An FDIC-supervised institution must demonstrate its comprehensive understanding of a securitization exposure under paragraph (c)(1) of this section, for each securitization exposure by:

(i) 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, 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, fair 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, 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 this section for each securitization exposure.

§ 324.142 Risk-weighted assets for securitization exposures.

(a) *Hierarchy of approaches.* Except as provided elsewhere in this section and in § 324.141:

(1) An FDIC-supervised institution 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 FDIC-supervised institution must apply the supervisory formula approach in § 324.143 to the exposure if the FDIC-supervised institution and the exposure qualify for the supervisory formula approach according to § 324.143(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 FDIC-supervised institution may apply the simplified supervisory formula approach under § 324.144;

(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 in § 324.143, and the FDIC-supervised institution does not apply the simplified supervisory formula approach in § 324.144, the FDIC-supervised institution must apply a 1,250 percent risk weight to the exposure; and

(5) If a securitization exposure is a derivative contract (other than protection provided by an FDIC-supervised institution in the form of 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), an FDIC-supervised institution 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.* An FDIC-supervised institution's total risk-weighted assets for securitization exposures is equal to the sum of its risk-weighted assets calculated using §§ 324.141 through 146.

(c) *Deductions.* An FDIC-supervised institution 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 § 324.141(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 FDIC-supervised institution associated with a single securitization (excluding any risk-based capital requirements that relate to the FDIC-supervised institution's gain-on-sale or CEIOs associated with the securitization) may not exceed the sum of:

(1) The FDIC-supervised institution's total risk-based capital requirement for the underlying exposures calculated under this subpart as if the FDIC-supervised institution directly held the underlying exposures; and

(2) The total ECL of the underlying exposures calculated under this subpart.

(e) *Exposure amount of a securitization exposure.* (1) The exposure amount of an on-balance sheet securitization exposure that is not a repo-style transaction, eligible margin loan, OTC derivative contract, or cleared transaction is the FDIC-supervised institution's carrying value.

(2) Except as provided in paragraph (m) of this section, the exposure amount of an off-balance sheet securitization exposure that is not an OTC derivative contract (other than a credit derivative), repo-style transaction, eligible margin loan, 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 FDIC-supervised institution 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 exposure amount of a securitization exposure that is a repo-style transaction, eligible margin loan, or OTC derivative contract (other than a credit derivative) or cleared transaction (other than a credit derivative) is the

EAD of the exposure as calculated in § 324.132 or § 324.133.

(f) *Overlapping exposures.* If an FDIC-supervised institution has multiple securitization exposures that provide duplicative coverage of the underlying exposures of a securitization (such as when an FDIC-supervised institution provides a program-wide credit enhancement and multiple pool-specific liquidity facilities to an ABCP program), the FDIC-supervised institution is not required to hold duplicative risk-based capital against the overlapping position. Instead, the FDIC-supervised institution may assign to the overlapping securitization exposure the applicable risk-based capital treatment under this subpart that results in the highest risk-based capital requirement.

(g) *Securitizations of non-IRB exposures.* Except as provided in § 324.141(c), if an FDIC-supervised institution has a securitization exposure where any underlying exposure is not a wholesale exposure, retail exposure, securitization exposure, or equity exposure, the FDIC-supervised institution:

(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 FDIC-supervised institution is an originating FDIC-supervised institution;

(2) May apply the simplified supervisory formula approach in § 324.144 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 in § 324.143, and the FDIC-supervised institution does not apply the simplified supervisory formula approach in § 324.144 to the exposure.

(h) *Implicit support.* If an FDIC-supervised institution provides support to a securitization in excess of the FDIC-supervised institution's contractual obligation to provide credit support to the securitization (implicit support):

(1) The FDIC-supervised institution 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 FDIC-supervised institution must disclose publicly:

(i) That it has provided implicit support to the securitization; and

(ii) The regulatory capital impact to the FDIC-supervised institution of providing such implicit support.

(i) *Undrawn portion of a servicer cash advance facility.* (1) Notwithstanding any other provision of this subpart, an FDIC-supervised institution that is a servicer under an eligible servicer cash advance facility is not required to hold risk-based capital against potential future cash advance payments that it may be required to provide under the contract governing the facility.

(2) For an FDIC-supervised institution that acts as a servicer, the exposure amount for a servicer cash advance facility that is not an eligible servicer cash advance facility is equal to the amount of all potential future cash advance payments that the FDIC-supervised institution may be contractually required to provide during the subsequent 12 month period under the contract governing the facility.

(j) *Interest-only mortgage-backed securities.* Regardless of any other provisions in this part, 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, an FDIC-supervised institution 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 FDIC-supervised institution establishes and maintains, pursuant to GAAP, a non-capital reserve sufficient to meet the FDIC-supervised institution'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 (15 U.S.C. 632 *et seq.*); and

(iv) The FDIC-supervised institution is well-capitalized, as defined in subpart H of this part. For purposes of determining whether an FDIC-supervised institution is well capitalized for purposes of this paragraph, the FDIC-supervised institution'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 an FDIC-supervised institution on transfers of small-business obligations subject to paragraph (k)(1) of this section cannot exceed 15 percent of the FDIC-supervised institution's total capital.

(3) If an FDIC-supervised institution ceases to be well capitalized or exceeds the 15 percent capital limitation in paragraph (k)(2) of this section, 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 FDIC-supervised institution was well capitalized and did not exceed the capital limit.

(4) The risk-based capital ratios of an FDIC-supervised institution 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) *N^{th}-to-default credit derivatives*—(1) *Protection provider.* An FDIC-supervised institution must determine a risk weight using the supervisory formula approach (SFA) pursuant to § 324.143 or the simplified supervisory formula approach (SSFA) pursuant to § 324.144 for an nth-to-default credit derivative in accordance with this paragraph. In the case of credit protection sold, an FDIC-supervised institution must determine its exposure in the nth-to-default credit derivative as the largest notional 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 FDIC-supervised institution 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 FDIC-supervised institution's exposure to the total notional amount of all underlying exposures. For purposes of the SSFA, parameter A is expressed as a decimal value between zero and one. 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 FDIC-supervised

institution'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 FDIC-supervised institution's exposure.

(ii) The detachment point (parameter D) equals the sum of parameter A plus the ratio of the notional amount of the FDIC-supervised institution's exposure in the nth-to-default credit derivative to the total notional amount of all underlying exposures. For purposes of the SSFA, parameter W is expressed as a decimal value between zero and one. For purposes of the SFA, parameter D must be set to equal L plus the thickness of tranche T input to the SFA formula.

(3) An FDIC-supervised institution 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.* An FDIC-supervised institution that obtains credit protection on a group of underlying exposures through a first-to-default credit derivative that meets the rules of recognition of § 324.134(b) must determine its risk-based capital requirement under this subpart for the underlying exposures as if the FDIC-supervised institution synthetically securitized the underlying exposure with the lowest risk-based capital requirement and had obtained no credit risk mitigant on the other underlying exposures. An FDIC-supervised institution must calculate a risk-based capital requirement for counterparty credit risk according to § 324.132 for a first-to-default credit derivative that does not meet the rules of recognition of § 324.134(b).

(ii) *Second-or-subsequent-to-default credit derivatives.* (A) An FDIC-supervised institution that obtains credit protection on a group of underlying exposures through a nth-to-default credit derivative that meets the rules of recognition of § 324.134(b) (other than a first-to-default credit derivative) may recognize the credit risk mitigation benefits of the derivative only if:

(*1*) The FDIC-supervised institution 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 an FDIC-supervised institution satisfies the requirements of paragraph (l)(3)(ii)(A) of this section, the FDIC-supervised institution 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 smallest risk-based capital requirement and had obtained no credit risk mitigant on the other underlying exposures.

(C) An FDIC-supervised institution must calculate a risk-based capital requirement for counterparty credit risk according to § 324.132 for a nth-to-default credit derivative that does not meet the rules of recognition of § 324.134(b).

(m) *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 an FDIC-supervised institution that covers the full amount or a pro rata share of a securitization exposure's principal and interest, the FDIC-supervised institution 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) An FDIC-supervised institution that purchases an OTC credit derivative (other than an nth-to-default credit derivative) that is recognized under § 324.145 as a credit risk mitigant (including via recognized collateral) is not required to compute a separate counterparty credit risk capital requirement under § 324.131 in accordance with § 324.132(c)(3).

(ii) If an FDIC-supervised institution cannot, or chooses not to, recognize a purchased credit derivative as a credit risk mitigant under § 324.145, the FDIC-supervised institution must determine the exposure amount of the credit derivative under § 324.132(c).

(A) If the FDIC-supervised institution purchases credit protection from a counterparty that is not a securitization SPE, the FDIC-supervised institution must determine the risk weight for the exposure according to § 324.131.

(B) If the FDIC-supervised institution purchases the credit protection from a counterparty that is a securitization SPE, the FDIC-supervised institution must determine the risk weight for the exposure according to this § 324.142, including paragraph (a)(5) of this section for a credit derivative that has a first priority claim on the cash flows from the underlying exposures of the securitization SPE (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments.

§ 324.143 Supervisory formula approach (SFA).

(a) *Eligibility requirements.* An FDIC-supervised institution must use the SFA to determine its risk-weighted asset amount for a securitization exposure if the FDIC-supervised institution 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 a securitization exposure equals its SFA risk-based capital requirement as calculated under paragraph (c) and (d) of this section, multiplied by 12.5.

(c) *The SFA risk-based capital requirement.* (1) If K_{IRB} is greater than or equal to L+T, an exposure's SFA risk-based capital requirement equals the exposure amount.

(2) If K_{IRB} is less than or equal to L, an exposure's SFA risk-based capital requirement is UE multiplied by TP multiplied by the greater of:

(i) $F \cdot T$ (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 FDIC-supervised institution must apply a 1,250 percent risk weight to an amount equal to $UE \cdot TP \cdot (K_{IRB} - L)$, and the exposure's SFA risk-based capital requirement is UE multiplied by TP multiplied by the greater of:

(i) $F \cdot (T - (K_{IRB} - L))$ (where F is 0.016 for all other securitization exposures); or

(ii) $S[L + T] - S[K_{IRB}]$.

(d) *The supervisory formula:*

$$(1)\quad S[Y] = \begin{cases} Y & \text{when } Y \le K_{IRB} \\ K_{IRB} + K[Y] - K[K_{IRB}] + \dfrac{d \cdot K_{IRB}}{20}\left(1 - e^{\frac{20 \cdot (K_{IRB} - Y)}{K_{IRB}}}\right) & \text{when } Y > K_{IRB} \end{cases}$$

$$(2)\quad K[Y] = (1-h) \cdot \left[\left(1 - \beta[Y; a, b]\right) \cdot Y + \beta[Y; a+1, b] \cdot c\right]$$

$$(3)\quad h = \left(1 - \frac{K_{IRB}}{EWALGD}\right)^N$$

$$(4)\quad a = g \cdot c$$

$$(5)\quad b = g \cdot (1 - c)$$

$$(6)\quad c = \frac{K_{IRB}}{1 - h}$$

$$(7)\quad g = \frac{(1 - c) \cdot c}{f} - 1$$

$$(8)\quad f = \frac{v + K_{IRB}^{\ 2}}{1 - h} - c^2 + \frac{(1 - K_{IRB}) \cdot K_{IRB} - v}{(1 - h) \cdot 1000}$$

$$(9)\quad v = K_{IRB} \cdot \frac{(EWALGD - K_{IRB}) + .25 \cdot (1 - EWALGD)}{N}$$

$$(10)\quad d = 1 - (1 - h) \cdot (1 - \beta[K_{IRB}; a, b]).$$

(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.* For purposes of the calculations in paragraphs (c) and (d) of this section:

(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 § 324.142(e)) plus the adjusted carrying value of any underlying exposures that are equity exposures (as defined in § 324.151(b)).

(2) *Tranche percentage (TP).* TP is the ratio of the amount of the FDIC-supervised institution'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 FDIC-supervised institution); 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 all of the 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 FDIC-supervised institution's securitization exposure; to

(B) UE.

(ii) An FDIC-supervised institution 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 FDIC-supervised institution'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 FDIC-supervised institution's securitization exposure; to

(ii) UE.

(6) *Effective number of exposures (N).* (i) Unless the FDIC-supervised institution elects to use the formula provided in paragraph (f) of this section,

$$N = \frac{(\sum_i EAD_i)^2}{\sum_i EAD_i^2}$$

where EAD_i represents the EAD associated with the ith instrument in the underlying exposures.

(ii) Multiple exposures to one obligor must be treated as a single underlying exposure.

(iii) In the case of a resecuritization, the FDIC-supervised institution 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 ith obligor. In the case of a resecuritization, 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, an FDIC-supervised institution may apply the SFA using the following simplifications:

(i) h = 0; and

(ii) v = 0.

(2) Under the conditions in §§ 324.143(f)(3) and (f)(4), an FDIC-supervised institution may employ a simplified method for calculating N and EWALGD.

(3) If C_1 is no more than 0.03, an FDIC-supervised institution 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 FDIC-supervised institution.

(4) Alternatively, if only C_1 is available and C_1 is no more than 0.03, the FDIC-supervised institution 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 $N = 1/C_1$.

§ 324.144 Simplified supervisory formula approach (SSFA).

(a) *General requirements for the SSFA.* To use the SSFA to determine the risk weight for a securitization exposure, an FDIC-supervised institution 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; if the contracts governing the underlying exposures of the securitization require payments on a monthly or quarterly basis, the data used to assign the parameters described in paragraph (b) of this section must be no more than 91 calendar days old. An FDIC-supervised institution 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, an FDIC-supervised institution 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 subpart D of this part. K_G is expressed as a decimal value between zero and one (that is, an average risk weight of 100 percent represents a value of K_G equal to 0.08).

(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 of the securitization that meet any of the criteria as set forth in paragraphs (b)(2)(i) through (vi) of this section to the 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 payments for 90 days or more, other than principal or interest payments deferred on:

(A) Federally-guaranteed student loans, in accordance with the terms of those guarantee programs; or

(B) Consumer loans, including non-federally-guaranteed student loans, provided that such payments are deferred pursuant to provisions

included in the contract at the time funds are disbursed that provide for period(s) of deferral that are not initiated based on changes in the creditworthiness of the borrower; 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. Except as provided in § 324.142(l) for n^{th}-to-default credit derivatives, parameter A equals the ratio of the current dollar amount of underlying exposures that are subordinated to the exposure of the FDIC-supervised institution 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 FDIC-supervised institution'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. Except as provided in § 324.142(l) for n^{th}-to-default credit derivatives, 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 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 securitization exposure, as appropriate, is the larger of the risk weight determined in accordance with this paragraph, 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 FDIC-supervised institution 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. For the purpose of this weighted-average calculation:

(i) The weight assigned to 1,250 percent equals $\frac{K_A - A}{D - A}$; and

(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:

$$Risk\ Weight = \left[\left(\frac{K_A - A}{D - A}\right) \cdot 1{,}250\ percent\right] + \left[\left(\frac{D - K_A}{D - A}\right) \cdot 1{,}250\ percent \cdot K_{SSFA}\right]$$

(d) SSFA equation. (1) The FDIC-supervised institution must define the following parameters:

$$K_A = (1 - W) \cdot K_G + (0.5 \cdot W)$$

$$a = -\frac{1}{p \cdot K_A}$$

$$u = D - K_A$$

$$l = \max(A - K_A, 0)$$

$e = 2.71828$, the base of the natural logarithms.

(2) Then the FDIC-supervised institution 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 $K_{SSFA} \times 1{,}250$.

§ 324.145 Recognition of credit risk mitigants for securitization exposures.

(a) *General.* An originating FDIC-supervised institution that has obtained a credit risk mitigant to hedge its securitization exposure to a synthetic or traditional securitization that satisfies the operational criteria in § 324.141 may recognize the credit risk mitigant, but only as provided in this section. An investing FDIC-supervised institution 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.* An FDIC-supervised institution may recognize financial collateral in determining the FDIC-supervised institution'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 FDIC-supervised institution has reflected collateral in its determination of exposure amount under § 324.132) as

follows. The FDIC-supervised institution'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 § 324.144 or under the SFA in § 324.143 multiplied by the ratio of adjusted exposure amount (SE*) to original exposure amount (SE), where:

(i) SE* equals max {0, [SE − C × (1 − H_s − H_{fx})]};

(ii) SE equals the amount of the securitization exposure calculated under § 324.142(e);

(iii) C equals the current fair value of the collateral;

(iv) H_s equals the haircut appropriate to the collateral type; and

(v) H_{fx} equals 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 fair value of the asset in the basket divided by the current fair value of all assets in the basket and H_i is the haircut applicable to that asset.

(3) *Standard supervisory haircuts.* Unless an FDIC-supervised institution qualifies for use of and uses own-estimates haircuts in paragraph (b)(4) of this section:

(i) An FDIC-supervised institution must use the collateral type haircuts (H_s) in Table 1 to § 324.132 of this subpart;

(ii) An FDIC-supervised institution must use a currency mismatch haircut (H_{fx}) of 8 percent if the exposure and the collateral are denominated in different currencies;

(iii) An FDIC-supervised institution 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) An FDIC-supervised institution 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 FDIC, an FDIC-supervised institution may calculate haircuts using its own internal estimates of market price volatility and foreign exchange volatility, subject to § 324.132(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.* An FDIC-supervised institution may only recognize an eligible guarantee or eligible credit derivative provided by an eligible guarantor in determining the FDIC-supervised institution's risk-weighted asset amount for a securitization exposure.

(2) *ECL for securitization exposures.* When an FDIC-supervised institution recognizes an eligible guarantee or eligible credit derivative provided by an eligible guarantor in determining the FDIC-supervised institution's risk-weighted asset amount for a securitization exposure, the FDIC-supervised institution 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 FDIC-supervised institution's total ECL.

(3) *Rules of recognition.* An FDIC-supervised institution may recognize an eligible guarantee or eligible credit derivative provided by an eligible guarantor in determining the FDIC-supervised institution'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 FDIC-supervised institution 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 § 324.131), using the FDIC-supervised institution's PD for the guarantor, the FDIC-supervised institution's LGD for the guarantee or credit derivative, and an EAD equal to the amount of the securitization exposure (as determined in § 324.142(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 FDIC-supervised institution 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 § 324.131), using the FDIC-supervised institution's PD for the guarantor, the FDIC-supervised institution'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 §§ 324.142 through 324.146).

(4) *Mismatches.* The FDIC-supervised institution must make applicable adjustments to the protection amount as required in § 324.134(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 FDIC-supervised institution must use the longest residual maturity of any of the hedged exposures as the residual maturity of all the hedged exposures.

§§ 324.146 through 324.150 [Reserved]

Risk-Weighted Assets for Equity Exposures

§ 324.151 Introduction and exposure measurement.

(a) *General.* (1) To calculate its risk-weighted asset amounts for equity

exposures that are not equity exposures to investment funds, an FDIC-supervised institution may apply either the Simple Risk Weight Approach (SRWA) in § 324.152 or, if it qualifies to do so, the Internal Models Approach (IMA) in § 324.153. An FDIC-supervised institution must use the look-through approaches provided in § 324.154 to calculate its risk-weighted asset amounts for equity exposures to investment funds.

(2) An FDIC-supervised institution must treat an investment in a separate account (as defined in § 324.2), as if it were an equity exposure to an investment fund as provided in § 324.154.

(3) *Stable value protection.* (i) Stable value protection means a contract where the provider of the contract is obligated to pay:

(A) The policy owner of a separate account an amount equal to the shortfall between the fair value and cost basis of the separate account when the policy owner of the separate account surrenders the policy, or

(B) The beneficiary of the contract an amount equal to the shortfall between the fair value and book value of a specified portfolio of assets.

(ii) An FDIC-supervised institution that purchases stable value protection on its investment in a separate account must treat the portion of the carrying value of its investment in the separate account attributable to the stable value protection as an exposure to the provider of the protection and the remaining portion of the carrying value of its separate account as an equity exposure to an investment fund.

(iii) An FDIC-supervised institution that provides stable value protection must treat the exposure as an equity derivative with an adjusted carrying value determined as the sum of § 324.151(b)(1) and (2).

(b) *Adjusted carrying value.* For purposes of this subpart, the adjusted carrying value of an equity exposure is:

(1) For the on-balance sheet component of an equity exposure, the FDIC-supervised institution's carrying value of the exposure;

(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.

(3) 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 FDIC-supervised institution's best estimate of the amount that would be funded under economic downturn conditions.

§ 324.152 Simple risk weight approach (SRWA).

(a) *General.* Under the SRWA, an FDIC-supervised institution'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 FDIC-supervised institution'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 FDIC-supervised institution's individual equity exposures to an investment fund as determined in § 324.154.

(b) *SRWA computation for individual equity exposures.* An FDIC-supervised institution 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 § 324.131(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 significant investments in the capital of an unconsolidated institution in the form of common stock and exposures to an investment firm that would meet the definition of a traditional securitization were it not for the FDIC's application of paragraph (8) of that definition in § 324.2 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 FDIC-supervised institution's total capital.

(A) To compute the aggregate adjusted carrying value of an FDIC-supervised institution's equity exposures for purposes of this section, the FDIC-supervised institution 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 an FDIC-supervised institution does not know the actual holdings of the investment fund, the FDIC-supervised institution 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 FDIC-supervised institution 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 an FDIC-supervised institution's equity exposures qualifies for a 100 percent risk weight under this section, an FDIC-supervised institution 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 in the form of common stock that are not deducted from capital pursuant to § 324.22(b)(4) 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 FDIC's application of paragraph (8) of that definition in § 324.2; 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 FDIC-supervised institution acquires at least one of the equity exposures); the documentation specifies the measure of effectiveness (E) the FDIC-supervised institution 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. An FDIC-supervised institution 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 FDIC-supervised institution 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:

$$E = 1 - \frac{\sum_{t=1}^{T} \left(X_t - X_{t-1} \right)^2}{\sum_{t=1}^{T} \left(A_t - A_{t-1} \right)^2}, \text{ where}$$

(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 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.

§ 324.153 Internal models approach (IMA).

(a) *General.* An FDIC-supervised institution 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, an FDIC-supervised institution must receive prior written approval from the FDIC. To receive such approval, the FDIC-supervised institution must demonstrate to the FDIC's satisfaction that the FDIC-supervised institution meets the following criteria:

(1) The FDIC-supervised institution 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 FDIC-supervised institution's modeled equity exposures; and

(iii) Adequately capture both general market risk and idiosyncratic risk.

(2) The FDIC-supervised institution'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 99th percentile one-tailed confidence interval of the distribution of quarterly returns for a benchmark portfolio of equity exposures comparable to the FDIC-supervised institution'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 FDIC-supervised institution's model and benchmarking exercise must be sufficient to provide confidence in the accuracy and robustness of the FDIC-supervised institution's estimates.

(4) The FDIC-supervised institution's model and benchmarking process must

incorporate data that are relevant in representing the risk profile of the FDIC-supervised institution'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 FDIC-supervised institution's modeled equity exposures. In addition, the FDIC-supervised institution's benchmarking exercise must be based on daily market prices for the benchmark portfolio. If the FDIC-supervised institution's model uses a scenario methodology, the FDIC-supervised institution must demonstrate that the model produces a conservative estimate of potential losses on the FDIC-supervised institution's modeled equity exposures over a relevant long-term market cycle. If the FDIC-supervised institution employs risk factor models, the FDIC-supervised institution must demonstrate through empirical analysis the appropriateness of the risk factors used.

(5) The FDIC-supervised institution must be able to demonstrate, using theoretical arguments and empirical evidence, that any proxies used in the modeling process are comparable to the FDIC-supervised institution's modeled equity exposures and that the FDIC-supervised institution has made appropriate adjustments for differences. The FDIC-supervised institution must derive any proxies for its modeled equity exposures and benchmark portfolio using historical market data that are relevant to the FDIC-supervised institution'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 FDIC-supervised institution's modeled equity exposures.

(c) *Risk-weighted assets calculation for an FDIC-supervised institution using the IMA for publicly traded and non-publicly traded equity exposures.* If an FDIC-supervised institution models publicly traded and non-publicly traded equity exposures, the FDIC-supervised institution'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 § 324.152(b)(1) through (b)(3)(i) (as determined under § 324.152) and each equity exposure to an investment fund (as determined under § 324.154); and

(2) The greater of:

(i) The estimate of potential losses on the FDIC-supervised institution's equity exposures (other than equity exposures referenced in paragraph (c)(1) of this section) generated by the FDIC-supervised institution'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 FDIC-supervised institution'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 § 324.152(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 FDIC-supervised institution's equity exposures that are not publicly traded, do not qualify for a 0 percent, 20 percent, or 100 percent risk weight under § 324.152(b)(1) through (b)(3)(i), and are not equity exposures to an investment fund.

(d) *Risk-weighted assets calculation for an FDIC-supervised institution using the IMA only for publicly traded equity exposures.* If an FDIC-supervised institution models only publicly traded equity exposures, the FDIC-supervised institution'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 §§ 324.152(b)(1) through (b)(3)(i) (as determined under § 324.152), each equity exposure that qualifies for a 400 percent risk weight under § 324.152(b)(5) or a 600 percent risk weight under § 324.152(b)(6) (as determined under § 324.152), and each equity exposure to an investment fund (as determined under § 324.154); and

(2) The greater of:

(i) The estimate of potential losses on the FDIC-supervised institution's equity exposures (other than equity exposures referenced in paragraph (d)(1) of this section) generated by the FDIC-supervised institution'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 FDIC-supervised institution'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 § 324.152(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.

§ 324.154 Equity exposures to investment funds.

(a) *Available approaches.* (1) Unless the exposure meets the requirements for a community development equity exposure in § 324.152(b)(3)(i), an FDIC-supervised institution 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 § 324.152(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 FDIC-supervised institution does not use the full look-through approach, the FDIC-supervised institution may use the ineffective portion of the hedge pair as determined under § 324.152(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.* An FDIC-supervised institution 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 of this part as if the proportional ownership share of each exposure were held directly by the FDIC-supervised institution) may either:

(1) Set the risk-weighted asset amount of the FDIC-supervised institution'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 FDIC-supervised institution; and

(ii) The FDIC-supervised institution's proportional ownership share of the fund; or

(2) Include the FDIC-supervised institution's proportional ownership share of each exposure held by the fund in the FDIC-supervised institution's IMA.

(c) *Simple modified look-through approach.* Under this approach, the risk-weighted asset amount for an FDIC-supervised institution'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

of this part 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, an FDIC-supervised institution 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 FDIC-supervised institution'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 FDIC-supervised institution 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 of this part until the maximum total investment level is reached. If more than one exposure type applies to an exposure, the FDIC-supervised institution must use the highest applicable risk weight. An FDIC-supervised institution 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.

§ 324.155 Equity derivative contracts.

(a) Under the IMA, in addition to holding risk-based capital against an equity derivative contract under this part, an FDIC-supervised institution 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 § 324.132.

(b) Under the SRWA, an FDIC-supervised institution 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, an FDIC-supervised institution using the SRWA must either include all or exclude all of the contracts from any measure used to determine counterparty credit risk exposure.

§§ 324.161 through 324.160 [Reserved]

Risk-Weighted Assets for Operational Risk

§ 324.161 Qualification requirements for incorporation of operational risk mitigants.

(a) *Qualification to use operational risk mitigants.* An FDIC-supervised institution may adjust its estimate of operational risk exposure to reflect qualifying operational risk mitigants if:

(1) The FDIC-supervised institution's operational risk quantification system is able to generate an estimate of the FDIC-supervised institution's operational risk exposure (which does not incorporate qualifying operational risk mitigants) and an estimate of the FDIC-supervised institution's operational risk exposure adjusted to incorporate qualifying operational risk mitigants; and

(2) The FDIC-supervised institution's methodology for incorporating the effects of insurance, if the FDIC-supervised institution 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 FDIC-supervised institution deems to have strong capacity to meet its claims payment obligations and the obligor rating category to which the FDIC-supervised institution 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 FDIC has given prior written approval. In evaluating an operational risk mitigant other than insurance, the FDIC will consider whether the operational risk mitigant covers potential operational losses in a manner equivalent to holding total capital.

§ 324.162 Mechanics of risk-weighted asset calculation.

(a) If an FDIC-supervised institution does not qualify to use or does not have qualifying operational risk mitigants, the FDIC-supervised institution's dollar risk-based capital requirement for operational risk is its operational risk exposure minus eligible operational risk offsets (if any).

(b) If an FDIC-supervised institution qualifies to use operational risk mitigants and has qualifying operational risk mitigants, the FDIC-supervised institution's dollar risk-based capital requirement for operational risk is the greater of:

(1) The FDIC-supervised institution'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 FDIC-supervised institution's operational risk exposure; and

(ii) Eligible operational risk offsets (if any).

(c) The FDIC-supervised institution's risk-weighted asset amount for operational risk equals the FDIC-supervised institution's dollar risk-based capital requirement for operational risk determined under sections 162(a) or (b) multiplied by 12.5.

§§ 324.163 through 324.170 [Reserved]

Disclosures

§ 324.171 Purpose and scope.

§§ 324.171 through 324.173 establish public disclosure requirements related to the capital requirements of an FDIC-supervised institution that is an advanced approaches FDIC-supervised institution.

§ 324.172 Disclosure requirements.

(a) An FDIC-supervised institution that is an advanced approaches FDIC-supervised institution that has completed the parallel run process and that has received notification from the FDIC pursuant to § 324.121(d) 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) An FDIC-supervised institution that is an advanced approaches FDIC-supervised institution that has completed the parallel run process and that has received notification from the FDIC pursuant to section § 324.121(d) 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) An FDIC-supervised institution described in paragraph (b) of this section must provide timely public disclosures each calendar quarter of the information in the applicable tables in § 324.173. If a significant change occurs, such that the most recent reported amounts are no longer reflective of the FDIC-supervised institution'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 FDIC-supervised institution's risk management objectives and policies, reporting system, and definitions) may be disclosed annually after the end of the fourth calendar quarter, provided that any significant changes to these are disclosed in the interim. Management may provide all of the disclosures required by this subpart in one place on the FDIC-supervised institution's public Web site or may provide the disclosures in more than one public financial report or other regulatory reports, provided that the FDIC-supervised institution publicly provides a summary table specifically indicating the location(s) of all such disclosures.

(2) An FDIC-supervised institution 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 FDIC-supervised institution must attest that the disclosures meet the requirements of this subpart.

(3) If an FDIC-supervised institution 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 FDIC-supervised institution 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.

§ 324.173 Disclosures by certain advanced approaches FDIC-supervised institutions.

(a) Except as provided in § 324.172(b), an FDIC-supervised institution described in § 324.172(b) must make the disclosures described in Tables 1 through 12 to § 324.173. The FDIC-supervised institution must make these disclosures publicly available for each of the last three years (that is, twelve quarters) or such shorter period beginning on January 1, 2014.

TABLE 1 TO § 324.173—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 [1] 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 E).
	(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.

[1] 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 2 TO § 324.173—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 (net of tax) and other reserves; and (5) Regulatory adjustments and deductions made to common equity tier 1 capital.

TABLE 2 TO § 324.173—CAPITAL STRUCTURE—Continued

	(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 adjustments and deductions 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 adjustments and deductions made to total capital.

TABLE 3 TO § 324.173—CAPITAL ADEQUACY

Qualitative disclosures	(a)	A summary discussion of the FDIC-supervised institution'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: (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 4 TO § 324.173—CAPITAL CONSERVATION AND COUNTERCYCLICAL CAPITAL BUFFERS

Qualitative disclosures	(a)	The FDIC-supervised institution 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 FDIC-supervised institution must calculate and publicly disclose the capital conservation buffer and the countercyclical capital buffer as described under § 324.11 of subpart B.
	(c)	At least quarterly, the FDIC-supervised institution must calculate and publicly disclose the buffer retained income of the FDIC-supervised institution, as described under § 324.11 of subpart B.
	(d)	At least quarterly, the FDIC-supervised institution must calculate and publicly disclose any limitations it has on distributions and discretionary bonus payments resulting from the capital conservation buffer and the countercyclical capital buffer framework described under § 324.11 of subpart B, including the maximum payout amount for the quarter.

(b) *General qualitative disclosure requirement.* For each separate risk area described in Tables 5 through 12 to § 324.173, the FDIC-supervised institution must describe its risk management objectives and policies, including:

(1) Strategies and processes;

(2) The structure and organization of the relevant risk management function;

(3) The scope and nature of risk reporting and/or measurement systems; and

(4) Policies for hedging and/or mitigating risk and strategies and processes for monitoring the continuing effectiveness of hedges/mitigants.

TABLE 5[1] TO § 324.173—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 7 to § 324.173), 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 and lease losses, including statistical methods used where applicable; (6) Policy for charging-off uncollectible amounts; and (7) Discussion of the FDIC-supervised institution's credit risk management policy
Quantitative disclosures	(b)	Total credit risk exposures and average credit risk exposures, after accounting offsets in accordance with GAAP,[2] 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, FDIC-supervised institutions 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[3] 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;[4] (5) The balance in the allowance for loan and lease 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,[5] further categorized as required by GAAP.
	(g)	Reconciliation of changes in ALLL.[6]
	(h)	Remaining contractual maturity breakdown (for example, one year or less) of the whole portfolio, categorized by credit exposure.

[1] Table 5 to § 324.173 does not cover equity exposures, which should be reported in Table 9 to § 324.173.

[2] *See,* for example, ASC Topic 815–10 and 210–20, as they may be amended from time to time.

[3] Geographical areas may comprise individual countries, groups of countries, or regions within countries. An FDIC-supervised institution 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.

[4] An FDIC-supervised institution is encouraged also to provide an analysis of the aging of past-due loans.

[5] The portion of the general allowance that is not allocated to a geographical area should be disclosed separately.

[6] 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 6 TO § 324.173—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 8 to § 324.173); and (4) Control mechanisms for the rating system, including discussion of independence, accountability, and rating systems review.

TABLE 6 TO § 324.173—CREDIT RISK: DISCLOSURES FOR PORTFOLIOS SUBJECT TO IRB RISK-BASED CAPITAL FORMULAS—Continued

	(b)	(1) Description of the internal ratings process, provided separately for the following: (i) Wholesale category; (ii) Retail subcategories; (iii) Residential mortgage exposures; (iv) Qualifying revolving exposures; and (v) 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.[1]
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:[2] (i) Total EAD;[3] (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 FDIC-supervised institution experienced higher than average default rates, loss rates or EADs.
	(e)	The FDIC-supervised institution's estimates compared against actual outcomes over a longer period.[4] 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.[5] Where appropriate, the FDIC-supervised institution should further decompose this to provide analysis of PD, LGD, and EAD outcomes against estimates provided in the quantitative risk assessment disclosures above.[6]

[1] 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 FDIC-supervised institution must disclose any significant differences in approach to estimating these variables within each category/subcategories.

[2] The PD, LGD and EAD disclosures in Table 6 (c) to § 324.173 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 an FDIC-supervised institution 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.

[3] Outstanding loans and EAD on undrawn commitments can be presented on a combined basis for these disclosures.

[4] 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 an FDIC-supervised institution sufficient time to build up a longer run of data that will make these disclosures meaningful.

[5] This disclosure item is not intended to be prescriptive about the period used for this assessment. Upon implementation, it is expected that an FDIC-supervised institution would provide these disclosures for as long a set of data as possible—for example, if an FDIC-supervised institution 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.

[6] An FDIC-supervised institution 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 FDIC-supervised institution must also provide explanations for such differences.

TABLE 7 TO § 324.173—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 FDIC-supervised institution would have to provide if the FDIC-supervised institution were to receive a credit rating downgrade.

TABLE 7 TO § 324.173—GENERAL DISCLOSURE FOR COUNTERPARTY CREDIT RISK OF OTC DERIVATIVE CONTRACTS, REPO-STYLE TRANSACTIONS, AND ELIGIBLE MARGIN LOANS—Continued

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.[1] 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 FDIC-supervised institutions not using the internal models methodology in § 324.132(d), the distribution of current credit exposure by types of credit exposure.[2]
	(c)	Notional amount of purchased and sold credit derivatives, segregated between use for the FDIC-supervised institution'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 FDIC-supervised institution has received supervisory approval to estimate alpha.

[1] 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.

[2] 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 8 TO § 324.173—CREDIT RISK MITIGATION [1] [2]

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 FDIC-supervised institution 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 FDIC-supervised institution; (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.

[1] At a minimum, an FDIC-supervised institution must provide the disclosures in Table 8 to § 324.173 in relation to credit risk mitigation that has been recognized for the purposes of reducing capital requirements under this subpart. Where relevant, FDIC-supervised institutions are encouraged to give further information about mitigants that have not been recognized for that purpose.

[2] 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 8 to § 324.173) and included within those relating to securitization (in Table 9 to § 324.173).

TABLE 9 TO § 324.173—SECURITIZATION

Qualitative disclosures	(a)	The general qualitative disclosure requirement with respect to securitization (including synthetic securitizations), including a discussion of: (1) The FDIC-supervised institution's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the FDIC-supervised institution to other entities and including the type of risks assumed and retained with resecuritization activity; [1] (2) The nature of the risks (e.g. liquidity risk) inherent in the securitized assets; (3) The roles played by the FDIC-supervised institution in the securitization process [2] and an indication of the extent of the FDIC-supervised institution'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 FDIC-supervised institution's policy for mitigating the credit risk retained through securitization and resecuritization exposures; and (6) The risk-based capital approaches that the FDIC-supervised institution follows for its securitization exposures including the type of securitization exposure to which each approach applies.

TABLE 9 TO § 324.173—SECURITIZATION—Continued

	(b)	A list of: (1) The type of securitization SPEs that the FDIC-supervised institution, as sponsor, uses to securitize third-party exposures. The FDIC-supervised institution must indicate whether it has exposure to these SPEs, either on- or off- balance sheet; and (2) Affiliated entities: (i) That the FDIC-supervised institution manages or advises; and (ii) That invest either in the securitization exposures that the FDIC-supervised institution has securitized or in securitization SPEs that the FDIC-supervised institution sponsors.[3]
	(c)	Summary of the FDIC-supervised institution'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 FDIC-supervised institution 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[4] by the FDIC-supervised institution in securitizations that meet the operational criteria in § 324.141 (categorized into traditional/synthetic), by underlying exposure type[5] separately for securitizations of third-party exposures for which the FDIC-supervised institution acts only as sponsor.
	(f)	For exposures securitized by the FDIC-supervised institution in securitizations that meet the operational criteria in § 324.141: (1) Amount of securitized assets that are impaired[6]/past due categorized by exposure type; and (2) Losses recognized by the FDIC-supervised institution during the current period categorized by exposure type.[7]
	(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, CEIOs deducted from total capital (as described in § 324.42(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 creditworthiness categories or guarantor name.

[1] The FDIC-supervised institution 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 FDIC-supervised institution is active.

[2] For example, these roles would include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.

[3] For example, money market mutual funds should be listed individually, and personal and private trusts, should be noted collectively.

[4] "Exposures securitized" include underlying exposures originated by the FDIC-supervised institution, 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 FDIC-supervised institution's balance sheet and underlying exposures acquired by the FDIC-supervised institution 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.

[5] An FDIC-supervised institution is required to disclose exposures regardless of whether there is a capital charge under this part.

[6] An FDIC-supervised institution must include credit-related other than temporary impairment (OTTI).

[7] For example, charge-offs/allowances (if the assets remain on the FDIC-supervised institution'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 FDIC-supervised institution with respect to securitized assets.

TABLE 10 TO § 324.173—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 FDIC-supervised institution's measurement approach.
	(c)	A description of the use of insurance for the purpose of mitigating operational risk.

TABLE 11 TO § 324.173—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) [1] (2) Total latent revaluation gains (losses) [2] (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 FDIC-supervised institution's methodology, as well as the aggregate amounts and the type of equity investments subject to any supervisory transition regarding total capital requirements.[3]

[1] Unrealized gains (losses) recognized in the balance sheet but not through earnings.
[2] Unrealized gains (losses) not recognized either in the balance sheet or through earnings.
[3] 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.

TABLE 12 TO § 324.173—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).

§§ 324.174 through 234.200 [Reserved]

Subpart F—Risk-Weighted Assets—Market Risk

§ 324.201 Purpose, applicability, and reservation of authority.

(a) *Purpose.* This subpart F establishes risk-based capital requirements for FDIC-supervised institutions with significant exposure to market risk, provides methods for these FDIC-supervised institutions 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 F applies to any FDIC-supervised institution with aggregate trading assets and trading liabilities (as reported in the FDIC-supervised institution's most recent quarterly Call Report), equal to:

(i) 10 percent or more of quarter-end total assets as reported on the most recent quarterly Call Report; or

(ii) $1 billion or more.

(2) The FDIC may apply this subpart to any FDIC-supervised institution if the FDIC deems it necessary or appropriate because of the level of market risk of the FDIC-supervised institution or to ensure safe and sound banking practices.

(3) The FDIC may exclude an FDIC-supervised institution that meets the criteria of paragraph (b)(1) of this section from application of this subpart if the FDIC determines that the exclusion is appropriate based on the level of market risk of the FDIC-supervised institution and is consistent with safe and sound banking practices.

(c) *Reservation of authority* (1) The FDIC may require an FDIC-supervised institution to hold an amount of capital greater than otherwise required under this subpart if the FDIC determines that the FDIC-supervised institution's capital requirement for market risk as calculated under this subpart is not commensurate with the market risk of the FDIC-supervised institution's covered positions. In making determinations under paragraphs (c)(1) through (c)(3) of this section, the FDIC will apply notice and response procedures generally in the same manner as the notice and response procedures set forth in § 324.5(c).

(2) If the FDIC determines that the risk-based capital requirement calculated under this subpart by the FDIC-supervised institution for one or more covered positions or portfolios of covered positions is not commensurate with the risks associated with those positions or portfolios, the FDIC may require the FDIC-supervised institution 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 FDIC may also require an FDIC-supervised institution 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 FDIC under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law.

§ 324.202 Definitions.

(a) Terms set forth in § 324.2 and used in this subpart have the definitions assigned thereto in § 324.2.

(b) For the purposes of this subpart, the following terms are defined as follows:

Backtesting means the comparison of an FDIC-supervised institution'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 GSE, 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),[27] as reported on Call Report, that meets the following conditions:

(i) The position is a trading position or hedges another covered position;[28] and

(ii) The position is free of any restrictive covenants on its tradability or the FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC determines to be outside the scope of the FDIC-supervised institution's hedging strategy required in paragraph (a)(2) of § 324.203;

(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 FDIC-supervised institution 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 § 324.132(e)(5) or § 324.132(e)(6), except as provided in § 324.132(e)(6)(vii);

(vi) Any equity position that is not publicly traded, other than a derivative that references a publicly traded equity and other than a position in an investment company as defined in and registered with the SEC under the Investment Company Act, provided that all the underlying equities held by the investment company are publicly traded;

(vii) Any equity position that is not publicly traded, other than a derivative that references a publicly traded equity and other than a position in an entity not domiciled in the United States (or a political subdivision thereof) that is supervised and regulated in a manner similar to entities described in paragraph (3)(vi) of this definition;

(viii) Any position an FDIC-supervised institution holds with the intent to securitize; or

(ix) 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 § 324.2.

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

[27] Securities subject to repurchase and lending agreements are included as if they are still owned by the lender.

[28] 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 § 324.203.

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 FDIC 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 FDIC 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 344.3 (state nonmember bank) and 12 CFR 390.203 (state savings association));

(iii) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of ERISA, a ''governmental plan'' (as defined in 29 USC 1002(32)) that complies with the tax deferral qualification requirements provided in the Internal Revenue Code, or any similar employee benefit plan established under the laws of a foreign jurisdiction; or

(iv) Registered with the SEC under the Investment Company Act or foreign equivalents 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 FDIC-supervised institution's tier 1 or tier 2 capital; or

(4) A position designed to hedge an FDIC-supervised institution'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 FDIC-supervised institution 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.

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.

§ 324.203 Requirements for application of this subpart F.

(a) *Trading positions*—(1) *Identification of trading positions.* An FDIC-supervised institution 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.* An FDIC-supervised institution must have clearly defined trading and hedging strategies for its trading positions that are approved by senior management of the FDIC-supervised institution.

(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 FDIC-supervised institution is willing to accept and must detail the instruments, techniques, and strategies the FDIC-supervised institution will use to hedge the risk of the portfolio.

(b) *Management of covered positions*—(1) *Active management.* An FDIC-supervised institution 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 FDIC-supervised institution'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 FDIC-supervised institution 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) An FDIC-supervised institution must obtain the prior written approval of the FDIC before using any internal model to calculate its risk-based capital requirement under this subpart.

(2) An FDIC-supervised institution must meet all of the requirements of this section on an ongoing basis. The FDIC-supervised institution must promptly notify the FDIC when:

(i) The FDIC-supervised institution plans to extend the use of a model that the FDIC has approved under this subpart to an additional business line or product type;

(ii) The FDIC-supervised institution makes any change to an internal model approved by the FDIC under this subpart that would result in a material change in the FDIC-supervised institution's risk-weighted asset amount for a portfolio of covered positions; or

(iii) The FDIC-supervised institution makes any material change to its modeling assumptions.

(3) The FDIC may rescind its approval of the use of any internal model (in whole or in part) or of the determination of the approach under § 324.209(a)(2)(ii) for an FDIC-supervised institution's modeled correlation trading positions and determine an appropriate capital requirement for the covered positions to which the model would apply, if the FDIC determines that the model no longer complies with this subpart or fails to reflect accurately the risks of the FDIC-supervised institution's covered positions.

(4) The FDIC-supervised institution 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 FDIC's standards for model approval and employ risk measurement methodologies that are most appropriate for the FDIC-supervised institution's covered positions.

(5) The FDIC-supervised institution 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 an FDIC-supervised institution's internal models must be commensurate with the complexity and amount of its covered positions. An FDIC-supervised institution'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 FDIC-supervised institution's internal models must properly measure all the material risks in the covered positions to which they are applied.

(8) The FDIC-supervised institution'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 FDIC-supervised institution 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 an FDIC-supervised institution uses internal models to measure specific risk, the internal models must also satisfy the requirements in paragraph (b)(1) of § 324.207.

(d) *Control, oversight, and validation mechanisms.* (1) The FDIC-supervised institution must have a risk control unit that reports directly to senior management and is independent from the business trading units.

(2) The FDIC-supervised institution must validate its internal models initially and on an ongoing basis. The FDIC-supervised institution'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 FDIC-supervised institution'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 FDIC-supervised institution'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 FDIC-supervised institution 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 FDIC-supervised institution's trading activities that may not be adequately captured in its internal models.

(4) The FDIC-supervised institution must have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the FDIC-supervised institution'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 FDIC-supervised institution's measures for market risk under this subpart. At least annually, the internal audit function must report its findings to the FDIC-supervised institution's board of directors (or a committee thereof).

(e) *Internal assessment of capital adequacy.* The FDIC-supervised institution 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 FDIC-supervised institution 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.

§ 324.204 Measure for market risk.

(a) *General requirement.* (1) An FDIC-supervised institution must calculate its standardized measure for market risk by following the steps described in paragraph (a)(2) of this section. An advanced approaches FDIC-supervised institution 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.* An FDIC-supervised institution 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 FDIC-supervised institution may not use the SFA in § 324.210(b)(2)(vii)(B) for purposes of this calculation), plus any additional capital requirement established by the FDIC. An advanced approaches FDIC-supervised institution that has completed the parallel run process and that has received notifications from the FDIC pursuant to § 324.121(d) 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), plus any additional capital requirement established by the FDIC.

(i) *VaR-based capital requirement.* An FDIC-supervised institution's VaR-based capital requirement equals the greater of:

(A) The previous day's VaR-based measure as calculated under § 324.205; or

(B) The average of the daily VaR-based measures as calculated under § 324.205 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.* An FDIC-supervised institution's stressed VaR-based capital requirement equals the greater of:

(A) The most recent stressed VaR-based measure as calculated under § 324.206; or

(B) The average of the stressed VaR-based measures as calculated under § 324.206 for each of the preceding 12 weeks multiplied by three, except as provided in paragraph (b) of this section.

(iii) *Specific risk add-ons.* An FDIC-supervised institution's specific risk add-ons equal any specific risk add-ons that are required under § 324.207 and are calculated in accordance with § 324.210.

(iv) *Incremental risk capital requirement.* An FDIC-supervised institution's incremental risk capital requirement equals any incremental risk capital requirement as calculated under § 324.208.

(v) *Comprehensive risk capital requirement.* An FDIC-supervised institution's comprehensive risk capital requirement equals any comprehensive risk capital requirement as calculated under § 324.209.

(vi) *Capital requirement for de minimis exposures.* An FDIC-supervised institution's capital requirement for *de minimis* exposures equals:

(A) The absolute value of the fair value of those *de minimis* exposures that are not captured in the FDIC-supervised institution's VaR-based measure or under paragraph (a)(2)(vi)(B) of this section; and

(B) With the prior written approval of the FDIC, the capital requirement for any *de minimis* exposures using alternative techniques that appropriately measure the market risk associated with those exposures.

(b) *Backtesting.* An FDIC-supervised institution 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. An FDIC-supervised institution must begin backtesting as required by this paragraph (b) no later than one year after the later of January 1, 2014, and the date on which the FDIC-supervised institution becomes subject to this subpart. In the interim, consistent with safety and soundness principles, an FDIC-supervised institution subject to this subpart as of January 1, 2014 should continue to follow backtesting procedures in accordance with the FDIC's supervisory expectations.

(1) Once each quarter, the FDIC-supervised institution 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) An FDIC-supervised institution must use the multiplication factor in Table 1 to § 324.204 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 FDIC notifies the FDIC-supervised institution in writing that a different adjustment or other action is appropriate.

TABLE 1 TO § 324.204—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

§ 324.205 VaR-based measure.

(a) *General requirement.* An FDIC-supervised institution 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 FDIC-supervised institution's specific risk for one or more portfolios of debt and equity positions, if the internal models meet the requirements of § 324.207(b)(1). The daily VaR-based measure must also reflect the FDIC-supervised institution's specific risk for any portfolio of correlation trading positions that is modeled under § 324.209. An FDIC-supervised institution may elect to include term repo-style transactions in its VaR-based measure, provided that the FDIC-supervised institution includes all such term repo-style transactions consistently over time.

(1) The FDIC-supervised institution'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 FDIC-supervised institution 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 FDIC-supervised institution 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 fair value of the positions to changes in the volatility of the underlying rates, prices, or other material risk factors. An FDIC-supervised institution 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 FDIC-supervised institution must be able to justify to the satisfaction of the FDIC the omission of any risk factors from the calculation of its VaR-based measure that the FDIC-supervised institution uses in its pricing models.

(5) The FDIC-supervised institution must demonstrate to the satisfaction of the FDIC the appropriateness of any proxies used to capture the risks of the FDIC-supervised institution'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 FDIC-supervised institution 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. An FDIC-supervised institution 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 FDIC.

(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 FDIC-supervised institution's actual exposures and of sufficient quality to support the calculation of risk-based capital requirements. The FDIC-supervised institution must update data sets at least monthly or more frequently as changes in market conditions or portfolio composition warrant. For an FDIC-supervised institution that uses a weighting scheme or other method for the historical observation period, the FDIC-supervised institution 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 FDIC 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 FDIC-supervised institution's trading portfolio over a full business cycle. An FDIC-supervised institution using this option must update its data more frequently than monthly and in a manner appropriate for the type of weighting scheme.

(c) An FDIC-supervised institution must divide its portfolio into a number of significant subportfolios approved by the FDIC for subportfolio backtesting purposes. These subportfolios must be sufficient to allow the FDIC-supervised institution and the FDIC to assess the adequacy of the VaR model at the risk factor level; the FDIC will evaluate the appropriateness of these subportfolios relative to the value and composition of the FDIC-supervised institution's covered positions. The FDIC-supervised institution must retain and make available to the FDIC 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).

§ 324.206 Stressed VaR-based measure.

(a) *General requirement.* At least weekly, an FDIC-supervised institution 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) An FDIC-supervised institution 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 § 324.205, 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 FDIC-supervised institution's current portfolio.

(2) The stressed VaR-based measure must be calculated at least weekly and be no less than the FDIC-supervised institution's VaR-based measure.

(3) An FDIC-supervised institution must have policies and procedures that describe how it determines the period of significant financial stress used to calculate the FDIC-supervised institution's stressed VaR-based measure under this section and must be able to provide empirical support for the period used. The FDIC-supervised institution must obtain the prior approval of the FDIC for, and notify the FDIC if the FDIC-supervised institution makes any material changes to, these policies and procedures. The policies and procedures must address:

(i) How the FDIC-supervised institution 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 FDIC-supervised institution'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 FDIC-supervised institution's current portfolio.

(4) Nothing in this section prevents the FDIC from requiring an FDIC-supervised institution to use a different period of significant financial stress in the calculation of the stressed VaR-based measure.

§ 324.207 Specific risk.

(a) *General requirement.* An FDIC-supervised institution 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.* An FDIC-supervised institution may use models to measure the specific risk of covered positions as provided in § 324.205(a) (therefore, excluding securitization positions that are not modeled under § 324.209). An FDIC-supervised institution must use models to measure the specific risk of correlation trading positions that are modeled under § 324.209.

(1) *Requirements for specific risk modeling.* (i) If an FDIC-supervised institution 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; and

(*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 an FDIC-supervised institution calculates an incremental risk measure for a portfolio of debt or equity positions under § 324.208, the FDIC-supervised institution 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 FDIC-supervised institution'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 FDIC-supervised institution has no specific risk add-on for those portfolios for purposes of § 324.204(a)(2)(iii).

(c) *Specific risk not modeled.* (1) If the FDIC-supervised institution's VaR-based measure does not capture all material aspects of specific risk for a portfolio of debt, equity, or correlation trading positions, the FDIC-supervised institution must calculate a specific-risk add-on for the portfolio under the standardized measurement method as described in § 324.210.

(2) An FDIC-supervised institution must calculate a specific risk add-on under the standardized measurement method as described in § 324.210 for all of its securitization positions that are not modeled under § 324.209.

§ 324.208 Incremental risk.

(a) *General requirement.* An FDIC-supervised institution that measures the specific risk of a portfolio of debt positions under § 324.207(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 FDIC-supervised institution'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 FDIC, an FDIC-supervised institution 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 FDIC-supervised institution 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. An FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC-supervised institution's initial risk level. The FDIC-supervised institution 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 an FDIC-supervised institution 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 FDIC-supervised institution maintains the same set of positions throughout the one-year horizon. If an FDIC-supervised institution uses this assumption, it must do so consistently across all portfolios.

(iii) An FDIC-supervised institution's selection of a constant position or a constant risk assumption must be consistent between the FDIC-supervised institution's incremental risk model and its comprehensive risk model described in § 324.209, if applicable.

(iv) An FDIC-supervised institution's treatment of liquidity horizons must be consistent between the FDIC-supervised institution's incremental risk model and its comprehensive risk model described in § 324.209, 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, an FDIC-supervised institution 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 FDIC-supervised institution'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.

§ 324.209 Comprehensive risk.

(a) *General requirement.* (1) Subject to the prior approval of the FDIC, an FDIC-supervised institution 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) An FDIC-supervised institution 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 FDIC-supervised institution's modeled measure of all price risk determined according to the requirements in paragraph (b) of this section; and

(B) A surcharge for the FDIC-supervised institution's modeled correlation trading positions equal to the total specific risk add-on for such positions as calculated under § 324.210 multiplied by 8.0 percent; or

(ii) With approval of the FDIC and provided the FDIC-supervised institution 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 FDIC-supervised institution'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 § 324.210 multiplied by 8.0 percent.

(b) *Requirements for modeling all price risk.* If an FDIC-supervised institution 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, an FDIC-supervised institution 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 FDIC-supervised institution must use market data that are relevant in representing the risk profile of the FDIC-supervised institution's correlation trading positions in order to ensure that the FDIC-supervised institution fully captures the material risks of the correlation trading positions in its comprehensive risk measure in accordance with this section; and

(4) The FDIC-supervised institution 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) An FDIC-supervised institution 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) An FDIC-supervised institution must retain and make available to the FDIC the results of the supervisory stress testing, including comparisons with the capital requirements generated by the FDIC-supervised institution's comprehensive risk model.

(ii) An FDIC-supervised institution must report to the FDIC 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.

§ 324.210 Standardized measurement method for specific risk.

(a) *General requirement.* An FDIC-supervised institution must calculate a total specific risk add-on for each portfolio of debt and equity positions for which the FDIC-supervised institution's VaR-based measure does not capture all material aspects of specific risk and for all securitization positions that are not modeled under § 324.209. An FDIC-supervised institution must calculate each specific risk add-on in accordance with the requirements of this section. Notwithstanding any other definition or requirement in this subpart, 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 § 324.2, shall be considered a debt position or an equity position, respectively, for purposes of this § 324.210.

(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 fair 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, an FDIC-supervised institution must assign a specific risk-weighting factor to the fair value of the effective notional amount of the underlying instrument or index portfolio, except for a securitization position for which the FDIC-supervised institution 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, an FDIC-supervised institution must risk weight the fair 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, an FDIC-supervised institution may net long and short positions (including derivatives) in identical issues or identical indices. An FDIC-supervised institution may also net positions in depositary receipts against an opposite position in an identical equity in different markets, provided that the FDIC-supervised institution 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 fair 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, an FDIC-supervised institution must multiply the absolute value of the current fair 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 accordance with Table 1 to § 324.210, an FDIC-supervised institution must assign a specific risk-weighting factor to a sovereign debt position based on the CRC applicable to the sovereign, and, as applicable, the remaining contractual maturity of the position, or if there is no CRC applicable to the sovereign, based on whether the sovereign entity is a member of the OECD. Notwithstanding any other provision in this subpart, 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 1 TO § 324.210—SPECIFIC RISK-WEIGHTING FACTORS FOR SOVEREIGN DEBT POSITIONS

		Specific risk-weighting factor (in percent)	
CRC	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	
OECD Member with No CRC		0.0	
Non-OECD Member with No CRC		8.0	

TABLE 1 TO § 324.210—SPECIFIC RISK-WEIGHTING FACTORS FOR SOVEREIGN DEBT POSITIONS—Continued

Sovereign Default	12.0

(B) Notwithstanding paragraph (b)(2)(i)(A) of this section, an FDIC-supervised institution may assign to a sovereign debt position a specific risk-weighting factor that is lower than the applicable specific risk-weighting factor in Table 1 to § 324.210 if:

(*1*) The position is denominated in the sovereign entity's currency;

(*2*) The FDIC-supervised institution 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) An FDIC-supervised institution 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) An FDIC-supervised institution must assign a 0.0 percent specific risk-weighting factor to a sovereign debt position if the sovereign entity is a member of the OECD and does not have a CRC assigned to it, except as provided in paragraph (b)(2)(i)(C) of this section.

(E) An FDIC-supervised institution must assign an 8.0 percent specific risk-weighting factor to a sovereign debt position if the sovereign is not a member of the OECD and does not have a CRC assigned to it, except as provided in paragraph (b)(2)(i)(C) of this section.

(ii) *Certain supranational entity and multilateral development bank debt positions.* An FDIC-supervised institution 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.* An FDIC-supervised institution must assign a 1.6 percent specific risk-weighting factor to a debt position that is an exposure to a GSE. Notwithstanding the foregoing, an FDIC-supervised institution 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, an FDIC-supervised institution 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, in accordance with Table 2 to § 324.210 of this section, based on the CRC that corresponds to that entity's home country or the OECD membership status of that entity's home country if there is no CRC applicable to the entity's home country, and, as applicable, the remaining contractual maturity of the position.

TABLE 2 TO § 324.210—SPECIFIC RISK-WEIGHTING FACTORS FOR DEPOSITORY INSTITUTION, FOREIGN BANK, AND CREDIT UNION DEBT POSITIONS

	Specific risk-weighting factor	Percent
CRC 0–2 or OECD Member with No CRC	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
CRC 3		8.0
CRC 4–7		12.0
Non-OECD Member with No CRC		8.0
Sovereign Default		12.0

(B) An FDIC-supervised institution 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 § 324.22.

(C) An FDIC-supervised institution 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, an FDIC-supervised institution must assign a specific risk-weighting factor to a debt position that is an exposure to a PSE in accordance with Tables 3 and 4 to § 324.210 depending on the position's categorization as a general obligation or revenue obligation based on the CRC that corresponds to the PSE's home country or the OECD membership status of the PSE's home country if there is no CRC applicable to the PSE's home country, and, as applicable, the remaining contractual maturity of the position, as set forth in Tables 3 and 4 to § 324.210.

(B) An FDIC-supervised institution may assign a lower specific risk-weighting factor than would otherwise apply under Tables 3 and 4 to § 324.210 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 Table 1 to § 324.210.

(C) An FDIC-supervised institution 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 3 TO § 324.210—SPECIFIC RISK-WEIGHTING FACTORS FOR PSE GENERAL OBLIGATION DEBT POSITIONS

	General obligation specific risk-weighting factor	Percent
CRC 0–2 or OECD Member with No CRC	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
CRC 3		8.0
CRC 4–7		12.0
Non-OECD Member with No CRC		8.0
Sovereign Default		12.0

TABLE 4 TO § 324.210—SPECIFIC RISK-WEIGHTING FACTORS FOR PSE REVENUE OBLIGATION DEBT POSITIONS

	Revenue obligation specific risk-weighting factor	Percent
CRC 0–1 or OECD Member with No CRC	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
CRC 2–3		8.0
CRC 4–7		12.0
Non-OECD Member with No CRC		8.0
Sovereign Default		12.0

(vi) *Corporate debt positions.* Except as otherwise provided in paragraph (b)(2)(vi)(B) of this section, an FDIC-supervised institution 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, an FDIC-supervised institution must assign a specific risk-weighting factor based on the category and remaining contractual maturity of the position, in accordance with Table 5 to § 324.210. For purposes of this paragraph (b)(2)(vi)(A)(*1*), the FDIC-supervised institution must determine whether the position is in the investment grade or not investment grade category.

TABLE 5 TO § 324.210—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*) An FDIC-supervised institution 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*) An FDIC-supervised institution 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*) An FDIC-supervised institution 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, if applicable, in Table 1 to § 324.210.

(vii) *Securitization positions.* (A) General requirements. (*1*) An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution 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 § 324.211) or assign a specific risk-weighting factor of 100 percent to the position.

(*2*) An FDIC-supervised institution that is an advanced approaches FDIC-supervised institution must calculate a specific risk add-on for a securitization position in accordance with paragraph (b)(2)(vii)(B) of this section if the FDIC-supervised institution and the securitization position each qualifies to use the SFA in § 324.143. An FDIC-supervised institution that is an advanced approaches FDIC-supervised institution 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*) An FDIC-supervised institution 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, an FDIC-supervised institution that is an advanced approaches FDIC-supervised institution

must set the specific risk add-on for the position equal to the risk-based capital requirement as calculated under § 324.143.

(C) *SSFA.* To use the SSFA to determine the specific risk-weighting factor for a securitization position, an FDIC-supervised institution must calculate the specific risk-weighting factor in accordance with § 324.211.

(D) *N*th*-to-default credit derivatives.* An FDIC-supervised institution 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 FDIC-supervised institution is a net protection buyer or net protection seller. An FDIC-supervised institution must determine its position in the nth-to-default credit derivative as the largest notional 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 FDIC-supervised institution 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 FDIC-supervised institution's position to the total notional amount of all underlying exposures. For purposes of the SSFA, parameter A is expressed as a decimal value between zero and one. 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 § 324.143. In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the FDIC-supervised institution'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 FDIC-supervised institution's position.

(*ii*) The detachment point (parameter D) equals the sum of parameter A plus the ratio of the notional amount of the FDIC-supervised institution's position in the nth-to-default credit derivative to the total notional amount of all underlying exposures. For purposes of the SSFA, parameter A is expressed as a decimal value between zero and one. 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 § 324.143.

(*2*) An FDIC-supervised institution 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 § 324.209, the total specific risk add-on is the greater of:

(1) The sum of the FDIC-supervised institution's specific risk add-ons for each net long correlation trading position calculated under this section; or

(2) The sum of the FDIC-supervised institution'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 § 324.209, the total specific risk add-on is the greater of:

(1) The sum of the FDIC-supervised institution's specific risk add-ons for each net long securitization position calculated under this section; or

(2) The sum of the FDIC-supervised institution'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, an FDIC-supervised institution must multiply the absolute value of the current fair value of each net long or net short equity position by the appropriate specific risk-weighting factor as determined under this paragraph:

(1) The FDIC-supervised institution must multiply the absolute value of the current fair 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 fair value of each net long or net short position is multiplied by a specific risk-weighting factor of 2.0 percent.[29]

(2) For equity positions arising from the following futures-related arbitrage strategies, an FDIC-supervised institution 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, an FDIC-supervised institution 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.

(f) *Due diligence requirements for securitization positions.* (1) An FDIC-supervised institution must demonstrate to the satisfaction of the FDIC 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 FDIC-supervised institution's analysis must be commensurate with the complexity of the securitization position and the materiality of the position in relation to capital.

(2) An FDIC-supervised institution must demonstrate its comprehensive understanding for each securitization position by:

(i) Conducting 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,

[29] 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 fair value.

credit enhancements, liquidity enhancements, fair 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.

(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.

§ 324.211 Simplified supervisory formula approach (SSFA).

(a) *General requirements.* To use the SSFA to determine the specific risk-weighting factor for a securitization position, an FDIC-supervised institution 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; if the contracts governing the underlying exposures of the securitization require payments on a monthly or quarterly basis, the data used to assign the parameters described in paragraph (b) of this section must be no more than 91 calendar days old. An FDIC-supervised institution 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, an FDIC-supervised institution 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 one (that is, an average risk weight of 100 percent represents a value of K_G equal to 0.08).

(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 of the securitization that meet any of the criteria as set forth in paragraphs (b)(2)(i) through (vi) of this section to the 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 payments for 90 days or more, other than principal or interest payments deferred on:

(A) Federally-guaranteed student loans, in accordance with the terms of those guarantee programs; or

(B) Consumer loans, including non-federally-guaranteed student loans, provided that such payments are deferred pursuant to provisions included in the contract at the time funds are disbursed that provide for period(s) of deferral that are not initiated based on changes in the creditworthiness of the borrower; 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. Except as provided in § 324.210(b)(2)(vii)(D) for n^{th}-to-default credit derivatives, parameter A equals the ratio of the current dollar amount of underlying exposures that are subordinated to the position of the FDIC-supervised institution 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 FDIC-supervised institution'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. Except as provided in § 324.210(b)(2)(vii)(D) for n^{th}-to-default credit derivatives, 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 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, 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 FDIC-supervised institution 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. 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:

$$SRWF = 100 \cdot \left[\left(\frac{K_A - A}{D - A}\right) \cdot 1.00\right] + \left[\left(\frac{D - K_A}{D - A}\right) \cdot K_{SSFA}\right]$$

(d) SSFA equation. (1) The FDIC-supervised institution must define the following parameters:

$$K_A = (1 - W) \cdot K_G + (0.5 \cdot W)$$

$$a = -\frac{1}{p \cdot K_A}$$

$$u = D - K_A$$

$$l = \max(A - K_A, 0)$$

$e = 2.71828$, the base of the natural logarithms.

(2) Then the FDIC-supervised institution 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 $K_{SSFA} \times 100$.

§ 324.212 Market risk disclosures.

(a) *Scope.* An FDIC-supervised institution 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. An FDIC-supervised institution must make timely public disclosures each calendar quarter. If a significant change occurs, such that the most recent reporting amounts are no longer reflective of the FDIC-supervised institution'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 an FDIC-supervised institution 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 FDIC-supervised institution 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. The FDIC-supervised institution's

management may provide all of the disclosures required by this section in one place on the FDIC-supervised institution's public Web site or may provide the disclosures in more than one public financial report or other regulatory reports, provided that the FDIC-supervised institution publicly provides a summary table specifically indicating the location(s) of all such disclosures.

(b) *Disclosure policy.* The FDIC-supervised institution must have a formal disclosure policy approved by the board of directors that addresses the FDIC-supervised institution'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 FDIC-supervised institution 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 FDIC-supervised institution must provide timely public disclosures of 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 FDIC-supervised institution, with an analysis of important outliers.

(2) In addition, the FDIC-supervised institution 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 FDIC-supervised institution must provide timely public disclosures of the following information at least annually after the end of the fourth calendar quarter, or more frequently in the event of material changes for each portfolio:

(1) The composition of material portfolios of covered positions;

(2) The FDIC-supervised institution'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 FDIC-supervised institution 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 FDIC-supervised institution'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 FDIC-supervised institution'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 FDIC-supervised institution'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 FDIC-supervised institution's policy governing the use of credit risk mitigation to mitigate the risks of securitization and resecuritization positions.

§§ 324.213 through 324.299 [Reserved]

Subpart G—Transition Provisions

§ 324.300 Transitions.

(a) *Capital conservation and countercyclical capital buffer.* (1) From January 1, 2014, through December 31, 2015, an FDIC-supervised institution is not subject to limits on distributions and discretionary bonus payments under § 324.11 notwithstanding the amount of its capital conservation buffer or any applicable countercyclical capital buffer amount.

(2) Beginning January 1, 2016, through December 31, 2018, an FDIC-supervised institution's maximum payout ratio shall be determined as set forth in Table 1 to § 324.300.

TABLE 1 TO § 324.300

Transition period	Capital conservation buffer	Maximum payout ratio (as a percentage of eligible retained income)
Calendar year 2016	Greater than 0.625 percent (plus 25 percent of any applicable countercyclical capital buffer amount).	No payout ratio limitation applies under this section.

TABLE 1 TO § 324.300—Continued

Transition period	Capital conservation buffer	Maximum payout ratio (as a percentage of eligible retained income)
	Less than or equal to 0.625 percent (plus 25 percent of any applicable countercyclical capital buffer amount), and greater than 0.469 percent (plus 17.25 percent of any applicable countercyclical capital buffer amount).	60 percent.
	Less than or equal to 0.469 percent (plus 17.25 percent of any applicable countercyclical capital buffer amount), and greater than 0.313 percent (plus 12.5 percent of any applicable countercyclical capital buffer amount).	40 percent.
	Less than or equal to 0.313 percent (plus 12.5 percent of any applicable countercyclical capital buffer amount), and greater than 0.156 percent (plus 6.25 percent of any applicable countercyclical capital buffer amount).	20 percent.
	Less than or equal to 0.156 percent (plus 6.25 percent of any applicable countercyclical capital buffer amount).	0 percent.
Calendar year 2017	Greater than 1.25 percent (plus 50 percent of any applicable countercyclical capital buffer amount).	No payout ratio limitation applies under this section.
	Less than or equal to 1.25 percent (plus 50 percent of any applicable countercyclical capital buffer amount), and greater than 0.938 percent (plus 37.5 percent of any applicable countercyclical capital buffer amount).	60 percent.
	Less than or equal to 0.938 percent (plus 37.5 percent of any applicable countercyclical capital buffer amount), and greater than 0.625 percent (plus 25 percent of any applicable countercyclical capital buffer amount).	40 percent.
	Less than or equal to 0.625 percent (plus 25 percent of any applicable countercyclical capital buffer amount), and greater than 0.313 percent (plus 12.5 percent of any applicable countercyclical capital buffer amount).	20 percent.
	Less than or equal to 0.313 percent (plus 12.5 percent of any applicable countercyclical capital buffer amount).	0 percent.
Calendar year 2018	Greater than 1.875 percent (plus 75 percent of any applicable countercyclical capital buffer amount).	No payout ratio limitation applies under this section.
	Less than or equal to 1.875 percent (plus 75 percent of any applicable countercyclical capital buffer amount), and greater than 1.406 percent (plus 56.25 percent of any applicable countercyclical capital buffer amount).	60 percent.
	Less than or equal to 1.406 percent (plus 56.25 percent of any applicable countercyclical capital buffer amount), and greater than 0.938 percent (plus 37.5 percent of any applicable countercyclical capital buffer amount).	40 percent.
	Less than or equal to 0.938 percent (plus 37.5 percent of any applicable countercyclical capital buffer amount), and greater than 0.469 percent (plus 18.75 percent of any applicable countercyclical capital buffer amount).	20 percent.
	Less than or equal to 0.469 percent (plus 18.75 percent of any applicable countercyclical capital buffer amount).	0 percent.

(b) *Regulatory capital adjustments and deductions.* Beginning January 1, 2014, for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015, for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution must make the capital adjustments and deductions in § 324.22 in accordance with the transition requirements in this paragraph (b). Beginning January 1, 2018, an FDIC-supervised institution must make all regulatory capital adjustments and deductions in accordance with § 324.22.

(1) *Transition deductions from common equity tier 1 capital.* Beginning January 1, 2014, for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015, for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution, must make the deductions required under § 324.22(a)(1)—(7) from common equity tier 1 or tier 1 capital elements in accordance with the percentages set forth in Tables 2 and 3 to § 324.300.

(i) An FDIC-supervised institution must deduct the following items from common equity tier 1 and additional tier 1 capital in accordance with the percentages set forth in Table 2 to § 324.300: Goodwill (§ 324.22(a)(1)), DTAs that arise from net operating loss and tax credit carryforwards (§ 324.22(a)(3)), a gain-on-sale in connection with a securitization exposure (§ 324.22(a)(4)), defined benefit pension fund assets (§ 324.22(a)(5)), expected credit loss that exceeds eligible credit reserves (for advanced approaches FDIC-supervised institutions that have completed the parallel run process and that have received notifications from the FDIC pursuant to § 324.121(d) of subpart E) (§ 324.22(a)(6)), and financial subsidiaries (§ 324.22(a)(7)).

TABLE 2 TO § 324.300

Transition period	Transition deductions under § 324.22(a)(1), (a)(7), (a)(8), and (a)(9)	Transition deductions under § 324.22(a)(3)–(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 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) An FDIC-supervised institution 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 3 to § 324.300.

(iii) An FDIC-supervised institution 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 3 TO § 324.300

Transition period	Transition deductions under § 324.22(a)(2)—Percentage of the deductions from common equity tier 1 capital
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.* Beginning January 1, 2014, for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015, for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution, must allocate the regulatory adjustments related to changes in the fair value of liabilities due to changes in the FDIC-supervised institution's own credit risk (§ 324.22(b)(1)(iii)) between common equity tier 1 capital and tier 1 capital in accordance with the percentages set forth in Table 4 to § 324.300.

(i) If the aggregate amount of the adjustment is positive, the FDIC-supervised institution must allocate the deduction between common equity tier 1 and tier 1 capital in accordance with Table 4 to § 324.300.

(ii) If the aggregate amount of the adjustment is negative, the FDIC-supervised institution must add back the adjustment to common equity tier 1 capital or to tier 1 capital, in accordance with Table 4 to § 324.300.

TABLE 4 TO § 324.300

Transition period	Transition adjustments under § 324.22(b)(2)	
	Percentage of the adjustment applied to common equity tier 1 capital	Percentage of the adjustment applied to tier 1 capital
Calendar year 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 for an advanced approaches FDIC-supervised institution and an FDIC-supervised institution that has not made an AOCI opt-out election under § 324.22(b)(2).* Beginning January 1, 2014, for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015, for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution and that has not made an AOCI opt-out election under § 324.22(b)(2), and in each case through December 31, 2017, an FDIC-supervised institution must adjust common equity tier 1 capital with respect to the transition AOCI adjustment amount (transition AOCI adjustment amount):

(i) The transition AOCI adjustment amount is the aggregate amount of an FDIC-supervised institution's:

(A) Unrealized gains on available-for-sale securities that are preferred stock classified as an equity security under

GAAP or available-for-sale equity exposures, plus

(B) Net unrealized gains or losses on available-for-sale securities that are not preferred stock classified as an equity security under GAAP or available-for-sale equity exposures, plus

(C) Any amounts recorded in AOCI attributed to defined benefit postretirement plans resulting from the initial and subsequent application of the relevant GAAP standards that pertain to such plans (excluding, at the FDIC-supervised institution's option, the portion relating to pension assets deducted under § 324.22(a)(5)), plus

(D) Accumulated net gains or losses on cash flow hedges related to items that are reported on the balance sheet at fair value included in AOCI, plus

(E) Net unrealized gains or losses on held-to-maturity securities that are included in AOCI.

(ii) An FDIC-supervised institution must make the following adjustment to its common equity tier 1 capital:

(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 5 to § 324.300.

(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 5 to § 324.300.

TABLE 5 TO § 324.300

Transition period	Percentage of the transition AOCI adjustment amount to be applied to common equity tier 1 capital
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

(iii) An FDIC-supervised institution may include in tier 2 capital the percentage of unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures as set forth in Table 6 to § 324.300.

TABLE 6 TO § 324.300

Transition period	Percentage of unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures that may be included in tier 2 capital
Calendar year 2014	36
Calendar year 2015	27
Calendar year 2016	18
Calendar year 2017	9
Calendar year 2018 and thereafter	0

(4) *Additional transition deductions from regulatory capital.* (i) Beginning January 1, 2014, for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015, for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution must use Table 7 to § 324.300 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 (§ 324.22(d)) (that is, MSAs, DTAs arising from temporary differences that the FDIC-supervised institution 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 capital.

(ii) Beginning January 1, 2014, for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015, for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution 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 § 324.22(d)(2), beginning January 1, 2018, an FDIC-supervised institution 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 7 TO § 324.300

Transition period	Transitions for deductions under § 324.22(c) and (d)—Percentage of additional deductions from regulatory capital
Calendar year 2014	20
Calendar year 2015	40
Calendar year 2016	60

TABLE 7 TO § 324.300—Continued

Transition period	Transitions for deductions under § 324.22(c) and (d)—Percentage of additional deductions from regulatory capital
Calendar year 2017	80
Calendar year 2018 and thereafter	100

(iii) For purposes of calculating the transition deductions in this paragraph (b)(4), beginning January 1, 2014, for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015, for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution's 15 percent common equity tier 1 capital deduction threshold for MSAs, DTAs arising from temporary differences that the FDIC-supervised institution 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 FDIC-supervised institution's common equity tier 1 elements, after regulatory adjustments and deductions required under § 324.22(a) through (c) (transition 15 percent common equity tier 1 capital deduction threshold).

(iv) Beginning January 1, 2018, an FDIC-supervised institution must calculate the 15 percent common equity tier 1 capital deduction threshold in accordance with § 324.22(d).

(c) *Non-qualifying capital instruments. Depository institutions.* (1) Beginning on January 1, 2014, a depository institution that is an advanced approaches FDIC-supervised institution, and beginning on January 1, 2015, all other depository institutions may include in regulatory capital debt or equity instruments issued prior to September 12, 2010, that do not meet the criteria for additional tier 1 or tier 2 capital instruments in § 324.20 but that were included in tier 1 or tier 2 capital respectively as of September 12, 2010 (non-qualifying capital instruments issued prior to September 12, 2010) up to the percentage of the outstanding principal amount of such non-qualifying capital instruments as of January 1, 2014 in accordance with Table 8 to § 324.300.

(2) Table 8 to § 324.300 applies separately to tier 1 and tier 2 non-qualifying capital instruments.

(3) The amount of non-qualifying capital instruments that cannot be included in additional tier 1 capital under this section may be included in tier 2 capital without limitation, provided that the instruments meet the criteria for tier 2 capital instruments under § 324.20(d).

TABLE 8 TO § 324.300

Transition period (calendar year)	Percentage of non-qualifying capital instruments includable in additional tier 1 or tier 2 capital
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

(d) *Minority interest*—(1) *Surplus minority interest.* Beginning January 1, 2014, for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015, for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution may include in common equity tier 1 capital, tier 1 capital, or total capital the percentage of the common equity tier 1 minority interest, tier 1 minority interest and total capital minority interest outstanding as of January 1, 2014 that exceeds any common equity tier 1 minority interest, tier 1 minority interest or total capital minority interest includable under § 324.21 (surplus minority interest), respectively, as set forth in Table 9 to § 324.300.

(2) *Non-qualifying minority interest.* Beginning January 1, 2014, for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015, for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution may include in tier 1 capital or total capital the percentage of the tier 1 minority interest and total capital minority interest outstanding as of January 1, 2014 that does not meet the criteria for additional tier 1 or tier 2 capital instruments in § 324.20 (non-qualifying minority interest), as set forth in Table 9 to § 324.300.

TABLE 9 TO § 324.300

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 2014	80

TABLE 9 TO § 324.300—Continued

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 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

(e) *Prompt corrective action.* For purposes of subpart H of this part, an FDIC-supervised institution must calculate its capital measures and tangible equity ratio in accordance with the transition provisions in this section.

§§ 324.301 through 324.399 [Reserved]

Subpart H—Prompt Corrective Action

§ 324.401 Authority, purpose, scope, other supervisory authority, disclosure of capital categories, and transition procedures.

(a) *Authority.* This subpart H 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-supervised institutions, 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 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. Beginning on, and thereafter, January 1, 2015, this subpart H implements the provisions of section 38 of the FDI Act as they apply to FDIC-supervised institutions 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 H 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 H 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 an FDIC-supervised institution or an insured branch of a foreign bank for which the FDIC is the appropriate Federal banking agency under this subpart H 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 FDIC-supervised institution or insured branch of a foreign bank for which the FDIC is the appropriate Federal banking agency may state in any advertisement or promotional material its capital category under this subpart H or that the FDIC or any other Federal banking agency has assigned it to a particular capital category.

(f) *Transition procedures*—(1) *Definitions applicable before January 1, 2015, for certain FDIC-supervised institutions.* Before January 1, 2015, notwithstanding any other requirement in this subpart H and with respect to any FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution:

(i) The definitions of leverage ratio, tangible equity, tier 1 capital, tier 1 risk-based capital, and total risk-based capital as calculated or defined under Appendix A to part 325 or Appendix B to part 325, as applicable, remain in effect for purposes of this subpart H; and

(ii) The term total assets shall have the meaning provided in 12 CFR 325.2(x).

(2) *Timing.* The calculation of the definitions of common equity tier 1 capital, the common equity tier 1 risk-based capital ratio, the leverage ratio, the supplementary leverage ratio, tangible equity, tier 1 capital, the tier 1 risk-based capital ratio, total assets, total leverage exposure, the total risk-based capital ratio, and total risk-weighted assets under this subpart H is subject to the timing provisions at 12 CFR 324.1(f) and the transitions at 12 CFR part 324, subpart G.

(g) For purposes of subpart H, as of January 1, 2015, total assets means quarterly average total assets as reported in an FDIC-supervised institution's Call Report, minus amounts deducted from tier 1 capital under § 324.22(a), (c), and (d). At its discretion, the FDIC may calculate total assets using an FDIC-supervised institution's period-end assets rather than quarterly average assets.

§ 324.402 Notice of capital category.

(a) *Effective date of determination of capital category.* An FDIC-supervised institution shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this subpart H as of the date the FDIC-supervised institution 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.* An FDIC-supervised institution shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

(1) A Call Report is required to be filed with the FDIC;

(2) A final report of examination is delivered to the FDIC-supervised institution; or

(3) Written notice is provided by the FDIC to the FDIC-supervised institution of its capital category for purposes of

section 38 of the FDI Act and this subpart or that the FDIC-supervised institution's capital category has changed as provided in § 324.403(d).

(c) *Adjustments to reported capital levels and capital category* — (1) *Notice of adjustment by bank or state savings association.* An FDIC-supervised institution shall provide the appropriate FDIC regional director with written notice that an adjustment to the FDIC-supervised institution'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 FDIC-supervised institution to be placed in a lower capital category from the category assigned to the FDIC-supervised institution for purposes of section 38 of the FDI Act and this subpart H on the basis of the FDIC-supervised institution'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 FDIC-supervised institution and shall notify the bank or state savings association of the FDIC's determination.

§ 324.403 Capital measures and capital category definitions.

(a) *Capital measures.* For purposes of section 38 of the FDI Act and this subpart H, 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 January 1, 2018, the supplementary leverage ratio calculated in accordance with § 324.11 for advanced approaches FDIC-supervised institutions that are subject to subpart E of this part.

(b) *Capital categories.* For purposes of section 38 of the FDI Act and this subpart, an FDIC-supervised institution shall be deemed to be:

(1) ''Well capitalized'' if it:

(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 it:

(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 FDIC-supervised institution will be deemed to be ''adequately capitalized'' if it 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 it:

(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 FDIC-supervised institution will be deemed to be ''undercapitalized'' if it has a supplementary leverage ratio of less than 3.0 percent, as calculated in accordance with § 324.11.

(4) ''Significantly undercapitalized'' if it 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 H, 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, 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 FDIC-supervised institution as adequately capitalized and may require an adequately capitalized FDIC-supervised institution or an undercapitalized FDIC-supervised institution to comply with certain mandatory or discretionary supervisory

actions as if the FDIC-supervised institution were in the next lower capital category (except that the FDIC may not reclassify a significantly undercapitalized FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC-supervised institution, the FDIC-supervised institution received and has not corrected a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, or liquidity.

§ 324.404 Capital restoration plans.

(a) *Schedule for filing plan*—(1) *In general.* An FDIC-supervised institution shall file a written capital restoration plan with the appropriate FDIC regional director within 45 days of the date that the FDIC-supervised institution receives notice or is deemed to have notice that the FDIC-supervised institution is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the FDIC notifies the FDIC-supervised institution in writing that the plan is to be filed within a different period. An adequately capitalized FDIC-supervised institution that has been required pursuant to § 324.403(d) to comply with supervisory actions as if the FDIC-supervised institution 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, an FDIC-supervised institution that has already submitted and is operating under a capital restoration plan approved under section 38 and this subpart H 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 § 324.403 unless the FDIC notifies the FDIC-supervised institution that it must submit a new or revised capital plan. An FDIC-supervised institution 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 it 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. An FDIC-supervised institution that is required to submit a capital restoration plan as a result of its reclassification pursuant to § 324.403(d) shall include a description of the steps the FDIC-supervised institution 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 FDIC-supervised institution.

(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 FDIC-supervised institution 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 FDIC-supervised institution 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 FDIC-supervised institution (as defined in § 324.403(b)) shall be subject to all of the provisions of section 38 of the FDI Act and this subpart H applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as a new or revised capital restoration plan submitted by the FDIC-supervised institution has been approved by the FDIC.

(e) *Failure to submit capital restoration plan.* An FDIC-supervised institution that is undercapitalized (as defined in § 324.403(b)) 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 FDIC-supervised institution 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 H applicable to significantly undercapitalized institutions.

(g) *Amendment of capital restoration plan.* An FDIC-supervised institution 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 FDIC-supervised institution shall implement the capital restoration plan as approved prior to the proposed amendment.

(h) *Performance guarantee by companies that control an* FDIC-supervised institution—(1) *Limitation on liability*—(i) *Amount limitation.* The aggregate liability under the guarantee provided under section 38 and this subpart H for all companies that control a specific FDIC-supervised institution that is required to submit a capital restoration plan under this subpart H shall be limited to the lesser of:

(A) An amount equal to 5.0 percent of the FDIC-supervised institution's total assets at the time the FDIC-supervised institution was notified or deemed to have notice that the FDIC-supervised institution was undercapitalized; or

(B) The amount necessary to restore the relevant capital measures of the FDIC-supervised institution to the levels required for the FDIC-supervised institution to be classified as adequately capitalized, as those capital measures and levels are defined at the time that the FDIC-supervised institution initially fails to comply with a capital restoration plan under this subpart H.

(ii) *Limit on duration.* The guarantee and limit of liability under section 38 of the FDI Act and this subpart H shall expire after the FDIC notifies the FDIC-supervised institution 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 FDIC-supervised institution after expiration of the first guarantee.

(iii) *Collection on guarantee.* Each company that controls a given FDIC-supervised institution shall be jointly and severally liable for the guarantee for such FDIC-supervised institution as required under section 38 and this subpart H, 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 an FDIC-supervised institution 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 FDIC-supervised institution shall, upon submission of the plan, be subject to the provisions of section 38 and this subpart H that are applicable to FDIC-supervised institutions that have not submitted an acceptable capital restoration plan.

(3) *Failure to perform guarantee.* Failure by any company that controls an FDIC-supervised institution 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 FDIC-supervised institution shall be subject to the provisions of section 38 and this subpart H that are applicable to FDIC-supervised institutions that have failed in a material respect to implement a capital restoration plan.

§ 324.405 Mandatory and discretionary supervisory actions.

(a) *Mandatory supervisory actions*—(1) *Provisions applicable to all FDIC-supervised institutions.* All FDIC-supervised institutions 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 FDIC-supervised institution. Immediately upon receiving notice or being deemed to have notice, as provided in § 324.402, that the FDIC-supervised institution is undercapitalized, significantly undercapitalized, or critically undercapitalized, it 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 FDIC-supervised institution (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 FDIC-supervised institution'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 FDIC-supervised institutions.* 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 § 324.402, that the FDIC-supervised institution is significantly undercapitalized, or critically undercapitalized, or that the FDIC-supervised institution is subject to the provisions applicable to institutions that are significantly undercapitalized because the FDIC-supervised institution failed to submit or implement in any material respect an acceptable capital restoration plan, the FDIC-supervised institution 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 § 324.402, 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.

(iii) The FDIC-supervised institution must remain 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 H.

PART 327—ASSESSMENTS

■ 14. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1813, 1815, 1817–19, 1821.

■ 15. Appendix A to subpart A of part 327 is amended by revising footnote 5 in section VI. to read as follows:

Appendix A to Subpart A of Part 327—Method to Derive Pricing Multipliers and Uniform Amount

* * * * *

VI. Description of Scorecard Measures

* * * * *

[5] Market risk capital is defined in Appendix C of part 325 of the FDIC Rules and Regulations or subpart F of Part 324 of the FDIC Rules and Regulations, as applicable.

* * * * *

■ 16. Appendix C to subpart A of part 327 is amended by revising the first paragraph in section I.A.5 to read as follows:

Appendix C to Subpart A to Part 327

* * * * *

I. * * *

A. * * *

5. Higher-Risk Securitizations

Higher-risk securitizations are defined as securitizations or securitization exposures (except securitizations classified as trading book), where, in aggregate, more than 50 percent of the assets backing the securitization meet either the criteria for higher-risk C & I loans or securities, higher-risk consumer loans, or nontraditional mortgage loans, except those classified as trading book. A securitization is as defined in 12 CFR part 325, Appendix A, Section II(B)(16), or in 12 CFR 324.2, as applicable, as they may be amended from time to time. A higher-risk securitization excludes the maximum amount that is recoverable from the U.S. government under guarantee or insurance provisions.

* * * * *

PART 333—EXTENSION OF CORPORATE POWERS

■ 17. The authority citation for part 333 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819 (''Seventh'', ''Eighth'' and ''Tenth''), 1828, 1828(m), 1831p–1(c).

■ 18. Section 333.4 is amended by revising the fourth sentence in paragraph (a) to read as follows:

§ 333.4 Conversions from mutual to stock form.

(a) *Scope.* * * * As determined by the Board of Directors of the FDIC on a case-by-case basis, the requirements of paragraphs (d), (e), and (f) of this section do not apply to mutual-to-stock conversions of insured mutual state savings banks whose capital category under § 325.103 of this chapter or § 324.403, as applicable, is ''undercapitalized'', ''significantly undercapitalized'' or ''critically undercapitalized''. * * *

* * * * *

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

■ 19. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821(f), 1828(j)(2), 1831, 1831f.

■ 20. Section 337.6 is amended by revising footnotes 12 and 13 in paragraph (a) to read as follows:

§ 337.6 Brokered deposits.

* * * * *

[12] For the most part, the capital measure terms are defined in the following regulations: FDIC—12 CFR part 325, subpart B or 12 CFR part 324, subpart H, as applicable; Board of Governors of the Federal Reserve System—12 CFR part 208; and Office of the Comptroller of the Currency—12 CFR part 6.

[13] The regulations implementing section 38 of the Federal Deposit Insurance Act and issued by the federal banking agencies generally provide that an insured depository institution is 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 is required to be filed with the appropriate federal banking agency; (2) A final report of examination is delivered to the institution; or (3) Written notice is provided by the appropriate federal banking agency to the institution of its capital category for purposes of section 38 of the Federal Deposit Insurance Act and implementing regulations or that the institution's capital category has changed. Provisions specifying the effective date of determination of capital category are generally published in the following regulations: FDIC—12 CFR 325.102 or 12 CFR 324.402, as applicable. Board of Governors of the Federal Reserve System—12 CFR 208.32. Office of the Comptroller of the Currency—12 CFR 6.3.

* * * * *

■ 21. Section 337.12 is amended by revising paragraph (b)(2) to read as follows:

§ 337.12 Frequency of examination.

* * * * *

(b) * * *

(2) The bank is well capitalized as defined in § 325.103(b)(1) of this chapter or § 324.403(b)(1) of this chapter, as applicable.

* * * * *

PART 347—INTERNATIONAL BANKING

■ 22. The authority citation for part 347 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109; Title IX, Pub.L. 98–181, 97 Stat. 1153.

■ 23. Section 347.102 is amended by revising paragraphs (u) and (v) to read as follows:

§ 347.102 Definition.

* * * * *

(u) Tier 1 capital means Tier 1 capital as defined in § 325.2 of this chapter or § 324.2 of this chapter, as applicable.

(v) Well capitalized means well capitalized as defined in § 325.103 of this chapter or § 324.403 of this chapter, as applicable.

PART 349—RETAIL FOREIGN EXCHANGE TRANSACTIONS

■ 24. The authority citation for part 349 continues to read as follows:

Authority: 12 U.S.C.1813(q), 1818, 1819, and 3108; 7 U.S.C. 2(c)(2)(E), 27 et seq.

■ 25. Section 349.8 is revised as follows:

§ 349.8 Capital requirements.

An FDIC-supervised insured depository institution offering or entering into retail forex transactions must be well capitalized as defined by 12 CFR part 325 or 12 CFR part 324, as applicable, unless specifically exempted by the FDIC in writing.

PART 360—RESOLUTION AND RECEIVERSHIP RULES

■ 26. The authority citation for part 360 continues to read as follows:

Authority: 12 U.S.C. 1817(b), 1818(a)(2), 1818(t), 1819(a) Seventh, Ninth and Tenth, 1820(b)(3), (4), 1821(d)(1), 1821(d)(10)(c), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub.L. 101–73, 103 Stat. 357.

■ 27. Section 360.5 is amended to revise paragraph (b) to read as follows:

§ 360.5 Definition of qualified financial contracts.

* * * * *

(b) *Repurchase agreements.* The following agreements shall be deemed ''repurchase agreements'' under section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1821(e)(8)(D)(v)): A repurchase agreement on qualified foreign government securities is an agreement or combination of agreements (including master agreements) which provides for the transfer of securities that are direct obligations of, or that are fully guaranteed by, the central governments (as set forth at 12 CFR part 325, appendix A, section II.C, n. 17, as may be amended from time to time or 12 CFR 324.2 (definition of sovereign exposure), as applicable) of the OECD-based group of countries (as set forth at 12 CFR part 325, appendix A, section II.B.2., note 12 as generally discussed in 12 CFR 324.32) against the transfer of funds by the transferee of such securities with a simultaneous agreement by such transferee to transfer to the transferor thereof securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds.

* * * * *

■ 28. Section 360.9 is amended by revising the first sentence of paragraph (e)(6) to read as follows:

§ 360.9 Large-bank deposit insurance determination modernization.

* * * * *

(e) * * *

(6) Notwithstanding the general requirements of this paragraph (e), on a case-by-case basis, the FDIC may accelerate, upon notice, the implementation timeframe of all or part

of the requirements of this section for a covered institution that: Has a composite rating of 3, 4, or 5 under the Uniform Financial Institution's Rating System, or in the case of an insured branch of a foreign bank, an equivalent rating; is undercapitalized, as defined under the prompt corrective action provisions of 12 CFR part 325 or 12 CFR part 324, as applicable; or is determined by the appropriate Federal banking agency or the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination. * * *

* * * * *

PART 362—ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS

■ 29. 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).

■ 30. Section 362.2 is amended by revising paragraphs (s) and (t) to read as follows:

§ 362.2 Definitions.

* * * * *

(s) *Tier one capital* has the same meaning as set forth in part 324 or 325 of this chapter, as applicable, for an insured State nonmember bank. For other state-chartered depository institutions, the term ''tier one capital'' has the same meaning as set forth in the capital regulations adopted by the appropriate Federal banking agency.

(t) *Well-capitalized* has the same meaning set forth in part 324 or 325 of this chapter, as applicable, of this chapter for an insured State nonmember bank. For other state-chartered depository institutions, the term ''well-capitalized'' has the same meaning as set forth in the capital regulations adopted by the appropriate Federal banking agency.

■ 31. Section 362.4 is amended by revising paragraph (e)(3) to read as follows:

§ 362.4 Subsidiaries of insured State banks.

* * * * *

(e) * * *

(3) Use such regulatory capital amount for the purposes of the bank's assessment risk classification under part 327 of this chapter and its categorization as a ''well-capitalized'', an ''adequately capitalized'', an ''undercapitalized'', or a ''significantly undercapitalized'' institution as defined in § 325.103(b) of this chapter or § 324.403(b) of this chapter, as applicable, provided that the capital deduction shall not be used for purposes of determining whether the bank is ''critically undercapitalized'' under part 325 of this chapter or part 324 of this chapter, as applicable.

■ 32. Section 362.17 is amended by revising paragraph (d) to read as follows:

§ 362.17 Definitions.

* * * * *

(d) *Tangible equity* and *Tier 2 capital* have the same meaning as set forth in part 325 of this chapter or part 324 of this chapter, as applicable.

* * * * *

■ 33. 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 its total risk-based capital (this deduction shall be made equally from tier 1 and tier 2 capital) or from common equity tier 1 capital in accordance with 12 CFR part 324, subpart C, as applicable.

* * * * *

PART 363—ANNUAL INDEPENDENT AUDITS AND REPORTING REQUIREMENTS

■ 34. The authority citation for part 363 continues to read as follows:

Authority: 12 U.S.C. 1831m.

■ 35. Appendix A to part 363 is amended by revising Table 1 to Appendix A to read as follows:

Appendix A to Part 363—Guidelines and Interpretations

TABLE 1 TO APPENDIX A—DESIGNATED FEDERAL LAWS AND REGULATIONS APPLICABLE TO:

		National banks	State member banks	State non-member banks	Savings associations
Insider Loans—Parts and/or Sections of Title 12 of the United States Code					
375a	Loans to Executive Officers of Banks	√	√	(A)	(A)
375b	Extensions of Credit to Executive Officers, Directors, and Principal Shareholders of Banks.	√	√	(A)	(A)
1468(b)	Extensions of Credit to Executive Officers, Directors, and Principal Shareholders.				√
1828(j)(2)	Extensions of Credit to Officers, Directors, and Principal Shareholders.			√	
1828(j)(3)(B)	Extensions of Credit to Officers, Directors, and Principal Shareholders.	(B)		(C)	
Parts and/or Sections of Title 12 of the Code of Federal Regulations					
31	Extensions of Credit to Insiders	√			
32	Lending Limits	√			
215	Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks.	√	√	(D)	(E)
337.3	Limits on Extensions of Credit to Executive Officers, Directors, and Principal Shareholders of Insured Nonmember Banks.			√	

TABLE 1 TO APPENDIX A—DESIGNATED FEDERAL LAWS AND REGULATIONS APPLICABLE TO:—Continued

		National banks	State member banks	State non-member banks	Savings associations
563.43	Loans by Savings Associations to Their Executive Officers, Directors, and Principal Shareholders.				√
Dividend Restrictions—Parts and/or Sections of Title 12 of the United States Code					
56	Prohibition on Withdrawal of Capital and Unearned Dividends.	√	√		
60	Dividends and Surplus Fund	√	√		
1467a(f)	Declaration of Dividend				√
1831o(d)(1)	Prompt Corrective Action—Capital Distributions Restricted.	√	√	√	√
Parts and/or Sections of Title 12 of the Code of Federal Regulations					
5 Subpart E	Payment of Dividends	√			
6.6	Prompt Corrective Action— Restrictions on Undercapitalized Institutions.	√			
208.5	Dividends and Other Distributions		√		
208.45	Prompt Corrective Action— Restrictions on Undercapitalized Institutions.		√		
325.105 or 324.403, as applicable.	Prompt Corrective Action— Restrictions on Undercapitalized Institutions.			√	
563 Subpart E	Capital Distributions				√
565.6	Prompt Corrective Action—Restrictions on Undercapitalized Institutions.				√

A. Subsections (g) and (h) of section 22 of the Federal Reserve Act [12 U.S.C. 375a, 375b].
B. Applies only to insured Federal branches of foreign banks.
C. Applies only to insured State branches of foreign banks.
D. See 12 CFR 337.3.
E. See 12 CFR 563.43.

PART 364—STANDARDS FOR SAFETY AND SOUNDNESS

■ 36. The authority citation in part 364 continues to read as follows:

Authority: 12 U.S.C. 1818 and 1819 (Tenth), 1831p–1; 15 U.S.C. 1681b, 1681s, 1681w, 6801(b), 6805(b)(1).

■ 37. Appendix A to part 364 is amended by revising the last sentence in section I.A. as follows:

Appendix A to Part 364—Interagency Guidelines Establishing Standards for Safety and Soundness

* * * * *

I. Introduction

* * * * *

A. Preservation of Existing Authority

* * * Nothing in these Guidelines limits the authority of the FDIC pursuant to section 38(i)(2)(F) of the FDI Act (12 U.S.C. 1831(o)) and part 325 or part 324, as applicable, of Title 12 of the Code of Federal Regulations.

* * * * *

PART 365—REAL ESTATE LENDING STANDARDS

■ 38. The authority citation for part 365 continues to read as follows:

Authority: 12 U.S.C. 1828(o) and 5101 et seq.

■ 39. Appendix A to subpart A of part 365 is amended by revising footnote 2 to the ''Loans in Excess of the Supervisory Loan-to-Value Limits'' section to read as follows:

Appendix A to Subpart A of Part 365—Interagency Guidelines for Real Estate Lending Policies

* * * * *

[2] For insured state non-member banks, ''total capital'' refers to that term described in table I of appendix A to 12 CFR part 325 or 12 CFR 324.2, as applicable. For state savings associations, the term ''total capital'' is defined at 12 CFR part 390, subpart Z or 12 CFR 324.2, as applicable.

* * * * *

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 40. The authority citation for part 390 continues to read as follows:

Authority: 12 U.S.C. 1819.; Subpart A also issued under 12 U.S.C. 1820; Subpart B also issued under 12 U.S.C. 1818.; Subpart C also issued under 5 U.S.C. 504; 554–557; 12 U.S.C. 1464; 1467; 1468; 1817; 1818; 1820; 1829; 3349, 4717; 15 U.S.C. 78l; 78o–5; 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.; Subpart D also issued under 12 U.S.C. 1817; 1818; 1820; 15 U.S.C. 78l; Subpart E also issued under 12 U.S.C. 1813; 1831m; 15 U.S.C. 78.; Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 et seq.; Subpart G also issued under 12 U.S.C. 2810 et seq., 2901 et seq.; 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.; Subpart H also issued under 12 U.S.C. 1464; 1831y; Subpart I also issued under 12 U.S.C. 1831x; Subpart J also issued under 12 U.S.C. 1831p–1; Subpart K also issued under 12 U.S.C. 1817; 1818; 15 U.S.C. 78c; 78l; Subpart L also issued under 12 U.S.C. 1831p–1; Subpart M also issued under 12 U.S.C. 1818; Subpart N also issued under 12 U.S.C. 1821; Subpart O also issued under 12 U.S.C. 1828; Subpart P also issued under 12 U.S.C. 1470; 1831e; 1831n; 1831p–1; 3339; Subpart Q also issued under 12 U.S.C. 1462.

■ 41. Appendix A to § 390.265 is amended by revising footnote 4 as follows:

§ 390.265 Real estate landing standards.

* * * * *

Appendix A to § 390.265—Interagency Guidelines for Real Estate Lending Policies

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[4] For the state member banks, the term ''total capital'' means ''total risk-based capital'' as defined in appendix A to 12 CFR part 208. For insured state non-member banks, ''total capital'' refers to that term described in table I of appendix A to 12 CFR

part 325 or 12 CFR 324.2, as applicable. For national banks, the term ''total capital'' is defined at 12 CFR 3.2(e). For savings associations, the term ''total capital'' is defined at 12 CFR 390, subpart Z or 12 CFR 324.2, as applicable.

* * * * *

PART 391—FORMER OFFICE OF THRIFT SUPERVISION REGULATIONS

■ 42. The authority citation for part 391 continues to read as follows:

Authority: 12 U.S.C. 1819 (Tenth); Subpart A also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p–1; 1881–1884; 15 U.S.C. 1681w; 15 U.S.C. 6801; 6805; Subpart B also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p–1; 1881–1884; 15 U.S.C.1681w; 15 U.S.C. 6801; 6805; Subpart C also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p–1; and 1881–1884; 15 U.S.C. 1681m; 1681w; Subpart D also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 42 U.S.C. 4012a; 4104a; 4104b; 4106; 4128; Subpart E also issued under 12 U.S.C. 1467a; 1468; 1817; 1831i.

■ 43. Appendix A to subpart B of part 391 is amended by revising the last sentence in section I.A. as follows:

Appendix A to Subpart B of Part 391—Interagency Guidelines Establishing Standards for Safety and Soundness

* * * * *

I. Introduction

* * * * *

A. Preservation of Existing Authority

* * * Nothing in these Guidelines limits the authority of the FDIC pursuant to section 38(i)(2)(F) of the FDI Act (12 U.S.C. 1831(o)) and part 325 or part 324, as applicable of Title 12 of the Code of Federal Regulations.

Dated at Washington, DC, this 9th day of July, 2013.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–20536 Filed 9–9–13; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status for Jemez Mountains Salamander (*Plethodon neomexicanus*) Throughout Its Range; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0063; 4500030113]

RIN 1018–AY24

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status for Jemez Mountains Salamander (Plethodon neomexicanus) Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine endangered species status under the Endangered Species Act of 1973 (Act), as amended, for the Jemez Mountains salamander (*Plethodon neomexicanus*). This final rule implements the Federal protections provided by the Act for this species. We have also determined that critical habitat for the Jemez Mountains salamander is prudent and determinable in the proposed rule and will soon publish in the **Federal Register** our final determination designating critical habitat for the Jemez Mountains salamander.

DATES: This rule becomes effective October 10, 2013.

ADDRESSES: This final rule is available on the Internet at *http://www.fws.gov/southwest/es/NewMexico/index.cfm,* and the rule as well as comments and materials received are available at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0063. Comments and materials received, as well as supporting documentation used in the preparation of this rule, will also be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, NM 87113; by telephone 505–346–2525; or by facsimile 505–346–2542.

FOR FURTHER INFORMATION CONTACT: Wally Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species or subspecies may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule. On September 12, 2012 (77 FR 56482), we proposed to list the Jemez Mountains salamander (*Plethodon neomexicanus*) under the Act as an endangered species and proposed to designate critical habitat. In that document we explained that the species currently faces numerous threats of high magnitude, and, therefore, qualifies for listing and requested additional information and comments on the proposed listing. This final rule considers all comments received by peer reviewers, tribes, State agencies, Federal agencies, and the public regarding the proposed rule to list the Jemez Mountains salamander. This is our final determination to list the Jemez Mountains salamander as endangered.

The basis for our action. Under the Act, a species may be determined to be an endangered or threatened species based on any of 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; and (E) other natural or manmade factors affecting its continued existence. We have determined that the Jemez Mountains salamander meets the definition of an endangered species due to three of these five factors.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We also considered all comments and information received during the comment period.

Background

Previous Federal Actions

Please refer to the proposed listing rule for the Jemez Mountains salamander (77 FR 56482; September 12, 2012) for a detailed description of previous Federal actions concerning this species.

We have also determined that critical habitat for the Jemez Mountains salamander is prudent and determinable in the proposed rule and will soon publish in the **Federal Register** our final determination designating critical habitat for the Jemez Mountains salamander.

Species Information

The Jemez Mountains salamander is uniformly dark brown above, with occasional fine gold to brassy coloring with stippling dorsally (on the back and sides) and is sooty gray ventrally (underside). The salamander is slender and elongate, and it possesses foot webbing and a reduced fifth toe. This salamander is a member of the family Plethodontidae, is strictly terrestrial, and does not use standing surface water for any life stage. Respiration (the exchange of oxygen and carbon dioxide) occurs through the skin, which requires a moist microclimate for gas exchange.

Taxonomy and Species Description

The Jemez Mountains salamander was originally reported as *Spelerpes multiplicatus* (=*Eurycea multiplicata*) in 1913 (Degenhardt *et al.* 1996, p. 27); however, it was described and recognized as a new and distinct species (*Plethodon neomexicanus*) in 1950 (Stebbins and Riemer, pp. 73–80). No subspecies of the Jemez Mountains salamander are recognized.

The Jemez Mountains salamander is one of two species of plethodontid salamanders' endemic (native and restricted to a particular region) to New Mexico: the Jemez Mountains salamander and the Sacramento Mountains salamander (*Aneides hardii*). Unlike most other North American plethodontid salamanders, these two species are geographically isolated from all other species of *Plethodon* and *Aneides.*

Genetic studies on plethodontid salamanders in North America suggest that the Jemez Mountains salamander is more closely related to western *Plethodon* species than to eastern *Plethodon* salamanders, and that the Larch Mountain salamander (*P. larselli*) found in Oregon and Washington is no longer considered the most closely related species to the Jemez Mountains salamander (Mahoney 2001, p. 184). In many of the analyses presented by Mahoney 2001 (entire), the Jemez Mountains salamander is basal to all other western *Plethodon* (that is, it maintains the most derived characters, or, that other western *Plethodon* are more closely related to each other than any are to the Jemez Mountains salamander), but still, the relationship of the Jemez Mountains salamander to other western plethodontid salamanders remains partially unresolved. Nonetheless, it has been demonstrated that the Jemez Mountains salamander's closest relatives are western

salamanders of the Pacific Northwest of the United States and include Van Dyke's salamander (*P. vandykei*), Larch Mountain salamander (*P. larselli*), Siskiyou Mountains salamander (*P. stormi*), Del Norte salamander (*P. elongatus*), western red-backed salamander (*P. vehiculum*), Dunn's salamander (*P. dunni*), and the green salamander (*Aneides aeneus*) (Mahoney 2001, pp. 178–183). These species, including the Jemez Mountains salamander, are thought to be the result of an old, rapid diversification (Mahoney 2001, p. 185).

Distribution

The distribution of plethodontid salamanders in North America has been highly influenced by past changes in climate and associated Pleistocene glacial cycles. In the Jemez Mountains, the lack of glacial landforms indicates that alpine glaciers may not have developed here, but evidence from exposed rocky areas (felsenmeers) may reflect near-glacial conditions during the Wisconsin Glacial Episode (Allen 1989, p. 11). Conservatively, the salamander has likely occupied the Jemez Mountains for at least 10,000 years, but this could be as long as 1.2 million years, colonizing the area subsequent to volcanic eruption.

The Jemez Mountains salamander is restricted to the Jemez Mountains in northern New Mexico, in Los Alamos, Rio Arriba, and Sandoval Counties, around the rim of the collapsed caldera (large volcanic crater), with some occurrences on topographic features (e.g., resurgent domes) on the interior of the caldera. The majority of salamander habitat is located on federally managed lands, including the U.S. Forest Service (USFS), the National Park Service (Bandelier National Monument), Valles Caldera National Preserve, and Los Alamos National Laboratory, with some habitat located on tribal land and private lands (New Mexico Endemic Salamander Team 2000, p. 1). The Valles Caldera National Preserve is located west of Los Alamos, New Mexico, and is part of the National Forest System (owned by the U.S. Department of Agriculture), but run by a nine-member Board of Trustees: the Supervisor of Bandelier National Monument, the Supervisor of the Santa Fe National Forest, and seven other members appointed by the President of the United States with distinct areas of experience or activity (Valles Caldera Trust 2005, pp. 1–11). Prior to Federal ownership in 2000, the Valles Caldera National Preserve was privately held. The species predominantly occurs at an elevation between 7,200 and 9,500 feet (ft) (2,200 and 2,900 meters (m)) (Degenhardt *et al.* 1996, p. 28), but has been found as low as 6,998 ft (2,133 m) (Ramotnik 1988, p. 78) and as high as 10,990 ft (3,350 m) (Ramotnik 1988, p. 84).

Biology

The Jemez Mountains salamander is strictly terrestrial, does not possess lungs, and does not use standing surface water for any life stage. Respiration (the exchange of oxygen and carbon dioxide) occurs through the skin, which requires a moist microclimate for gas exchange. Substrate moisture through its effect on absorption and loss of water is probably the most important factor in the ecology of this terrestrial salamander, as it is in other strictly terrestrial salamander species (Heatwole and Lim 1961, p. 818). The Jemez Mountains salamander spends much of its life underground, but can be found above ground when relative environmental conditions are warm and wet, which is typically from July through September; but occasional salamander observations have been made in May, June, and October. Relatively warm and wet environmental conditions suitable for salamander aboveground activity are likely influenced by melting snow and summer monsoon rains. When active above ground, the species is usually found under decaying logs, rocks, bark, or moss mats or inside decaying logs or stumps.

Changes in pH (acidity or alkalinity) can affect plethodontid salamander behavioral and physiological responses (Cummer and Painter 2007, p. 34). In one study of the Jemez Mountains salamander, soil pH was the single best indicator of relative abundance of salamanders at a site (Ramotnik 1988, pp. 24–25). Sites with salamanders had a soil pH of 6.6 (± 0.08) and sites without salamanders had a soil pH of 6.2 (± 0.06). In another species of a terrestrial plethodontid salamander, the red-backed salamander (*Plethodon cinereus*), soil pH influences and limits its distribution and occurrence as well as its oxygen consumption rates and growth rates (Wyman and Hawksley-Lescault 1987, p. 1823). Similarly, Frisbie and Wyman (1991, p. 1050) found the disruption of sodium balance by acidic conditions in three species of terrestrial salamanders. A low pH substrate can also reduce salamander body sodium, body water levels, and body mass (Frisbie and Wyman 1991, p. 1050). Significant differences in habitat features (soil pH, litter depth, and log size) were reported between the logged and unlogged sites (Ramotnik 1986, p. 8). We do not know if salamanders actually occupied the logged sites prior to logging, but significant differences in habitat features (soil pH, litter depth, and log size) between the logged and unlogged sites were reported (Ramotnik 1986, p. 8). The type and quantity of vegetation affects soil pH (e.g. pine needles are acidic, decomposed pine needles can increase the soils acidity), and thus could also affect the salamander.

Salamander prey from aboveground foraging is diverse in size and type, with ants (Hymenoptera, Formicidae), mites (Acari), and beetles (Coleoptera) being most important (most numerous, most voluminous, and most frequent) in the salamander's diet (Cummer 2005, p. 43). Cummer (2005, pp. 45–50) found that specialization on invertebrate species was unlikely, but there was likely a preferential selection of prey categories (ants, mites, and beetles).

The aboveground microhabitat (under or inside cover objects) temperature for some Jemez Mountains salamanders ranged from 43 to 63 degrees Fahrenheit (°F) (6.0 to 17.0 degrees Celsius (°C)), with an average of 54.9 °F (12.7 °C) (Williams 1972, p. 18). Significantly more salamanders were observed under logs where temperatures were closest to the average temperature (Williams 1972, p. 19).

Sexual maturity is attained at 3 to 4 years in age for females and 3 years for males (Williams 1976, pp. 31, 35). Reproduction in the wild has not been observed; however, based on observed physiological changes, mating is believed to occur above ground between July and August during the rainy season (Williams 1976, pp. 31–36). Based on examination of 57 female salamanders in the wild and 1 clutch of eggs laid in a laboratory setting, Williams (1978, p. 475) concluded that females likely lay 7 or 8 eggs every 2 to 3 years. Eggs are thought to be laid underground in the spring, about 9 to 10 months after mating occurs (Williams 1978, p. 475). Fully formed Jemez Mountains salamanders hatch from the eggs.

The lifespan of the salamander in the wild is unknown. However, in 2013 a marked salamander was observed at a previous study site where salamanders were uniquely marked with fluorescent elastomer (a colored epoxy injected under the skin) from 1996 through 2000. Based on the colors used, this salamander was likely marked in 1998 or 1999. Juvenile salamanders received a different kind of marking, indicating that this wild salamander is minimally 14 years old, but more likely 15–17 years old.

Movements, Home Range, and Dispersal

Ramotnik (1988, pp. 11–12) used implanted radioactive wires in polyethylene tubing to track nine individual Jemez Mountain salamanders for durations between 2 days and 6 weeks, monitoring their movements every 1 to 3 days, and two salamanders were tracked every 2 hours throughout a 12-hour period. Ramotnik (1988, p. 27) reported that individual distances salamanders moved between consecutive observations ranged from 0 to 108 ft (0 to 33 m) and that 73 percent of recorded movements were less than 3.3 ft (1 m). In 59 of 109 observations, salamanders did not move. When the zero-distance movements were excluded from analysis, the average distance salamanders moved was 7.8 ft (2.4 m), and the greatest total recorded distance of an individual was 144 ft (43.9 m) over 22 days (Ramotnik 1988, p. 28). Ramotnik (1988, p. 32) also estimated the home range of six salamanders with these data and reports the average home range was 86 square feet (ft^2) (8.0 square meters (m^2)); males had a larger home range (137 ft^2 (12.7 m^2)) than females (78 ft^2 (7.2 m^2)). The individuals that had larger home ranges (greater than 54 ft^2 (5.0 m^2)) were often found returning to the same cover object; whereas individuals with home ranges less than 54 ft^2 (5 m^2) rarely returned to the same spot (Ramotnik 1988, p. 32). The smallest estimated home range was 10.7 ft^2 (1 m^2) and the largest 220.7 ft^2 (20.5 m^2) (Ramotnik 1988, p. 28).

In a mark–recapture study conducted by the New Mexico Department of Game and Fish (NMDGF), the average distance of 32 movements measured via recapture either in the same year or from year to year, measured over the course of approximately 10 years within a 164-ft-by-164-ft (50-m-by-50-m) plot, was 19.6 ft (5.98 m), with a maximum distance moved from original capture site of 60.7 ft (18.5 m) (NMDGF 2000, p. 15). In this same study, one salamander was observed near the same log nearly 5 years later (NMDGF 2000, p. 16). The data from this study suggest that Jemez Mountains salamanders generally move very little (NMDGF 2000, p. 16). While the data on Jemez Mountains salamander movements are limited because of small sample size, they provide important information on the relatively small movements made by individuals and their relatively small home range, and show that, occasionally, individuals can make larger movements.

For another well-studied terrestrial salamander, the red-backed salamander (*Plethodon cinereus*), researchers have conflicting evidence regarding dispersal abilities. Some information suggests this salamander exhibits small movements, even across multiple years, consisting primarily of small home ranges and with little movement among cover objects (53–269 ft^2, 5–25 m^2) (Kleeberger and Werner 1982, p. 411). However, there is other evidence of moderate-distance homing ability (90 m, 295 ft) (Kleeberger and Werner 1982, p. 411). Cabe *et al.* 2007 (pp. 53–60) measured gene flow of red-backed salamanders across a continuous forested habitat as an indicator of the salamander's dispersal. They suggested that gene flow and dispersal frequency were normally low, indicating that red-backed salamanders generally do not move much, but under certain circumstances, they might disperse farther than normal. These unique conditions occur when the population density of red-backed salamanders is so high in a given area that the habitat is saturated with them, resulting in a reduction in breeding success, and other, less densely populated habitat is available (Cabe *et al.* 2007, p. 53). In a more closely related terrestrial salamander, the Siskiyou Mountains salamander, individuals are reported to make daily to seasonal vertical migrations in the ground surface as microclimate conditions change, but not extensive horizontal movements (Olson *et al.* 2009, p. 3). Furthermore, genetic analyses indicate limited gene flow in the Siskiyou Mountains salamander and that populations may have been on isolated evolutionary pathways for a very long time (Olson *et al.* 2009, p. 3).

Because the Jemez Mountains salamander makes very small horizontal movements and has limited potential for long-distance horizontal movements, habitat connectivity limitations could have profound effects on populations. These effects could occur from increased vulnerability to genetic drift (the process where small population size causes chance alterations in the genetic composition of a population by natural selection) and inbreeding, fewer successful breeding opportunities, and increased susceptibility to stochastic events (occurring in a random pattern, such as floods, fires, and tornados). Gene flow and population structure has not been assessed in the Jemez Mountains salamander, but would provide useful information for population management and identification of important areas to protect in order to maintain habitat connectivity.

Habitat

The strictly terrestrial Jemez Mountains salamander predominantly inhabits mixed-conifer forest, consisting primarily of Douglas fir (*Pseudotsuga menziesii*), blue spruce (*Picea pungens*), Engelman spruce (*P. engelmannii*), white fir (*Abies concolor*), limber pine (*Pinus flexilis*), Ponderosa pine (*P. ponderosa*), Rocky Mountain maple (*Acer glabrum*), and aspen (*Populus tremuloides*) (Reagan 1967, p. 17; Degenhardt *et al.* 1996, p. 28). Although pure stands of Ponderosa pine may not be considered ideal habitat, the species has occasionally been found in this habitat. The species has also occasionally been found in spruce-fir and aspen stands, and high-elevation meadows. However, these habitat types have not been adequately surveyed so the extent to which salamanders use these habitats is not fully known. Predominant understory trees include Rocky Mountain maple (*Acer glabrum*), New Mexico locust (*Robinia neomexicana*), oceanspray (*Holodiscus sp.*), and various shrubby oaks (*Quercus* spp.) (Reagan 1967, p. 17; Degenhardt *et al.* 1996, p. 28).

Everett (2003, entire) reported habitat variables for 23 sites where Jemez Mountains salamanders were found. Everett (2003) reported that the salamander occurred on all slope aspects (p. 21) (the average slope ranged from 4 to 40.5 degrees (p. 24)); were within 14.0 to 99.8 percent canopy cover and averaged 58.2 to 94.3 percent canopy cover (p. 24); and were found under logs (35 percent), rocks (34 percent), bark (9 percent), and inside logs (22 percent). Available cover objects included rock (52 percent), coarse woody debris (7 percent), bark (11 percent), and cow pie (i.e., manure, less than 1 percent) (p. 24). There may be high-elevation meadows located within the critical habitat units that are used by the Jemez Mountains salamander. Currently, we do not fully understand how salamanders utilize areas like meadows, where the above ground vegetation component differs from areas where salamanders are more commonly encountered (e.g., forested areas); however, salamanders have been found in high-elevation meadows. Salamanders are generally found in association with decaying coniferous logs (which they use as cover and daytime retreats), and in areas with abundant white fir, Ponderosa pine, and Douglas fir as the predominant tree species (Reagan 1967, pp. 16–17; Ramotnik 1988, p. 17). Salamanders use decaying coniferous logs (particularly Douglas fir logs) considerably more

often than deciduous logs, likely due to the physical features (e.g., blocky pieces with cracks and spaces) that form as coniferous logs decay (Ramotnik 1988, p. 53). Still, the species may be found beneath some deciduous logs and excessively decayed coniferous logs, because these can provide aboveground habitat and cover (Ramotnik 1988, p. 53).

Subsurface geology and loose rocky soil structure may be an important attribute of underground salamander habitat (Degenhardt *et al.* 1996, p. 28). Geologic and moisture constraints likely limit the distribution of the species. Soil pH (acidity or alkalinity) may limit distribution as well. However, the composition of this subterranean habitat has not been fully investigated. Everett (2003) reported that the salamander occurred in areas where soil texture was composed of 56 percent sandy clay loam, 36 percent clay loam, 6 percent sandy loam, and 2 percent silty clay loam (p. 28); the overall soil bulk density ranged from 0.2 to 0.98 ounces per cubic inch (oz/in^3) (0.3 to 1.7 grams per cubic centimeter (g/cm^3) (p. 28); and had average soil moisture from 4.85 to 59.7 percent (p. 28). The salamander's subterranean habitat appears to be deep, fractured, subterranean, igneous rock in areas with high soil moisture (New Mexico Endemic Salamander Team 2000, p. 2). Many terrestrial salamanders deposit eggs in well hidden sites, such as underground cavities, decaying logs, and moist rock crevices (Pentranka 1998, p. 6). Because the Jemez Mountain salamander spends the majority of its life below ground, eggs are probably laid and hatch underground. Although no egg clutches have been discovered in the wild, it is believed they are laid in the fractured interstices of subterranean, metamorphic rock.

Jemez Mountain salamanders lack lungs; instead, they are cutaneous respirators (meaning they exchange gases, such as oxygen and carbon dioxide, through their skin). To support cutaneous respiration its skin must be moist and permeable. Jemez Mountain salamanders must address hydration needs above all other life-history needs. The salamander must obtain its water from its habitat. In addition, it has no physiological mechanism to stop dehydration or water loss to the environment. Based on this information, it is likely that substrate moisture through its effect on absorption and loss of water is the most important factor in the ecology of this species (Heatwole and Lim 1961, p. 818). We suspect that these components may be a main driver behind salamander occurrences and distribution. We are aware of two modeling efforts that have been initiated on the relationship of subsurface rock and soil components of salamander habitat that we anticipate will help inform our understanding of the distribution of the salamander, but these are not yet completed. In addition, because microclimates where conditions are moist and cool are important to the species, we also suspect that variables that contribute to or work in concert with one another to provide moist cool microclimates are important to the species. For example, shading on hills provided by topography and mosaic patterns in canopy closure provide shading and allow precipitation to reach the soil.

Status of the Species

A complete overview of the available survey data and protocols for the Jemez Mountains salamander is reported in the 12-month finding for the salamander (75 FR 54822; September 9, 2010). Standardized survey protocols have been used for the salamander since 1987 (NMDGF 2000, p. 2), but the number and location of surveys have been variable and opportunistic. Survey methods involve searching under potential cover objects (e.g., logs, rocks, bark, moss mats) and inside decomposing coniferous logs when environmental conditions are likely best for detecting surface-active salamanders, generally May through September, when summer monsoon rains occur. Unfortunately, methods for determining locations to survey salamanders over the past 20 years have not been systematic, and though we have conducted a comprehensive review, the data have not been consistently available to allow comparison of the status of the salamander over its entire range.

Three survey protocols have been in use since 1987 (NMEST 2000b, pp. 27–29). Protocol A (presence or absence) has been used when attempting to determine whether an area is occupied (NMEST 2000b, p. 27). Following this protocol, surveys cease after 2 ''person-hours'' of effort (e.g., one person searching for 2 hours or two people searching for 1 hour) or when the first salamander is observed, whichever comes first. Because the salamander utilizes underground habitat and an unknown number of individuals may be active at the surface, repeated surveys may be necessary to determine occupancy of a locality (NMEST 2000b, p. 27).

Protocol B (population levels and trends) has been used for comparing plots, monitoring trends through time, or evaluating how salamander localities fluctuate in response to environmental variables (NMEST 2000b, p. 28). For this protocol, a survey is conducted for 2 person-hours, with all salamanders tallied.

Protocol C (detailed environmental data) collects microhabitat data to characterize potential salamander habitat (NMEST 2000b, p. 28). This protocol involves collecting data on important habitat features within a 50 m (160 ft) by 2 m (6.6 ft) transect, in addition to surveying for salamanders under cover objects.

The rangewide population size of the salamander is also unknown. Monitoring the absolute abundance of plethodontid salamanders is inherently difficult because of the natural variation associated with surface activity (Hyde and Simons 2001, p. 624), which ultimately affects the probability of detecting a salamander. The probability of detection varies over space and time and is highly dependent upon the environmental and biological parameters that drive surface activity (Hyde and Simons 2001, p. 624). Given the known bias of detection probabilities and the inconsistent survey effort across years, population size estimates using existing data cannot be made accurately.

In summary, we have approximately 20 years of salamander survey data that provide detection information at specific survey sites for given points in time. The overall rangewide population size of the Jemez Mountains salamander is unknown because surveys tend to be localized (approximately 256-ft-by-256-ft areas, 200-m-by-200-m). Additionally, like most plethodontid salamanders, monitoring population size or trends of the Jemez Mountains salamander is inherently difficult because of the natural variation associated with the species' behavior (Hyde and Simons 2001, p. 624). For example, when the species is underground, they cannot be detected (Hyde and Simons 2001, p. 624). Therefore, the probability of detecting a salamander is highly variable and dependent upon the environmental and biological parameters that drive aboveground and belowground activities ((i.e., moisture, temperature) Hyde and Simons 2001, p. 624). Everett (2003, p. 35) noted that areas with high percentages of area of habitat covered by decaying logs, rocks, bark, moss mats, and stumps are difficult to survey and locate salamanders when present, and may bias the data toward lower percentages of area covered by decaying logs, rocks, bark, moss mats, and stumps. Given the known bias of detection probabilities (i.e., the difficulty in detecting

salamanders when present due to being underground, secretive, and sparse numbers) and the inconsistent survey effort across years, as a result of differences in the number of days when surveys occurred, differences in environmental conditions, and different survey methods employed, population trends and population size estimates using existing data cannot be made accurately.

Despite our inability to quantify population size or trends for the salamander, these qualitative data (data that are observable, but not measurable) provide information for potential inferences. Based on these inferences, the persistence of the salamander may vary across the range of the species. For example, in some localities where the salamander was once considered abundant or common, the salamander is now rarely detected or has not been recently detected at all (New Mexico Heritage Program 2010a and b, spreadsheets). The number of areas where salamanders were once present, but have not been observed during more recent surveys, also appears to have increased (New Mexico Heritage Program 2010a and b, spreadsheets). Alternatively, there are two localities on the Valles Caldera National Preserve where the salamander continues to be relatively abundant (Redondo Border located in the central portion of the Valles Caldera National Preserve, and on a slope in the northeast portion of the Valles Caldera National Preserve), compared to most other recent detections at other sites. Still, the number of individuals found at the two above referenced localities in the Valle Caldera National Preserve is far less than historical reports from other areas. For example, 659 individual salamanders were captured outside the Valle Caldera National Preserve at one location in Sandoval County in a single year in 1970, and 394 of the 659 were captured in a single month (Williams 1976, p. 26). The maximum number of salamanders captured rangewide is 68 salamanders (observed in 2005). In other words, the number of salamanders observed during recent surveys is far less than observed in historical surveys. Currently, there is no known location where the number of salamanders observed is similar to that observed in 1970.

Overall, the numbers of salamanders found at some of the localized survey areas appear to be similar from survey to survey and from year to year. Surveys are conducted during the period in which environmental conditions for salamander aboveground activity is warm and wet, which is typically from July through September. However, in other areas when surveys are conducted during optimal environmental conditions, fewer or no salamanders are captured, particularly along the western and southern sides of the range, (New Mexico Heritage Program 2010a and b, spreadsheets). An assessment of population trends using these data would not be appropriate because estimates of detection probabilities were not collected, and repeated surveys within the same year were not regularly conducted. Without specifically accounting for detection probabilities using repeated survey techniques, it is unknown whether a trend in population is an actual trend or is due to a greater or lesser proportion of salamanders present being above ground or below ground, which is driven by environmental conditions such as temperature and moisture. For example, if one year a small proportion of a population was above ground and in the next year a large proportion of the population was above ground, it could be interpreted that the number of individuals increased at that site; however, actual numbers could have been unchanged. We have not fully explored future studies that could make use of the existing data; however, we expect that detecting overall trends will be difficult for this species, given data limitations, the cost of comprehensive surveys and protocols to account for natural, annual, and spatial variation, and the long timeframe needed to detect trends.

In summary, the available data cannot be used to estimate population size or trends in the rangewide abundance of the salamander. Although we lack specific long-term population and trend information, available data and qualitative observations of salamanders at surveyed sites during wet environmental conditions indicate that salamanders are now more difficult to find during most surveys than they were 20 years ago and earlier, and the number of areas with surveys resulting in no salamander detections is increasing. On this basis, which is the best available scientific information, we conclude that the Jemez Mountains salamander is in danger of extinction throughout all of its range.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed rule during two comment periods. The first comment period associated with the publication of the proposed rule opened on September 12, 2012 (77 FR 56482), and closed on November 13, 2012. We also requested comments during a period that opened on February 12, 2013 (78 FR 9876), and closed on March 14, 2013. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. A newspaper notice inviting general public comment was published in the Los Alamos Monitor. We did not receive any requests for a public hearing.

During the first comment period, we received nine comment letters addressing the proposed listing of the Jemez Mountains salamander with endangered status and the proposed critical habitat designation. During the second comment period, we received 11 comment letters addressing the proposed listing of the Jemez Mountains salamander, the proposed critical habitat designation, the draft environmental assessment or the draft economic analysis. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from seven knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from three of the seven peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the listing of Jemez Mountains salamander. All three peer reviewers agreed that the information presented in the proposed rule to list the Jemez Mountains salamander as an endangered species is scientifically sound and well researched; that the assumptions, analyses, and conclusions are well reasoned; and that the information is well formulated and the risks or threats to the species are not undervalued. The peer reviewers provided clarifications and suggestions to improve the final rules to list the Jemez Mountains salamander as endangered and to designate critical habitat. Peer reviewer comments specifically regarding the listing of the Jemez Mountains salamander are addressed in the following summary and incorporated into the final rule as appropriate.

Biology and Background Section

(1) *Comment:* Two peer reviewers and some commenters thought additional information regarding our understanding of the subsurface rock and soil components of salamander habitat should be included in the habitat section. One commenter stated that some factors, including soil pH and soil bulk density, are ignored or too readily dismissed.

Our Response: Subsurface geology and loose rocky soil structure may be an important attribute of salamander habitat (Degenhardt *et al.* 1996, p. 28). However, the composition of this belowground habitat has not been fully investigated, although soils comprised of pumice or tuft generally are not suitable. The salamander's belowground habitat appears to be deep, fractured, subterranean, igneous rock in areas with high soil moisture (New Mexico Endemic Salamander Team 2000, p. 2). Everett (2003) reported that the salamander occurred in areas where soil texture was composed of 56 percent sandy clay loam, 36 percent clay loam, 6 percent sandy loam, and 2 percent silty clay loam (p. 28); the overall soil bulk density ranged from 0.2 to 0.98 ounces per cubic inch (oz/in^3) (0.3 to 1.7 grams per cubic centimeter (g/cm^3) (p. 28); and had average soil moisture from 4.85 to 59.7 percent (p. 28). Sites with salamanders had a soil pH of 6.6 (± 0.08) and sites without salamanders had a soil pH of 6.2 (± 0.06) (Ramotnik 1988, pp. 24–25). We have updated the relevant sections to better describe our current understanding of Jemez Mountains salamander subsurface rock and soil components. We have clarified the language in section ''Biology'' above, and the ''Fire Exclusion, Suppression, and Severe Wildland Fires'' section below. We are not aware of any reliable information that is currently available to us on these topics that was not considered in this determination process.

Threats

(2) *Comment:* One peer reviewer did not agree with the conclusion that fire suppression actions, which include the use of fire retardants, water dropping, backfiring, and fire line construction, are not a threat to the salamander.

Our Response: The best commercial and scientific information available at this time, including the Fire Retardant Biological Assessment submitted by the USFS (2011, entire), does not evaluate impacts to salamanders or their habitat from fire suppression actions. Fire suppression actions, including fire retardants, water dropping, backfiring, and fire line construction, may both protect and negatively impact salamanders and their habitat. The effects from fire suppression on the Jemez Mountains salamander or its habitat are unknown. Fire retardants may affect individual salamanders and their habitat, but based the best available scientific and commercial data does not indicate that it is a threat to the species as a whole.

(3) *Comment:* Two peer reviewers commented on chemical use in salamander habitat. One stated that chemical use may constitute a significant threat to the salamander, implied that the lack of information does not mean that the threat does not affect salamanders, and suggested that effects that some chemicals used may have on the salamander or its habitat should be immediately studied. The other peer reviewer thought insecticides used to control western spruce budworm (*Choristoneura occidentalis*) and bark beetles (*Dendroctonus* spp., *Ips* spp.) should be considered in more detail.

Our Response: We agree with the reviewers that lack of information about impacts to the species does not mean there are no impacts. However, the best available scientific and commercial data does not support the claim that chemical use (including fire retardant chemical) is currently a threat to the species. Currently, we have no information on the effects of chemical impacts on salamanders. We are not aware of any broad-scale use of insecticides in salamander habitat in the past, which allow us to consider in more detail. Further, we are not aware of any broad-scale use of insecticides in salamander habitat or proposed for the future, and have no reason to believe that this could be a threat in the foreseeable future. The best available scientific data does not indicate that chemical use is a threat to the salamander.

(4) *Comment:* The data do not seem strong enough to conclude that changes in vegetative components alone constitute a threat.

Our Response: We consider existing and ongoing changes in vegetation composition and structure to be a threat to the salamander because it is interrelated to changes in fire regimes. In order to reduce the risk of large-scale stand-replacing wildfire, management actions to change the current forest conditions are needed.

(5) *Comment:* One peer reviewer stated that unregulated collection of the Jemez Mountains salamander may be more significant than credited, while another stated that the current absence of salamanders at the type locality is disturbing, yet does not prove that overcollecting is the cause of the decline or disappearance of salamanders in specific areas. A commenter stated that past collection was dismissed too readily. The USFS commented that it was not clear if collections were from the same sites that are used as reference sites for salamander populations, but that historical collections could still be influencing salamander populations because of relatively low fecundity.

Our Response: We believe that the majority of collections were made at and around the general area located on the southwest portion of the range of the salamander, south of New Mexico Highway 4. Based on the number of specimens collected from this area, we believe that the impact from collections here was significant and was no doubt a contributing factor in the lack of persistence of the salamander there. We have reviewed the *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes* in this final rule, below, and made clarifications based on the information available; in some cases, the source material was not clear. As explained in the *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes,* collection of the species is regulated by several State and Federal regulations, and illegal collection is not known or thought to be high. Therefore, the best available scientific and commercial data does not indicate that collection is presently an ongoing or future threat.

(6) *Comment:* One peer reviewer stated that increased coordination efforts on the timing and placement of salvage logging operations could mitigate the threats posed by salvage logging. Santa Clara Pueblo stated that salvage logging after wildfire can help alleviate the hydrophobicity (repelling the absorption of water) of soils through disturbance of the soils in pulling the salvage logs to a landing area, and the Service should be careful not to make too sweeping a statement about the threats posed by salvage logging. Guidelines could be developed for managing salvage logging that would also benefit the salamander. The USFS commented that there are many variables to consider regarding salvage logging, and some measures could be taken that include salvage logging in order to reduce the risk of re-burning in areas that have been burned with wildfire.

Our Response: We agree that some impacts resulting from salvage logging in salamander habitat could be abated through best management practices, and there may be certain management

actions regarding some salvage logging that could be of potential benefit to the Jemez Mountains salamander. We can provide technical assistance to develop best management practices with those engaged in salvage logging or timber harvesting in areas that may affect the salamander or its habitat. Furthermore, best management practices for minimizing or eliminating adverse effects to the salamander or its habitat resulting from actions such as salvage logging or timber harvesting that are funded, authorized, or carried out by Federal agencies can be developed through section 7 consultation with the Service.

(7) *Comment:* One peer reviewer stated the assumption that an increase in the number of small-diameter trees would result in increased water demand required for evapotranspiration should be supported with a citation, or if the situation is more complex, further explanation of the complexities and uncertainties should be made.

Our Response: We clarified timber harvest actions and included additional information regarding some timber harvest actions and soil water (moisture) in this final rule under the ''Forest Silvicultural Practices'' section under Factor *A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range,* below. The dynamic between tree density, thinning, and soil water is a key ecological process, which is relevant not only to restoration efforts, but also to salamander physiology. We strongly support research in this area in the Jemez Mountains. We also agree that some impacts resulting from timber harvest and thinning in salamander habitat could be abated through best management practices and could also benefit the salamander. We look forward to developing best management practices with those potentially engaged in timber harvesting in areas that may affect the salamander or its habitat. Furthermore, best management practices for minimizing or eliminating adverse effects to the salamander or its habitat resulting from actions such as timber harvesting that are funded, authorized, or carried out by Federal agencies can be developed through section 7 consultation with the Service.

Comments from the U.S. Forest Service

(8) *Comment:* The USFS commented that there are many variables to consider regarding salvage logging, and some measures could be taken that include salvage logging that reduces the risk of re-burning in areas that have been burned with wildfire.

Our Response: See our response to Comment 6, above.

(9) *Comment:* The USFS commented that there are still many unknowns, which lead to numerous assumptions made throughout the document and provide a clear indication that sufficient data does not exist to understand this species' status and needs. A public commenter stated the scientific record accumulated to date is not sufficiently robust to warrant further regulatory action. Additional data should be collected before listing the species as endangered. The Service should withdraw the proposal to list the Jemez Mountains salamander as endangered because of lack of sound scientific evidence. The proposed rule is flawed because it relies too much on speculation and assumption rather than the best scientific information available as required.

Our Response: As required by the Act, we based our proposal and this final rule on the best available scientific and commercial data. We requested review from seven scientific experts of our technical assumptions, analysis, adherence to regulations, and whether or not we had used the best available information. We received reviews from three, all three peer reviewers confirmed that the information contained within this rule is scientifically sound, based on a combination of reasonable facts, assumptions, and conclusions, and the science is well considered. We requested new information during the open public comment period and reviewed information in our files and other available published and unpublished information, and we consulted with recognized species experts and other Federal, State, and tribal agencies. We must make this determination on the basis of the best scientific and commercial information available at this time, and we may not delay our decision until more information about the species and its habitat are available. *Southwest Center for Biological Diversity* v. *Babbitt,* 215 F.3d 58 (DC Cir. 2000).

(10) *Comment:* In light of the unknowns, the number of assumptions described in the proposed rule, and the difficulty in detecting the salamander, it does not appear that there is evidence to support the conclusion that this species is at risk of extinction (i.e., endangered) or likely to become endangered throughout all or a significant portion of its range within the foreseeable future (i.e., threatened).

Our Response: Please see Our Response to Comment 9 above. We have found that the Jemez Mountains salamander is presently in danger of extinction throughout all of its range based on the severity of threats currently affecting the salamander. The threats are both current and expected to continue in the future, and are significant in that they limit all behavioral and physiological functions, including breathing, feeding, and reproduction and reproductive success, and extend across the entire range of the species (For full discussion, see Summary of Factors Affecting the Species and Determination sections, below).

(11) *Comment:* The proposed rule vastly increases the area of potential salamander habitat through loose description of the habitat and biology. As written, the proposed rule would suggest any mixed conifer, Ponderosa pine, spruce, and aspen, essentially all forested lands and meadows between 7,200 and 9,500 ft (2,194 to 2,895 m) elevation in the Jemez Mountains, to be salamander habitat. Clearly, that is not the case and has not been the view of the New Mexico Endemic Salamander Team Cooperative Management Plan as evident from the conservation area identified in the 2000 Cooperative Management Plan.

Our Response: It is unclear what the commenter is referring to in regard to an increase in the area of potential salamander habitat. We assume they are referring to the area of salamander habitat in the New Mexico Endemic Salamander Team Cooperative Management Plan, but that was not specified. The Service recognizes there are differences in the total areas identified in the New Mexico Endemic Salamander Team Cooperative Management Plan and the proposed listing rule. This difference is due to the different purposes of identifying habitat. The areas identified by the New Mexico Endemic Salamander Team in the Cooperative Management Plan are areas only on National Forest lands that were delineated ''by combining distribution data with on-the-ground knowledge of salamander natural history and habitat potentials'' (New Mexico Endemic Salamander Team 2000, p. 13) with the intended purpose of protecting areas known to be important to the species based on occupancy from actions that might occur there. The Cooperative Management Plan identified 146,890 acres (ac) (59,444 hectares (ha)) of salamander habitat on the Santa Fe National Forest for management and conservation of the species (New Mexico Endemic Salamander Team 2000, p. 14). During our process of determining critical habitat for the Jemez Mountains salamander (77 FR 56482 September 12, 2012; 78 FR 9876

February 12, 2013), we proposed designating 56,897 ac (23,025 ha) on USFS lands on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protections. However, the occupancy status of salamander habitat outside of the proposed critical habitat boundaries is not fully determined and may be larger than the area initially identified in the Cooperative Management Plan.

(12) *Comment:* With the exception of the discussion of fire interval, the proposed rule makes little distinction between dry and wet mixed conifer. Therefore, it is unclear how the USFS would manage mixed conifer stands as described in the proposed rule.

Our Response: The proposed rule and this final rule are not intended to prescribe to agencies how to specifically manage any forest type under their purview. However, we are interested in working with land managers to find solutions to minimize adverse effects to threatened or endangered species and their habitat while conducting management actions. In addition, we are interested in collaborating on actions that will help the salamander recover to the point where it is no longer considered to be endangered or threatened.

(13) *Comment:* The Service refers to the number of surveys that resulted in no salamanders being found as the main evidence that the species is in decline. Yet the USFS continues to find salamanders even during poor survey conditions. Recent salamander detection results could be influenced from historical overcollection, previous survey efforts, and drought with low precipitation during the monsoon season. Because of the multiple variables that influence salamander detections, it is unclear how the Service can determine that salamander populations are declining due to current management while new salamander locations are detected annually (four in 2011 and three in 2012).

Our Response: The commenter does not identify a specific survey report for us to reference. We have requested the data, but at the time of this final rule, we have not received the information. However, in the *Status of the Species* section of this final rule, below, we state that, despite our inability to quantify population size or trends for the salamander, the qualitative data (data that are observable, but not measurable) provide information for potential inferences. Based on these inferences, we believe that the persistence of the salamander may vary across the range of the species. For example, in some localities where the salamander was once considered abundant or common, the salamander is now rarely detected or has not been recently detected at all (New Mexico Heritage Program 2010a and b, spreadsheets). The number of areas where salamanders were once present, but have not been observed during more recent surveys, has also increased (New Mexico Heritage Program 2010a and b, spreadsheets).

Alternatively, there are two localities on the Valles Caldera National Preserve where the salamander continues to be relatively abundant (e.g., approximately 30 salamanders observed in a day each at Redondo Border located in the central portion of the Valles Caldera National Preserve and on a slope in the northeast portion of the Valles Caldera National Preserve compared to most other recent detections throughout its range. Still, the number of individuals recently found at the two localities on the Valles Caldera National Preserve is far less than other historical records throughout the species range. For example, in northeastern Sandoval County where the species was first 659 individual Jemez Mountain salamanders were captured in a single year in 1970, 394 of which were captured in a single month (Williams 1976, p. 26). Currently, there is no known location where the number of salamanders observed is similar to that observed in 1970. Finally, all three peer reviewers confirmed that the information contained within this rule is scientifically sound, based on a combination of reasonable facts, assumptions, and conclusions. One peer reviewer specifically stated that assumptions made in the section about population abundances and trends are generally typical for this type of salamander, that the risks or threats to the species are not undervalued, and if the threats are not managed, then the probability for a continued downward trend of this animal with extinction an eventual outcome is foreseeable.

(14) *Comment:* Peer reviewers of the proposed rule should include impartial experts in the fields of herpetology, fire ecology, and forest ecology specific to the southwest to evaluate the multitude of assumptions.

Our Response: Four of the seven peer reviewers we requested information from have expertise in the fields of herpetology, plethodontid salamander biology, fire ecology, and forest ecology.

(15) *Comment:* The use of the Wyman and Hawksley-Lescault (1987) citation does not appear applicable to changes in soil pH from wildfire.

Our Response: The purpose of this citation is to demonstrate that changes in soil pH could be an important factor in plethodontid salamander biology because changes in pH can affect their physiology. We have clarified the language of this final rule in section ''Biology'' above, and ''Fire Exclusion, Suppression, and Severe Wildland Fires'' below.

(16) *Comment:* The example for modifying fire management techniques to include not using flares to ignite large decaying logs or modifying chemical use in salamander habitat would eliminate the use of prescribed fire in salamander habitat. Almost all ignitions require the use of chemicals, whether petroleum fuels in drip torches, or potassium permanganate in balls dropped from a helicopter. These chemicals are mostly consumed in the process of getting fire on the ground and are unlikely to leave residue that could affect the salamander.

Our Response: We are not suggesting that prescribed fire be eliminated in salamander habitat or that fire management techniques be modified in a way that would prevent the use of prescribed fire in salamander habitat. Prescribed fire is clearly a necessary tool for managing forests in the Jemez Mountains and in salamander habitat. Furthermore, some activities, such as prescribed fire, can benefit the salamander and its habitat.

(17) *Comment:* The Service issued a biological opinion for the Fire Retardant Biological Assessment prepared by the USFS and should have all relevant information in their project record concerning whether chemicals in fire retardants or foams are a threat to the salamander.

Our Response: We have reviewed the administrative record for the Fire Retardant consultation between the USFS and the Service and did not find information to assess whether fire retardants or foams impacted the salamander. Measures were put in place to avoid aquatic amphibians, but no analyses were done for any terrestrial amphibian.

(18) *Comment:* The proposed rule gives the widening of State Highway 126 as an example of where the Conservation Agreement failed, yet recommendations from the New Mexico Endemic Salamander Team were considered and efforts were taken to minimize effects to the Jemez Mountains salamander in that area, even though the Federal Highway Administration undertook the project. The proposed rule neglects to mention the coordination between the New Mexico Endemic Salamander Team and the USFS on projects since the signing

of the agreement, even after the agreement expired in 2010.

Our Response: In regard to the realignment of Highway 126, action agencies included the Federal Highway Administration and the USFS. While the project was discussed with the New Mexico Endemic Salamander Team, and some efforts were made (e.g., an experimental salvage and relocation of Jemez Mountains salamanders from the footprint of the realignment and felling trees as future potential cover objects in areas adjacent to the road), the project still resulted in a large impact (permanent and complete fragmentation of the population and destruction of habitat) in a small area with relatively moderate salamander densities. We analyzed the adequacy of existing conservation measures at removing or reducing threats to the salamander across the range of the species such that listing the salamander under the Act is not warranted, and found that existing conservation measures are not adequate. The Highway 126 project is an example of how conservation measures as provided by the Cooperative Management Plan are inadequate to protect the salamander and its habitat. Further, the Cooperative Management Plan and the now expired Conservation Agreement only applied to a portion of the range of the salamander (some portions of USFS lands), applied to management actions that the USFS might take, does not specifically address significant threats (e.g., severe wildland fire, climate change) or actions that could be threats if plans to minimize impacts to the salamander are not considered (e.g., forest management such as thinning, prescribed fire), and do not provide specific mechanisms to protect the species (only that the New Mexico Endemic Salamander Team would provide discretionary recommendations). The Cooperative Management Plan and the expired Conservation Agreement are considered inadequate for providing protection to the salamander or alleviating threats to the salamander or its habitat.

Comment From Other Federal Agencies

(19) *Comment:* A new conservation plan should be created in lieu of listing the salamander as an endangered species.

Our Response: The Act does not provide authority to the Service to delay listing in order to wait for future, speculative conservation plans to be developed and implemented.

Comments From the New Mexico Department of Agriculture (NMDA)

(20) *Comment:* Listing the Jemez Mountains salamander will be counter-productive to solving the problem of poor watershed health in the Jemez Mountains and will slow the pace of ongoing forest restoration work. In addition, listing could alter the State's ability to acquire matching funds.

Our Response: Listing the Jemez Mountains salamander does not preclude forest restoration or management practices, including, but not limited to, prescribed fire and thinning treatments, restoration of the frequency and spatial extent of such disturbances as regeneration treatments, and implementation of prescribed natural fire management plans where feasible. We consider use of such treatments to be compatible with the ecosystem management of habitat mosaics and the best way to reduce the threats of catastrophic wildfire to Jemez Mountains salamander and provide protection for the species. In addition, listing the Jemez Mountains salamander does not preclude adaptive management or the incorporation of new information on the interaction between natural disturbance events and forest ecology. We continue to support sound ecosystem management and the maintenance of biodiversity, and we will fully support land management agencies in addressing the management of fire to protect and enhance natural resources under their stewardship.

(21) *Comment:* The Service should partner with ongoing efforts, such as the Southwest Jemez Collaborative Forest Landscape Restoration Project, to effectively improve the watershed health of the Jemez Mountains, thus benefiting the salamander.

Our Response: The Service recognizes the importance of forming and supporting partnerships to achieve mutually identified goals and objectives, and agrees that strong partnerships and collaborations are necessary for the restoration and conservation of our natural resources. We appreciate the ongoing efforts and collaborations with our existing partners, including members of the Southwest Jemez Collaborative Forest Landscape Restoration Project, encourage our partners to work with us to incorporate specific goals and objectives for the protection of the Jemez Mountains salamander and its habitat, and commit to long-term monitoring, without which it is difficult to evaluate the effectiveness of conservation measures intended to benefit salamander. We also look forward to the establishment of new partnerships to improve conservation.

(22) *Comment:* The Service should withdraw its proposal to list the Jemez Mountains salamander as an endangered species, because critical watershed restoration efforts would continue and these efforts could continue without the burdensome regulations associated with the Act.

Our Response: Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (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. Listing actions may be warranted based on any of the above threat factors, singly or in combination. The purpose of the Act is to protect and recover imperiled species and the ecosystems upon which they depend. The regulatory requirements under the Act were determined by Congress to ensure that otherwise lawful actions that affect species listed under the Act are not likely to jeopardize the continued existence of those listed species. The Service will work with Federal agencies during consultation, when required, to develop watershed restoration efforts. The Service can provide technical assistance to non-Federal projects to develop best management practices or alternatives.

Comments From the Santa Clara Pueblo

(23) *Comment:* Santa Clara Pueblo is very interested in restoring, promoting, and sustaining healthy forest lands, which will benefit the Jemez Mountains salamander.

Our Response: The Service appreciates comments received from Santa Clara Pueblo, welcomes continued input on all aspects of restoring, promoting, and sustaining healthy forest lands in the Jemez Mountains, and will continue to be available to provide technical assistance as may be requested by the tribe.

(24) *Comment:* Santa Clara Pueblo stated that salvage logging after wildfire can help alleviate soils repelling water through disturbance of the soils resulting from pulling the salvage logs to a landing area, and the Service

should be careful not to draw the wrong conclusion about the threats posed by salvage logging. Guidelines could be developed for managing coarse woody debris following wildfire that include some salvage logging that would also benefit the salamander.

Our Response: See our response to Comment 6 under Comments from Peer Reviewers, above.

(25) *Comment:* Santa Clara Pueblo commented that responsible timber harvesting can increase available soil moisture because transpiration of vegetation (the process by which plants release moisture into the air) is decreased and more soil moisture becomes available for residual plant growth (and the salamander). Although it is true that reduced shading could increase surface temperatures, that would have little effect at the root level or below where the salamander primarily resides.

Our Response: In the ''Forest Composition and Structure Conversions'' section of this final rule, the Service has clarified how the changes in forest composition and structure impacts the salamander in its habitat.

Public Comments

(26) *Comment:* A public commenter stated that, before the proposed rule is made final, agencies should jointly review the Memorandum of Agreement to determine whether it can be updated or revised in a way that would continue to protect the salamander without allowing it to be listed.

Our Response: It is unclear to what Memorandum of Agreement the commenter is referring. We are assuming the commenter is referring to the New Mexico Endemic Salamander Team Cooperative Management Plan. See our response to Comment 11 under *Comments From the U.S. Forest Service.*

(27) *Comment:* Another commenter could not determine from the text if different logging practices were distinguished, and believe that clear-cut logging would be detrimental to the salamander and its habitat, but that other commercial logging could be conducted in a way that is not. The threat from logging probably is real, but comes from the disruption of the vertical underground passages more than from tree removal. The logging threat is minimal, because industry barely exists in the area.

Our Response: As stated in our proposed rule and this final rule, clear-cutting degrades forest floor microhabitats for salamanders by eliminating shading and leaf litter, increasing soil surface temperature, and reducing moisture (Petranka 1998, p. 16). Significant differences in habitat features (soil pH, litter depth, and log size) were reported between the logged and unlogged sites (Ramotnik 1986, p. 8). On the unlogged sites, salamanders were associated with cover objects that were closer together and more decayed, and that had a higher canopy cover, greater moss and lichen cover, and lower surrounding needle cover, compared to cover objects on logged sites (Ramotnik 1986, p. 8). The best available scientific and commercial data does not indicate that there is an impact to vertical underground passages.

(28) *Comment:* A public commenter stated that the scientific record accumulated to date is not sufficiently robust to warrant further regulatory action. Additional data should be collected before listing the species as endangered. The Service should withdraw the proposal to list the Jemez Mountains salamander as endangered because of lack of sound scientific evidence. The proposed rule is flawed because it relies too much on speculation and assumption rather than the best scientific information available as required.

Our Response: See our response to Comment 9 under *Comments From U.S. Forest Service,* above.

(29) *Comment:* Listing the Jemez Mountains salamander may have the unintended consequences of undermining efforts to reduce the identified principal threat to the salamander, the risk of catastrophic wildfire. Listing the Jemez Mountains salamander as an endangered species may further slow efforts of the Southwest Jemez Mountains Collaborative Forest Landscape Restoration project because of the additional regulatory requirement for section 7 consultation.

Our Response: Listing of the Jemez Mountains salamander does not preclude the proactive treatments necessary to reduce the risk of catastrophic fire or managing forests to restore them to old growth conditions. We recognize that vegetative structural and landscape changes may require proactive management to restore an appropriate distribution of age classes, control regeneration densities, and reintroduce some measure of natural disturbance processes such as fire events, and will need adaptive management and the incorporation of new information as it becomes available. We continue to support sound ecosystem management, and we will fully support land management agencies in addressing the management of fire to protect and enhance natural resources under their stewardship. We recognize the importance of implementing restoration projects such as the Southwest Jemez Mountains Collaborative Forest Landscape Restoration project. We do not anticipate significant delays resulting from consultation, as there is overlap between salamander habitat and Mexican spotted owl habitat, which will also require consultation under section 7. Nonetheless, we will work to minimize any potential additional delays that may result from the requirement for consultation under section 7.

(30) *Comment:* No evidence is presented that time above ground is necessary for the salamander life cycle. Fallen logs are considered important in the rule; however, fallen logs only seem to be convenient places searched by the biologists when looking for the salamander rather than places important to the salamander's life cycle.

Our Response: Aboveground surface activity during wet surface conditions is a documented characteristic of the natural history of the Jemez Mountains salamander. Also, because stomach contents consist primarily of aboveground, ground-dwelling invertebrates, and plethodontid salamanders store fat reserves in their tails for energetic use when foraging opportunities are reduced or do not exist (e.g., underground), we conclude that aboveground activity is important for feeding. Additionally, based on reproductive studies (see Biology section of this rule), this species mates in July and August, which coincides with the salamander's aboveground activity period. We, therefore, conclude that time aboveground is necessary for foraging and mating. Cover objects, including logs, are used by salamanders when aboveground. As explained in the proposed and final rules, these cover objects provide shelter and high moisture retreats while salamanders are aboveground and are necessary for hydration, because overall surface activity usually dehydrates animals. In addition, fallen logs may be relatively more important to the species than rocks because they are able to hold moisture for longer periods, and can be a buffer to the increased temperatures resulting from habitat alterations or climate change.

(31) *Comment:* Thinning to reduce the risk of catastrophic wildfire could impact the vertical underground passages through use of machinery. Forest restoration treatments that minimize impacts and maximize benefits to the salamander need to be tested. The Service's call for research

into thinning techniques and their effects on the salamander is strongly endorsed.

Our Response: We agree that methods for forest restoration treatments that have the potential to significantly affect the salamander and its habitat should be tested to identify options that could minimize impacts and maximize benefits to the salamander. The Service is collaborating with the USFS, The Nature Conservancy, NMDGF, and others on a project to measure effects of prescribed fire to large downed log habitat components. We believe collaborations such as this will provide information on maintaining important salamander habitat features while conducting forest restoration.

Summary of Changes From the Proposed Rule

During the open comment periods, we were asked to add information to provide clarifications in some areas. We added clarifying language regarding our understanding of habitat variables including subsurface rock and geology; hillshading; canopy closure as it relates to microclimates; population connectivity; the disease Ranavirus; the current Forest Planning Rule; and timber harvest and soil moisture relationships. Some information we had not previously considered was provided by the USFS. This additional information did not alter our threats assessment.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (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. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The principal threats to the habitat of the Jemez Mountains salamander include historical fire exclusion (the act of preventing fire) and suppression (the act of putting out fire) and severe wildland fires; forest composition and structure conversions; post-fire rehabilitation; forest and fire management; roads, trails, and habitat fragmentation; and recreation.

Fire Exclusion, Suppression, and Severe Wildland Fires

In the Jemez Mountains, over 100 years of fire suppression and fire exclusion (along with livestock grazing and other stressors) have altered forest composition and structure, and increased the threat of wildfire in Ponderosa pine and mixed-conifer forests (Belsky and Blumenthal 1997, p. 318). Fire has been an important process in the Jemez Mountains for at least several thousand years (Allen 1989, p. 69), indicating that the salamander coexisted with historical fire regimes. Frequent, low-intensity surface fires; and patchy, small-scale (hundreds of acres instead of thousands of acres), high-intensity fires in the Jemez Mountains historically maintained salamander habitat. These fires spread widely through grassy understory fuels, or erupted on very small scales (a couple of hundred acres compared to several hundreds or thousands of acres). The natural fire intervals prior to the 1900s ranged from 5 to 25 years across the Jemez Mountains (Allen 2001, p. 4). Dry mixed-conifer forests burned on average every 12 years, whereas wet mixed-conifer forests burned on average every 20 years. Historically, patchy surface fires within mixed-conifer forests would have thinned stands and created natural fuel breaks that would limit the extent of fires. Still, in very dry years, there is evidence of historical fires occurring across entire watersheds, but they did not burn with high severity over entire mountain sides (Jemez Mountains Adaptive Planning Workshop Session II Final Notes 2010, p. 7). Aspen stands are evidence of historical patchy crown fires that represent the relatively small-scale, stand-replacing fires that have historically occurred in the Jemez Mountains, which are also associated with significantly dry years (Margolis *et al.* 2007, p. 2236).

These historical fire patterns were interrupted in the late 1800s through the elimination of fine fuels, as a result of livestock overgrazing and historical managed fire suppression. This interruption and exclusion of fire promoted the development of high forest stand densities with heavy accumulations of dead and downed fuel, and growth of ladder fuels (the dense mid-story trees that favor development of crown fires) (Allen 2001, pp. 5–6). In fact, past fire exclusion activities in this area converted historically low- to moderate-severity fire regimes with small, patchy fires to high-severity, large-scale, stand-replacing fires that have the potential to significantly destroy or degrade salamander habitat (USFS 2009a, pp. 8–9). The disruption of the natural cycle of fire and subsequent accumulation of continuous fuels within the coniferous forests on south- and north-facing slopes has increased the chances of a severe wildfire affecting large areas of salamander habitat within the Jemez Mountains (USFS 2009a, 2009b).

In recent years, prescribed fire at Valles Caldera National Preserve has been limited, with only one burn in 2004 that was described as creating a positive vegetation response (ENTRIX 2009, p. 97). A prescribed fire plan is expected to be developed (ENTRIX 2009, p. 97) because of concern for severe wildland fires to occur (Parmenter 2009, cited in Service 2010). The planned Scooter Peak prescribed burn between the Valles Caldera National Preserve and Bandelier National Monument is a fuel-reduction project in occupied salamander habitat, but is small in scale (approximately 960 ac (390 ha)) (ENTRIX 2009, p. 2). Although future thinning of secondary growth may partially reduce the risk of severe wildland fires in areas, these efforts are not likely at a sufficient geographical scale to lessen the overall threat to the salamander.

The frequency of large-scale, high-severity, stand-replacing wildland fires has increased in the latter part of the 20th century in the Jemez Mountains. This increase is due to landscape-wide buildup of woody fuels associated with removal of grassy fuels from extreme year-round livestock overgrazing in the late 1800s, and subsequent fire suppression (Allen 1989, pp. 94–97; 2001, pp. 5–6). The majority of wildfires over the past 20 years have exhibited crown fire behavior and burned in the direction of the prevailing south or southwest winds (USFS 2009a, p. 17). The first severe wildland fire in the Jemez Mountains was the La Mesa Fire in 1977, burning 15,400 ac (6,250 ha). Subsequent fires included the Buchanon Fire in 1993 (11,543 ac (4,671 ha)), the Dome Fire in 1996 (16,516 ac (6,684 ha)), the Oso Fire in 1997 (6,508 ac (2,634 ha)), the Cerro Grande Fire in 2000 (42,970 ac (17,390 ha)), and the Lakes Fire Complex (Lakes and BMG Fires) in 2002 (4,026 ac (1,629 ha)) (Cummer 2005, pp. 3–4). Between 1995 and 2010, severe wildland fires have

burned about 36 percent of modeled or known salamander habitat on USFS lands (USFS 2009, p. 1). Following the Cerro Grande Fire, the General Accounting Office reported that these conditions are common in much of the western part of the United States turning areas into a ''virtual tinderbox'' (General Accounting Office 2000, p. 15).

In 2011, the Las Conchas Fire burned 150,590 ac (60,942 ha) in the Jemez Mountains, and, until the 2012 Whitewater Complex Fire in southwestern New Mexico, Las Conchas was New Mexico's largest wildfire to date (USFS 2011a, p. 1). The Las Conchas Fire burned approximately 17,780 ac (7,195 ha) of modeled or known salamander habitat in the east, south, and southeastern part of its range. In the eastern portion of the salamander's range, the Thompson Ridge Fire burned a total of 23,965 ac (9,698 ha) in 2013. This demonstrates that the majority of salamander habitat has either recently burned with uncharacteristic wildfire or that the threat of severe wildland fires to salamander habitat remains high, due to tons of dead and down fuel, overcrowded tree conditions leading to poor forest health, and dense thickets of small-diameter trees. There is a 36 percent probability of having at least one large fire of 4,000 ac (over 1,600 ha) every year for the next 20 years in the southwest Jemez Mountains (USFS 2009a, p. 19). Moreover, the probability of exceeding this estimated threshold of 4,000 ac (1,600 ha) burned in the same time period is 65 percent (USFS 2009a, p. 19). The canyon topography in the western portion of the salamander's range aligns with south winds and steep slopes, making this area highly susceptible to crown fire (USFS 2009a, pp. 24–25). Moreover, we found that the risk of burning is not eliminated following severe wildfires. Some areas that previously burned during the 2000 Cerro Grande Fire burned again during the 2011 Las Conchas Fire burning the remaining forested mosaic areas and dead trees left after the Cerro Grande Fire.

Increases in soil and microhabitat (immediate localized environment that has a unique set of ecological conditions within a larger habitat) temperatures, which generally increase with increasing burn severity, can have profound effects on salamander behavior and physiology and can, therefore, influence their ability to persist subsequent to severe wildland fires. Following the Cerro Grande Fire, soil temperatures were recorded under potential salamander cover objects in geographic areas occupied by the salamander (Cummer and Painter 2007, pp. 26–37). Soil temperatures in areas of high-severity burn exceeded the salamander's thermal tolerance (the temperature that causes death) (Spotila 1972, p. 97; Cummer and Painter 2007, pp. 28–31). Because widespread dry conditions are an important factor contributing to the occurrence of severe wildfire, when severe wildfire occurs, most salamanders are likely protected in subterranean habitat and are not killed directly from wildfire. However, even in moderate and high-severity burned areas where fires did not result in the death of salamanders, the microhabitat conditions, such as those resulting from the Cerro Grande Wildfire, would limit the timing and duration that the salamanders could be active above ground (feeding and mating). Moreover, elevated temperatures lead to increases in oxygen consumption, heart rate, and metabolic rate, resulting in decreased body water (the percentage of water in the body) and body mass (Whitford 1968, pp. 247–251). Physiological stress from elevated temperatures may also increase susceptibility to disease and parasites. Effects from temperature increases are discussed in greater detail under Factor E, below.

As discussed in the Biology section above, soil pH may affect salamanders. Severe wildland fires typically increase soil pH, which could affect the salamander. Changes in soil pH following wildfire could impact the salamander, either by making the habitat less suitable, or through physiological stress. The existing risk of wildfire on the Valles Caldera National Preserve and surrounding areas, including the Santa Fe National Forest, is uncharacteristically high and is a significant departure from historical conditions over 100 years ago (Valles Caldera National Preserve 2010, p. 3.1; Allen 1989, pp. ii–346; 2001, pp. 1–10). Several regulatory attempts have been made to address and correct the altered ecological balance of New Mexico's forests resulting from a century of fire suppression, logging, and livestock grazing. Congress enacted the Community Forest Restoration Act to promote healthy watersheds and reduce the threat of large, high-intensity wildfires, insect infestation, and disease in the forests in New Mexico (H.R. 2389, Pub. L. 106–393). The subsequent Omnibus Public Land Management Act, also called the ''Forest Landscape Restoration Act'' (Title IV, Pub. L. III–II, 2009), established a national program that encourages ecological, economic, and social sustainability and utilization of forest restoration byproducts to benefit local rural economies and improve forest health. As a result, the Santa Fe National Forest and partners prepared the Southwest Jemez Mountains Landscape Assessment designed to reduce the threat of severe wildland fire in the western and southern part of the salamander's range over the next 10 years (USFS 2009, p. 2).

In 2011, this Collaborative Forest Landscape Restoration project was selected and is eligible for up to $4 million per year to restore approximately 210,000 ac (85,000 ha) of forest in the southwestern Jemez Mountains (USFS 2011b, pp. 1–2), but a lack of matching funds may limit the geographical extent of this project. Moreover, this project will not effectively address the short-term risk of severe wildland fire to the species because treatments are anticipated to be implemented slowly, over the next decade or more. Finally, it is unknown whether the proposed treatments will effectively reduce the risk of severe wildfire to the salamander or its habitat without causing additional harm to the species, because measures to minimize impacts will be experimental and have not yet been developed. We believe that this risk of wildfire is one of the most significant threats facing this species, and projects attempting to reduce the threat of wildland fire will need to be implemented over a large part of the landscape before significant risk reduction for the salamander is achieved. For these reasons, we conclude that the overall risk of severe wildland fire will not be significantly reduced or eliminated on USFS lands, National Park Service lands, the Valles Caldera National Preserve, or surrounding lands in the future.

Since 1977, these severe wildland fires have significantly degraded important features of salamander habitat, including removal of tree canopy and shading, increases of soil temperature, decreases of soil moisture, increased pH, loss or reduction of soil organic matter, and reduced soil porosity. It also results in short-term creation of hydrophobic (water-repelling) soils because the burning of the leaf litter, the intensity and speed of the fire and the soil type affect the ability of soils to absorb water. These and other effects limit the amount of available aboveground habitat, and the timing and duration when salamanders can be active above ground, which negatively impacts salamander behavior (e.g., movement to water balance, foraging, and mating) and physiology (e.g., increased dehydration, heart rate and oxygen consumption, and increased

energy demands). These negative impacts are greater for hatchlings and juvenile salamanders because, relative to their body mass size, they have a greater skin surface area than larger salamanders, and thus have greater rates of water and gas exchange over their skin surface. Survivorship of hatchlings and juveniles is likely reduced from the effects of extensive stand-replacing wildland fires.

For these reasons, severe wildland fires have led to a reduction in the quality and quantity of the available salamander habitat rangewide, reducing the survivorship and fecundity of the salamander rangewide. The USFS concludes, and we concur, that habitat loss from extensive, stand-replacing wildland fire is a threat to the salamander (USFS 2009c, p. 1), and these effects will likely continue into the future, because areas that have not burned in the past 15 years are still at extremely high risk, and areas that have experienced severe wildfires in the last 15 years have degraded habitat that continues to adversely affect the salamander. We consider the reduction in the quality and quantity of habitat from extensive stand-replacing wildland fire to be a significant threat to the species, because this threat is rangewide and directly kills salamanders or otherwise harms living salamanders by affecting salamander behavior, physiology, and reproductive success. Therefore, we believe that severe wildland fire has substantially impacted the salamander and its habitat, and this trend is expected to continue throughout its range in the future, unless and until projects attempting to reduce the threat of wildland fire are effectively implemented over the large part of the landscape in the Jemez Mountains which includes the habitat of the salamander.

Forest Composition and Structure Conversions

Changes in forest composition and structure exacerbate severe wildland fires and are, therefore, considered an interrelated threat to the salamander. In addition, changes in forest composition and structure may threaten the salamander by directly altering microhabitat conditions such as soil moisture, soil temperature, soil pH, relative humidity, and air temperature. In an area nearby to salamander habitat, but in piñon-juniper woodland (*Pinus edulis* and *Juniperus monosperma*) at 7,021 ft (2,140 m) elevation in the Jemez Mountains, soil moisture conditions can vary spatially between the ground under tree canopy and the ground without tree canopy resulting from the interrelated processes among soil evaporation, leaf interception, runoff generation and redistribution, and plant water use (Breshears *et al.* 1998, p. 1015). Relative to the ground without tree canopy, the ground beneath the canopy receives reduced precipitation input due to the interception of the precipitation from leaves. This also influences soil evaporation rates (Breshears *et al.* 1998, p. 1010). In a study measuring spatial variations in soil evaporation caused by tree shading for a water-limited pine forest in Israel, the authors report that the spatial variability in soil evaporation correlated with solar radiation, which was up to 92 percent higher in exposed compared to shaded sites, and with water content, which was higher in exposed areas during the wetting season, but higher in the shaded areas during the drying season (Raz-Yaseef and Yakir 2010, p. 454). The specific results of this study are not applicable to the Jemez Mountains, but generally support the findings of Breshears *et al.* (entire) and highlight the importance of the correlated factor of seasonality to all processes. Without specific studies measuring these processes in salamander habitat, we are not able to determine how the changes in vegetation composition and structure may have altered soil moisture, evaporation, and temperature processes, but we do understand that vegetation structure can directly influence hydrological processes that are correlated to solar radiation, precipitation, and seasonality, as well as other abiotic factors, such as soil type, slope, and topography. Furthermore, these complex interactions should be considered when forest restoration treatments that alter canopy cover are conducted in salamander habitat.

Reduced soil moisture disrupts other aboveground activities of salamanders (e.g., foraging and mating), because salamanders must first address moisture needs above all other life functions (Heatwole and Lim 196, p. 818). Additionally, ecological changes resulting from forest composition changes could result in altered prey availability; however, we do not know if such changes would affect the salamander. The type and quantity of vegetation affects soil pH (e.g., pine needles are acidic, decomposed pine needles can increase the soils acidity), and thus could also affect the salamander. Overall, the degree of cascading ecological impacts from shifts in forest composition and structure is currently unknown; however, alteration of forest composition and structure contribute to increased risk of forest die-offs from disease and insect infestation throughout the range of the salamander (USFS 2002, pp. 11–13; 2009d, p. 1; 2009a, pp. 8–9; 2010, pp. 1–11; Allen 2001, p. 6). Forest die-offs from disease or insect infestation would have similar effects to the salamander by reducing canopy closure and warming and drying the habitat. We find that the interrelated contributions from changes in vegetation due to large-scale, high-severity wildfire and forest die-offs are of a significant magnitude across the range of the species (e.g., see ''Fire Exclusion, Suppression, and Severe Wildland Fires'' section, above), and, in addition to continued predicted future changes to forested habitat within the range of the species, are threats to the salamander.

Data collected from the Valles Caldera National Preserve indicates that an increase in the amount of tree canopy cover in an area can decrease the amount of snow that is able to reach the ground, and can ultimately decrease the amount of soil moisture and infiltration (Enquist *et al.* 2009, p. 8). On the Valles Caldera National Preserve, 95 percent of coniferous forests have thick tree canopy cover with heavy understory fuels (Valles Caldera National Preserve 2010, pp. 3.3–3.4; USFS 2009a, p. 9). In these areas, snow accumulates in the tree canopy over winter, and in the spring can quickly evaporate without reaching or infiltrating the soil. Relatively recent increases in tree canopy cover, resulting from changes in forest composition and structure caused by historical management and fire suppression, could be having significant drying effects on salamander habitat. In summary, existing and ongoing changes in forest composition and structure are interrelated to the threat of severe wildland fire and may also directly affect habitat suitability by altering soil moisture, soil temperature, soil pH, relative humidity, and air temperature. Therefore, forest composition and structure conversions resulting in increased canopy cover and denser understory pose threats to the salamander now and are likely to continue in the future.

Post-Fire Rehabilitation

Post-fire management practices are often needed to restore forest dynamics (Beschta *et al.* 2004, p. 957). In 1971, USFS was given formal authority by Congress for Burn Area Emergency Rehabilitation (BAER) (Robichaud *et al.* 2000, p. 1) and integrated the evaluation of fire severity, funding request procedures, and treatment options. Treatment options implemented by USFS and BAER teams include hillslope

treatments (grass seeding, contour-felled logs, mulch, and other methods to reduce surface runoff and keep post-fire soil in place, such as tilling, temporary fencing, erosion control fabric, straw wattles, lopping, and scattering of slash) and channel treatments (straw bale check dams, log check dams, rock dams, and rock cage dams (gabions)) (Robichaud *et al.* 2000, pp. 11–21). Rehabilitation actions following the Cerro Grande fire in salamander habitat included heavy equipment and bulldozer operation, felling trees for safety reasons, mulching with straw and placement of straw bales, cutting and trenching trees (contour felling and securing on slope), hand and aerial seeding, and aerial hydromulch (process that broadcasts a slurry of water and mulch over an area) (USFS 2001, p. 1). Rehabilitation actions following the Las Conchas Fire included road protections (removal of culverts, installation of trash racks and drainage dips); hand and aerial seeding; mulching; and removal of trees at Native American ancestral communities (USFS 2011a, pp. 7–9; USFS 2012, pp. 1–3).

In many cases, rehabilitation actions can have further detrimental impacts on the Jemez Mountains salamander and its habitat beyond what was caused by the fire, but the USFS has made efforts to minimize such impacts (USFS 2012, pp. 1–3). For instance, following the Las Conchas Fire, rehabilitation actions in the Jemez Mountains salamander's habitat that are categorized as ''Essential'' according to the Jemez Mountains Salamander Management Plan or categorized as ''Occupied Stands'' of Jemez Mountains salamanders by the USFS were limited to small-scale areas and included an estimated 4.3 ac (1.7 ha) of habitat being impacted for road protections, 7.5 ac (3.0 ha) that were seeded and mulched (for archeological site protection and Nordic ski trail protection), 150 ac (60.7) disturbed for hazard tree removal (cutting trees that could be dangerous by falling onto a roadway), and 3.25 ac (1.3 ha) of bulldozer line that was rehabilitated with slash placement or seeding (USFS 2011a, pp. 7–9; USFS 2012, pp. 1–3).

Some post-fire rehabilitation actions may be beneficial for the salamander. For example, contour felling can slow erosion and, in cases where aboveground rocks are not present or present in low numbers, the felled logs can also provide immediate aboveground cover. Following the Cerro Grande Fire, the BAER Team recommended felling large-diameter Douglas fir logs and cutting four disks off each log (rounds) to provide immediate cover for salamanders before summer rains (Interagency BAER Team 2000, p. 87; USFS 2001, p. 1). Similar recommendations were made after the Las Conchas Fire (BAER Survey Specialist Report 2011, p. 3). We believe these actions would benefit the salamander immediately post-fire, but neither of these actions have been implemented or tested. Still, some post-fire treatments (e.g., grass seeding, heavy equipment operation, bulldozing, tilling, hydromulching (process that broadcasts a slurry of water and mulch with seed and fertilizer over an area), mulching, erosion control fabrics, and removal of aboveground rocks to build rock dams) likely negatively impacted the salamander.

The most common BAER treatment has been grass seeding dropped from aircraft (Robichaud *et al.* 2000, p. 11; Peppin *et al.* 2010, p. 574). Nonnative grasses have typically been seeded because they are fast-growing and have extensive fibrous roots (Robichaud *et al.* 2000, p. 11); however, in more recent years, efforts have been made to use native plant species, but their use is often limited by high cost and inadequate availability (Peppin *et al.* 2010, p. 574). Overall, seeding with grass is relatively inexpensive, and has been reported to rapidly increase water infiltration and stabilize soil (Robichaud *et al.* 2000, p. 11). However, Peppin *et al.* (2010, p. 573) concluded that post-wildfire seeding in western U.S. forests does little to protect soil in the short term, has equivocal effect on invasion of nonnative species, and can have negative effects on native vegetation recovery. Nevertheless, nonnative grasses from post-fire rehabilitation efforts have created thick mats that are impenetrable to the salamander, because the species has short legs and cannot dig tunnels. The existing spaces in the soil fill with extensive roots, altering the subterranean habitat in a manner that is unusable to the salamander. We are aware of areas that burned with moderate and high severities in the Dome Fire (eastern and southeastern part of its range), where these thick mats of grass resulting from rehabilitation still persist, and salamanders are no longer found there. It is possible that native grasses could have the same effect, because the goal of the rehabilitation effort is to stabilize the soil with quick-growing fibrous roots.

Additionally, grass seed mixtures can also contain fertilizer that is broadcast over large areas of habitat (e.g., hydromulch used in post-fire treatments for the Cerro Grande Fire). Fertilizers can contain nitrate, which is toxic to amphibians at certain levels (Rouse *et al.* 1999, p. 799). Finally, how mulching with straw post-fire affects the salamander remains unknown, but this practice could have significant adverse effects if there is widespread use and the mulch creates an impenetrable layer or alters the microecology in the upper layers of the soil and at the soil's surface. While the effects to salamanders from seeding with nonnative grasses, use of fertilizers, or mulch application have not been specifically studied, these actions, alone or in combination, have likely caused widespread adverse impacts to the salamander. To reduce adverse effects to the salamander resulting from post-fire rehabilitation efforts following the Las Conchas Fire, efforts were made to avoid seeding in most salamander areas (USFS 2011c, p. 9) and avoiding salamander habitat was a specific criterion for grass seeding and mulching actions (USFS 2012, p. 3). Because many common post-fire treatment actions have the potential to have significant, widespread adverse effects, we anticipate habitat alterations from wildfire and post-fire rehabilitation will continue to be a threat to the salamander localities from both past and future treatments.

In summary, some post-fire treatments, such as contour felling of logs and cutting and scattering rounds, may reduce some of the short-term effects of fire to the salamander and its habitat. However, other post-fire treatments negatively impact the salamander and its habitat in the long term. Small-scale impacts could occur from removing rocks from habitat to build rock dams, and large-scale impacts include grass seeding and associated chemicals, and possibly mulching. We conclude that, while the effects of high-severity, stand-replacing wildfire are the most significant threat to the salamander and its habitat, actions taken following wildfires are also a threat to the salamander's habitat and are expected to continue in the future.

Fire Use

Fire use includes the combination of wildland fire use (the management of naturally ignited wildland fires to accomplish specific resource management objectives) and prescribed fire (any fire ignited by management actions to meet specific objectives) applications to meet natural resource objectives (USFS 2010b, p. 1). Fire use can benefit the salamander in the long term by reducing the risk of severe wildland fires and by returning the natural fire cycle to the ecosystem. Other fire practices, such as broadcast

burning (i.e., conducting prescribed fires over large areas), consume ground litter (leaves, dead plants, etc.) that helps to create moist conditions and stabilize soil and rocky slopes. Depending on time of year, fire use can also negatively impact the salamander when the species is active above ground (typically from July to September). However, the wet conditions required for salamander aboveground activity are often not conducive to fire. Prescribed fire in the Jemez Mountains is often planned for the fall (when the salamanders are not active above ground), because low wind and increased moisture during this time allow more control, lowering chances of the fire's escape. Because fire historically occurred prior to July (i.e., premonsoon rains), the majority of fires likely preceded the salamander's aboveground activity. Prescribed fires conducted after September, when salamanders typically return to their subterranean retreats, would be similar to a natural fire regime in the spring with low direct impacts because most salamanders are subterranean at that time. However, the indirect impacts of altering the time of year when fire is present on the landscape on the salamander and its habitat are unknown.

Other activities related to fire use that may have negative impacts to the salamander and its habitat include digging fire lines, targeting the reduction of large decaying logs, and using flares and fire-retardant chemicals in salamander habitat. Some impacts or stressors to the salamander can be avoided through seasonal timing of prescribed burns and modifying objectives (e.g., leaving large-diameter logs and mixed canopy cover) and by modifying fire management techniques (e.g., not using flares or chemicals) in salamander habitat (Cummer 2005, pp. 2–7).

As part of the Southwest Jemez Restoration Project proposal, the Santa Fe National Forest has set specific goals pertaining to salamander habitat, including reduction of the risk of high-intensity wildfire in salamander habitat, and retention of a moisture regime that will sustain high-quality salamander habitat (USFS 2009a, p. 11). The Santa Fe National Forest intends to minimize impacts to salamander habitat and to work toward recovery of the salamander (USFS 2009, p. 4), but specific actions or recommendations to accomplish this goal have not yet been determined. If the salamander's needs are not considered, fire use could make its habitat less suitable (warmer; drier; fewer large, decaying logs), and kill or injure salamanders that are active above ground. Alternatively, the salamander's habitat may benefit if seasonal restrictions and maintaining key habitat features (e.g., large logs and sufficient canopy cover to maintain moist microhabitats) are part of managing fire.

Given the current condition of forest composition and structure, the risks of severe wildland fire on a large geographic scale will take a long-term planning strategy. Fire use is critical to the long-term protection of the salamander's habitat, although some practices are not beneficial to the species and may be a threat to the salamander.

Fire Suppression Activities

Similarly, fire suppression activities may both protect and negatively impact the salamander and its habitat. For example, fire suppression actions that occurred in salamander habitat during the Cerro Grande Fire included hand line construction and bulldozer line construction (digging firebreaks down to bare mineral soil), backfiring (burning off heavy ground cover before the main fire reached that fuel source), and fire retardant drops (USFS 2001, p. 1). Fire suppression actions in modeled salamander habitat on the Santa Fe National Forest following the Las Conchas Fire included 1.2 miles (mi) (1.9 kilometers (km)) of bulldozer line, 0.6 mi (0.9 km) of hand line, 1.2 mi (1.9 km) of fire retardant drop, and 1.5 ac (0.6 ha) of areas cleared for three drop points and one Medivac area (USFS 2011d, pp. 1–2). Water dropping from helicopters is another fire suppression technique used in the Jemez Mountains, where water is collected from accessible streams, ponds, or stock tanks. Dropping surface water into terrestrial habitat significantly increases the risk of spreading aquatic pathogens into terrestrial habitats (see *C. Disease and Predation,* below).

The impacts of fire retardants and firefighting foams to the salamander are discussed under *E. Other Natural or Manmade Factors Affecting Its Continued Existence,* below. Fire suppression actions, including the use of fire retardants, water dropping, backfiring, and fire line construction, likely impact the salamander's habitat; however, the effects of habitat impacts from fire suppression on the salamander remain unknown, and, based on the information available at this time, we determine that fire suppression actions do not appear to be a threat to the salamander's habitat. These activities improve the chances of quick fire suppression, and thus fires would be relatively smaller in scale and could have fewer impacts than a severe wildland fire. Therefore, we do not find that fire suppression activities are a threat to the salamander's habitat, nor do we expect them to become a threat in the future.

Mechanical Treatment of Hazardous Fuels

Mechanical treatment of hazardous fuels refers to the process of grinding or chipping vegetation (trees and shrubs) to meet forest management objectives. When these treatments are used, resprouting vegetation often grows back in a few years and subsequent treatment is needed. Mechanical treatment is a fuel-reduction technique that may be used alone or in combination with prescribed fire. Mechanical treatment may include the use of heavy equipment or manual equipment to cut vegetation (trees and shrubs) and to scrape slash and other debris into piles for burning or mastication. Mastication equipment uses a cutting head attached to an overhead boom to grind, chip, or crush wood into smaller pieces, and is able to treat vegetation on slopes up to 35 to 45 percent, while generally having little ground impact (soil compaction or disturbance). The debris is left on the ground where it decomposes and provides erosion protection, or it is burned after drying out.

Mechanical treatment of hazardous fuels, such as manual or machine thinning (chipping and mastication), may cause localized disturbances to the forest structure or alter ecological interactions at the soil surface that can impact the salamander and its habitat. For example, removal of overstory tree canopy or ground cover within salamander habitat may cause desiccation of soil or rocky substrates. Also, a layer of masticated material could change microhabitat conditions making it unsuitable for salamanders (e.g., altering fungal communities or physically making it difficult for salamanders to move through). Additionally, tree-felling or use of heavy equipment has the potential to disturb the substrate, resulting in destabilization of rocky slopes and compaction of soil, which may reduce subterranean interstices (spaces) used by salamanders for refuges or movement.

Activities that compact soil, alter ecological interactions at the soil surface, remove excessive canopy cover, or are conducted while salamanders are aboveground active would be detrimental to the salamander and its habitat. A masticator is one type of heavy machinery that can be used for mechanical treatment of fuels that could

potentially compact the soil and leave debris altering the soil surface ecology. In one study at a different location, a masticator was operated on existing skid trails (temporary trails used to transport trees, logs, or other forest products) and did not increase soil compaction, because the machinery traveled on existing trails covered with masticated materials (wood chips, etc.), which more evenly distributed the weight of the machinery and reduced soil compaction (Moghaddas and Stephens 2008, p. 3,104). However, studies in the Jemez Mountains and effects to soils there have not been conducted.

At this time, we do not have any specific information whether mechanical treatments, including mastication, negatively impact the salamander either through altering aboveground habitat or soil compaction. We encourage research on these techniques if they are to be implemented in salamander habitat. If mechanical treatment and hazardous fuels activities are conducted in a manner that minimizes impacts to the salamander and its habitat, while reducing the risk of severe wildland fire, the salamander could ultimately benefit from the reduction in the threat of severe wildland fire and the improvement in the structure and composition of the forest. However, mechanical treatments could also pose a threat to the salamander and its habitat if conducted in a manner that degrades habitat or makes it unusable to the salamander. Finally, if salamanders are active above ground, any of these activities could crush any salamanders present. We are not aware of any specific large-scale mechanical treatments in salamander habitat; however, mastication is an option for treatments in the Southwest Jemez Restoration Project area. We do not have information indicating that mechanical treatments pose a threat to the salamander.

Forest Silvicultural Practices

Many areas of the landscape in the Jemez Mountains have been fragmented by past silvicultural practices (the care and cultivation of forest trees) including commercial (trees greater than 9 inches (in) (23 centimeteres (cm)) in diameter at breast height (dbh)) and precommercial (trees less than 9 in (23 cm) dbh) timber harvesting. Much of the forests of the Jemez Mountains lack large-diameter trees and have become overgrown with small-diameter trees. While salamanders still occupy areas where timber harvesting has occurred, the effects of past silvicultural practices continue to adversely affect the salamander and its habitat through the absence of large-diameter trees that, when they fall and decompose, provide high-quality aboveground habitat, through the contribution of high fuels increasing the risk of large-scale stand-replacing wildfire, and cascading effects on soil moisture and temperature.

From 1935 to 1972, logging (particularly clear-cut logging) was conducted on Valles Caldera National Preserve (ENTRIX 2009, p. 164). These timber activities resulted in about 50 percent of Valles Caldera National Preserve being logged, with over 1,000 mi (1,600 km) of 1960s-era logging roads (ENTRIX 2009, p. 164) being built in winding and spiraling patterns around hills (ENTRIX 2009, pp. 59–60). On the Valles Caldera National Preserve, 95 percent of forest stands contain dense thickets of small-diameter trees, creating a multi-tiered forest structure (Valles Caldera National Preserve 2010, pp. 3.3–3.4). This multi-tiered forest structure is similar to surrounding areas, and provides ladder fuels that favor the development of crown fires (as opposed to high-intensity, habitat-destroying ground fires) (Allen 2001, pp. 5–6; USFS 2009a, p. 10). Additionally, all forest types on the Valles Caldera National Preserve contain very few late-stage mature trees greater than 16 in (41 cm) dbh (less than 10 percent of the overall cover) (Valles Caldera National Preserve 2010, pp. 3.4, 3.6–3.23). The lack of large trees is an artifact of intense logging, mostly from clear-cutting practices in the 1960s (Valles Caldera National Preserve 2010, p. 3.4). Clear-cutting degrades forest floor microhabitats for salamanders by eliminating shading and leaf litter, increasing soil surface temperature, and reducing moisture (Petranka 1998, p. 16).

In a study comparing four logged sites and five unlogged sites in Jemez Mountains salamander habitat, Ramotnik (1986, p. 8) reports that a total of 47 salamanders were observed at four of the five unlogged sites, while no salamanders were observed on any of the logged sites. We do not know if salamanders actually occupied the logged sites prior to logging, but significant differences in habitat features (soil pH, litter depth, and log size) between the logged and unlogged sites were reported (Ramotnik 1986, p. 8). On the unlogged sites, salamanders were associated with cover objects that were closer together and more decayed, and that had a higher canopy cover, greater moss and lichen cover, and lower surrounding needle cover, compared to cover objects on logged sites (Ramotnik 1986, p. 8). Cover objects on logged sites were less decomposed and accessible by the salamanders, had a shallower surrounding litter depth, and were associated with a more acidic soil than were cover objects on the unlogged sites (Ramotnik 1986, p. 8). Based on the differences between logged and unlogged sites, we believe that logging can destroy or modify the Jemez Mountains salamander's habitat in such a way that it becomes uninhabitable or less suitable for the species.

Consistent with the findings of Ramotnik (1986, p. 8), deMaynadier and Hunter (1995; in Olson *et al.* 2009, p. 6) reviewed 18 studies and found that salamander abundance after timber harvest was 3.5 times greater on control (unlogged) areas than in clear-cut areas. Furthermore, Petranka *et al.* (1993; in Olson *et al.* 2009, p. 6) found that *Plethodon* abundance and richness in mature forest were five times higher than in recent clear-cut areas, and they estimated that it would take as much as 50 to 70 years for clear-cut populations to return to pre-clearcut levels. We do not know the amount of time it might take for Jemez Mountains salamanders to recover from habitat alterations resulting from clear-cut logging, particularly because of concurrent and ongoing factors affecting forest stand conditions (e.g., fire suppression, livestock grazing, changes in vegetation composition and structure).

The majority of Jemez Mountains salamander habitat has been heavily logged, which has resulted in changes in stand structure, including a paucity of large-diameter trees. This lack of large-diameter trees means that there is a limited source for future large, decaying logs that provide high-quality (e.g., relatively cool, high-moisture diurnal retreats) aboveground habitat. Ramotnik (1986, p. 12) reported that logs with salamanders were significantly larger and wetter than those logs without salamanders, and most salamanders were found in well-decomposed logs. In a similar plethodontid salamander, downed logs provide refuge from warmer temperatures and resiliency from impacts that can warm and dry habitat (Kluber *et al.* 2009, p. 31). In summary, areas where large-diameter trees have been removed have less high-quality salamander habitat features and no material for future high-quality salamander habitat features.

On the Valles Caldera National Preserve, only minor selective logging has occurred since 1972, and it is expected that some thinning of secondary growth forests will continue to occur to prevent severe wildfires. However, no commercial logging is

proposed or likely in the foreseeable future (Parmenter 2009b, cited in Service 2010). Although commercial timber harvest on the Santa Fe National Forest has declined appreciably since 1988 (Fink 2008, pp. 9, 19), the effects from historical logging and associated roads (see Roads, Trails, and Habitat Fragmentation below) will continue to be a threat to the salamander.

The historical clear-cut logging practices in the Jemez Mountains have likely led to significant habitat loss for the salamander. The cutting has contributed to current stand conditions (high fuels), and the forest lacks large-diameter trees for future high-quality aboveground cover objects. We believe that the effects from historical, clear-cut logging are currently affecting the salamander and its habitat, and will continue to do so in the future.

Salvage cutting (logging) removes dead, dying, damaged, or deteriorating trees while the wood is still merchantable (Wegner 1984, p. 421). Sanitation cutting, similar to salvage, removes the same kinds of trees, as well as those susceptible to attack from biotic pests (Wegner 1984, p. 421). Both types of cutting occur in the Jemez Mountains salamander's habitat, and are referred to as ''salvage logging.'' Salvage logging is a common management response to forest disturbance (Lindenmayer *et al.* 2008, p. 4) and, in the salamander's habitat, is most likely to occur after a forest die-off resulting from fire, disease, insects, or drought. The purposes for salvage logging in the Jemez Mountains have included firewood for local use, timber for small and large mills, salvage before decay reduces the economic value of the trees, creation of diverse healthy and productive timber stands, management of stands to minimize insect and disease losses (USFS 1996, p. 4), and recovery of the timber value of fire-killed trees (USFS 2003, p. 1). When conducted in the salamander's habitat, salvage logging can further reduce the quality of the salamander's habitat remaining after the initial disturbance, by removing or reducing the shading afforded by dead standing trees (Moeur and Guthrie 1984, p. 140) and future salamander cover objects (removal of trees precludes their recruitment to the forest floor), and by interfering with habitat recovery (Lindenmayer *et al.* 2008, p. 13).

Recent salvage logging within the range of the Jemez Mountains salamander occurred following the 2002 Lakes and BMG Wildfire. The USFS stated that mitigation measures for the Lakes and BMG Wildfire Timber Salvage Project would further protect the salamander and enhance salamander habitat by immediately providing slash and fallen logs (USFS 2003, pp. 4–5). Mitigation for the salvage logging project included conducting activities during winter to avoid soil compaction (as the ground is more likely to be frozen and hard at that time), and providing for higher snag retention (by leaving all Douglas fir trees (16 percent fire-killed trees) and 10 percent of other large snags) to provide future fallen log habitat (USFS 2003, p. 29). These mitigation measures were developed in consultation with the New Mexico Endemic Salamander Team in an effort to minimize impacts to the Jemez Mountains salamander from salvage logging; however, the New Mexico Endemic Salamander Team recommended that salvage logging be excluded from occupied salamander habitat because it was not clear that, even with the additional mitigations, it would meet the conservation objectives of the Cooperative Management Plan (New Mexico Endemic Salamander Team 2003, p. 1).

The mitigation measures would likely benefit the salamander in the short term if conducted without salvage logging, or possibly with some salvage logging. It is not known if mitigation measures offset the impacts of salvage logging in salamander habitat; however, Lindenmayer *et al.* (2008, p. 13) reports that salvage logging interferes with natural ecological recovery and may increase the likelihood and intensity of subsequent fires. We believe that removal of trees limits the amount of future cover and allows additional warming and drying of habitat. The potential for large-scale forest die-offs from wildfire, insect outbreak, disease, or drought is high in the Jemez Mountains, which may result in future salvage logging in salamander habitat. We believe that if the needs of the salamander are not considered and provided for during salvage logging actions in salamander habitat, then salvage logging would further diminish habitat quality and may be a determining factor of salamander persistence subsequent to forest die-off.

Some timber harvest activities likely pose no threat to the continued existence of the Jemez Mountains salamander. For example, removal of trees that may pose a safety hazard may have minimal disturbance to surrounding soils or substrates, especially if removal is conducted when the species is not active above ground (i.e., seasonal restrictions). This type of localized impact may affect a few individuals, but it is not likely to affect a population or be considered a threat. Likewise, precommercial thinning (removal of trees less than 9 in (23 cm) dbh) or shrub and brush removal (without the use of herbicides) to control vegetation, and without disturbing or compacting large areas of the surrounding soils, likely could be conducted without adverse effects to the salamander or its habitat.

Similarly, some fuels treatment actions, such as thinning in areas around at-risk human communities could be conducted in a manner that would pose no threat to the salamander. For example, Clayton *et al.* (2009, entire) provides specific guidelines on fuels treatments to manage for the persistence and protection on the Siskiyou Mountains salamander that include maintaining certain habitat features and address specific activity mitigations. We anticipate implementation of similar guidelines for the Jemez Mountains salamander will alleviate any potential threat from fuels treatment action around at-risk communities.

In summary of forest silvicultural practices, impacts from past commercial clear-cut logging activities continue to have detrimental effects to the salamander and its habitat. These past activities removed large-diameter trees, altered forest canopy structure, created roads, compacted soil, and disturbed other important habitat features. These effects of historical clear-cutting logging include the warming and drying of habitat, and a paucity of large cover objects (decaying logs) that would have contributed to habitat complexity and resiliency. Salvage logging further diminishes salamander habitat subsequent to disturbance. Therefore, we conclude that the salamander continues to face threats from current forest silvicultural practices, including salvage logging. These actions are smaller in scale relative to the range of the species, and we are not aware of any proposals to salvage-log the large area of the Las Conchas burn area. However, the habitat-warming and drying effect of these actions may cause additional detrimental disturbance to habitat in areas burned by severe wildfire. We also conclude that the salamander continues to face threats resulting from the habitat-related effects of historical logging activities because high-quality, high-moisture retreats are presently fewer, and future opportunities for high-quality, high-moisture retreats will be extremely rare. Because all salamander life functions and activities are based on the individual's water balance, limiting opportunities for hydration affects all other aspects of survival and reproduction, greatly contributing to the risk of extinction. This significant threat

is occurring now and will continue into the future.

Dams

Following the 2000 Cerro Grande Fire, water retention dams were constructed within potential salamander habitat to minimize soil erosion within burned areas (NMDGF 2001, p. 1; New Mexico Endemic Salamander Team 2002, pp. 1–2; Kutz 2002, p. 1). Because these types of structures were installed to slow erosion subsequent to wildfire, additional dams or flood control features could be constructed within salamander habitat in the future following severe wildland fires. Some individual salamanders may be killed or injured by this activity; however, the impact to the species and habitat from construction of retention dams would be relatively minor. For this reason, we do not consider the construction of dams to currently be a significant threat to the salamander, nor do we expect dam construction to be a threat to the species in the future.

Mining

Pumice mining activities (e.g., Copar Pumice Company, the Copar South Pit Pumice Mine, and the El Cajete Pumice Mine) have been evaluated for impacts to the salamander (USFS 1995, pp. 1–14; 1996, pp. 1–3). Pumice mines are located within areas of volcanic substrate that are unlikely to support salamanders (USFS 2009c, p. 2). However, associated infrastructure from expansion of the El Cajete Mine, such as access roads and heavy equipment staging areas, may have the potential to be located in potential salamander habitat. Although no decision on authorizing the extension to the El Cajete Mine has been made (USFS 2009, p. 2), these activities would be small in scale and not likely considered a threat to the species, either currently or in the future.

Private (Residential) Development

In our 12-month finding (75 FR 54822; September 9, 2010), we found that residential development was a threat to the salamander, because we visually assessed salamander occurrences on a map and it appeared that private lands contained substantially sized, contiguous areas of salamander habitat, with the potential for future development. However, after conducting a GIS (Geographical Information System) analysis for the final critical habitat determination to be published soon in the **Federal Register**, we found that only 3 percent (2,817 ac (1,140 ha) of the total modeled habitat are private lands, of which 719 ac (291 ha) include the Pajarito Ski area, where the habitat is already developed and unlikely to be suitable for the salamander in the long term (see Recreation, below). The remaining areas of private lands occur as noncontiguous scattered parcels. However, some private lands, as well as areas with salamander habitat on the Santa Fe National Forest, could be developed for private use (USFS 1997, pp. 1–4; USFS 1998, pp. 1–2).

Development can destroy and fragment the salamander's habitat through the construction of homes and associated infrastructure (e.g., roads, driveways, and buildings), making those areas unusable to salamanders and likely resulting in mortalities to salamanders within those areas. Furthermore, as the human population continues to increase in the Jemez Mountains, we believe development will likely continue to directly affect the salamander and its habitat in the future. These activities will likely be in the form of new housing and associated roads and infrastructure. Although we anticipate some loss and degradation of habitat from these activities, salamander habitat on private lands is smaller and more isolated than we thought prior to our GIS analysis. Moreover, we found very few salamander occurrences on private lands. For these reasons, we believe that private residential development has the potential to impact the salamander and its habitat, but does not constitute a significant threat to the species.

Geothermal Development

A large volcanic complex in the Jemez Mountains is the only known high-temperature geothermal resource in New Mexico (Fleischmann 2006, p. 27). Geothermal energy was explored for possible development on the Valles Caldera National Preserve between 1959 and 1983 (USFS 2007, p. 126). In July 1978, the U.S. Department of Energy, Union Oil Company of California (Unocal), and the Public Service Company of New Mexico began a cooperative geothermal energy project (USFS 2007, p. 126). The demonstration project drilled 20 exploratory wells over the next 4 years. One of the geothermal development locations was south of Redondo Peak on the Valles Caldera National Preserve, and the canyon in this area was occupied by the salamander (Sabo 1980, pp. 2–4). An Environmental Impact Statement analyzed a variety of alternatives, including placement of transmission towers and lines (U.S. Department of Energy cited in Sabo 1980, pp. 2–5). Nevertheless, the project ended in January 1982, because Unocal's predictions concerning the size of geothermal resources were not met. Out of the 40 wells drilled in the Valles Caldera National Preserve in the Redondo Creek and Sulphur Springs areas, only a few yielded sufficient resources to be considered production wells (USFS 2007, p. 126). In some cases, these wells were drilled in the salamander's habitat and concrete well pads were built.

Although the geothermal resources are found within the range of the salamander in the Jemez Mountains, extraction of large quantities of hot fluids from these rocks has proven difficult and not commercially viable (USFS 2007, p. 127). As such, we are not aware of any current or future plans to construct large or small-scale geothermal power production projects within salamander habitat. Moreover, in 2006, the mineral rights on the Valles Caldera National Preserve were condemned, including geothermal resources (VallesCaldera.com 2010, p. 1). For these reasons, geothermal development does not present a current or future threat to the salamander.

Roads, Trails, and Habitat Fragmentation

Construction of roads and trails has historically eliminated or reduced the quality or quantity of salamander habitat, reducing blocks of native vegetation to isolated fragments, and creating a matrix of native habitat islands that have been altered by varying degrees from their natural state. Allen (1989, pp. 46, 54, 163, 216–242, and 302) collected and analyzed changes in road networks (railroads, paved roads, improved roads, dirt roads, and primitive roads) in the Jemez Mountains from 1935 to 1981. Landscape-wide road density increased 11.75 times, from 0.24 mi (0.38 km) of road per mi^2 (2.6 km^2) in 1935, to 2.8 mi (4.5 km) of road per mi^2 (2.6 km^2) in 1981, and in surface area of from 0.13 percent (610 ac; 247 ha) to 1.7 percent (7,739 ac; 3,132 ha) (Allen 1989, pp. 236–240). Allen (1989, p. 240) reports that, of 5,246 mi (8,443 km) of roads in the Jemez Mountains in 1981, 74 percent were mapped on USFS lands (2,241 mi; 3,607 km) and private lands (1,646 mi; 2,649 km). These roads generally indicate past logging activity of USFS and private lands (Allen 1989 p. 236).

Ongoing effects of roads and their construction on the Valles Caldera National Preserve may exceed the effects of the timber harvests for which the roads were constructed (Balmat and Kupfer 2004, p. 46). The majority of

roads within the range of the salamander are unpaved, and the compacted soil typically has very low infiltration rates that generate large amounts of surface runoff (Robichaud *et al.* 2010, p. 80). Increasing runoff, decreasing infiltration, and increasing edge effects (open areas along roads) has led to the drying of adjacent areas of salamander habitat.

The construction of roads and trails (motorized vehicle, bicycle, and foot trails) degrades habitat by compacting soil and eliminating interstitial spaces above and below ground. Roads are known to fragment terrestrial salamander habitat and act as partial barriers to movement (deMaynadier and Hunter 2000, p. 56; Marsh *et al.* 2005, p. 2004). Furthermore, roads and trails reduce or eliminate important habitat features (e.g., lowering canopy cover or drying of soil) and prevent gene flow (Saunders *et al.* 1991, p. 25; Burkey 1995, pp. 527, 528; Frankham *et al.* 2002, p. 310; Noss *et al.* 2006, p. 219). Vehicular and off-highway vehicle (OHV) use of roads and trails can kill or injure salamanders. We consider the establishment of roads and trails to be a threat that will likely continue to impact the salamander and its habitat, increasing the risk of extirpation of some localities.

Road clearing and maintenance activities can also cause localized adverse impacts to the salamander from scraping and widening roads and shoulders or maintaining drainage ditches or replacing culverts. These activities may kill or injure individuals through crushing by heavy equipment. Existing and newly constructed roads or trails fragment habitat, increasing the chances of extirpation of isolated populations, especially when movement between suitable habitats is not possible (Burkey 1995, p. 540; Frankham *et al.* 2002, p. 314). Isolated populations or patches are vulnerable to random events, which could easily destroy part of or an entire isolated population, or decrease a locality to such a low number of individuals that the risk of extirpation from human disturbance, natural catastrophic events, or genetic and demographic problems (e.g., loss of genetic diversity, uneven male to female ratios) would increase greatly (Shaffer 1987, p. 71; Burkey 1995, pp. 527, 528; Frankham *et al.* 2002, pp. 310–324).

Terrestrial salamanders are impacted by edge effects, typically adjacent to roads and areas of timber harvest, because microclimate conditions within forest edges often exhibit higher air and soil temperatures, lower soil moisture, and lower humidity, compared to interior forested areas (Moseley *et al.* 2009, p. 426). Moreover, by creating edge effects, roads can reduce the quality of adjacent habitat by increasing light and wind penetration, exposure to pollutants, and the spread of invasive species (Marsh *et al.* 2005, pp. 2004–2005). Due to the physiological nature of terrestrial salamanders, they are sensitive to these types of microclimate alterations, particularly to changes to temperature and moisture (Moseley *et al.* 2009, p. 426). Generally, more salamanders are observed with increasing distance from some edge types, which is attributed to reduced moisture and microhabitat quality (Moseley *et al.* 2009, p. 426).

On the western part of the species' range, road construction on New Mexico State Highway 126 around the town of Seven Springs occurred in occupied salamander habitat in 2007 and 2008. Measures were implemented by the USFS to reduce the impact of these road construction activities on salamanders, including limiting construction to times when salamanders would not be active above ground (October through June) and felling of approximately 300 trees in the project area to replace large woody debris that was being used by the salamander but removed by the road construction. However, these measures only offered some protection for salamanders and their habitat outside the project footprint. The rerouting and construction of Highway 126 went through the middle of a large salamander population where 24 ac (9.7 ha) of salamander habitat were directly impacted by this project (USFS 2009c, p. 2). This project destroyed and made unusable the 24 ac (9.7 ha). Also, the project fragmented the occupied salamander habitat remaining outside of the 24-ac (9.7-ha) footprint, because the new road has a nearly vertical cut bank and salamanders will not be able to cross it. Continued maintenance of State Highway 126 in the future will likely involve the use of salts for road de-icing, and increase the exposure of adjacent areas to chemicals and pollution from vehicular traffic. Habitat fragmentation of and subsequent edge effects due to this road construction project have reduced the quality and quantity of salamander habitat in this part of its range.

In 2007, the New Mexico Endemic Salamander Team concluded that impacts from OHVs and motorcycles were variable depending on their location relative to the salamander's habitat. Because the width of a trail is generally smaller than a road, canopy cover typically remains over trails. In some cases (e.g., flat areas without deeply cut erosion), the trails do not likely impede salamander movement. Alternatively, severe erosion caused by heavy trail use by motorcycles or OHVs in some places formed trenches approximately 2 ft wide by 2 to 3 ft deep (0.6 m wide by 0.6 to 0.9 m deep), which would likely prevent salamander movement, fragment local populations, and trap salamanders that fall into the trenches. Therefore, OHVs and motorcycles could severely impact the salamander's habitat.

On November 9, 2005 (70 FR 68264), the USFS issued the Travel Management Rule that requires designation of a system of roads, trails, and areas for motor vehicle use by vehicle class and, if appropriate, by time of year. As part of this effort, the USFS inventoried and mapped roads and motorized trails, and is currently completing a Final Environmental Impact Statement to change the usage of some of the current system within the range of the salamander. The Santa Fe National Forest is attempting to minimize the amount of authorized roads or trails in known occupied salamander habitat and will likely prohibit the majority of motorized cross-country travel within the range of the species (USFS 2009c, p. 2; USFS 2010c p. 95). Nevertheless, by closing some areas to OHV use, the magnitude of impacts in areas open to OHV use in salamander habitat will be greater (New Mexico Endemic Salamander Team 2008, p. 2). We acknowledge that some individual salamanders may be killed or injured by vehicles and OHVs, and that OHV use impacts salamander habitat. However, we believe the Santa Fe National Forest is attempting to minimize impacts to the salamander and its habitat. Furthermore, we believe that the revised travel management regulations will reduce the impact of motorized vehicles on the salamander and its habitat by providing a consistent policy that can be applied to all classes of motor vehicles, including OHVs. We consider unmanaged OHV and motorcycle use to be a threat to the salamander, but with the implementation of the forthcoming management of motorized trails on the Santa Fe National Forest, the threat will be greatly reduced.

In summary, the extensive roads that currently exist in the Jemez Mountains have significantly impacted the salamander and its habitat due to the possible death and injury of salamanders; fragmentation and population isolation; habitat loss; habitat modification near road edges; and in some cases, increased exposure to chemicals, salts, and pollution. Roads associated with private development are most likely to be constructed or

expanded in the future in the southern and eastern portions of the species' range, because this part of the species' range has the most private land. Also, new roads may also be constructed through Federal lands within the salamander's range, but such construction is unlikely because the Santa Fe National Forest is attempting to reduce roads and road usage in the Jemez Mountains. Roads and trails have significantly fragmented habitat and likely reduced persistence of existing salamander localities. Therefore, we consider roads, trails, and the resulting habitat fragmentation to be a threat to the Jemez Mountains salamander and its habitat now and in the future.

Recreation

The Jemez Mountains are heavily used for recreational activities that impact the species, including camping, hiking, mountain biking, hunting, and skiing; OHV use is addressed above. Located in the southwestern Jemez Mountains is the Jemez National Recreation Area. The Jemez National Recreation Area comprises 57,650 ac (23,330 ha) and is managed by the USFS for the promotion of fishing, camping, rock climbing, hunting, and hiking. Nearly 1.6 million people visit the Jemez National Recreation Area for recreational opportunities each year (Jemez National Recreation Area 2002, p. 2). Despite an existing average road density of approximately 2.5 mi (4.0 km) of road per mi^2 (2.6 km^2) on the Jemez National Recreation Area, off-road use continues to occur, resulting in new roads being created or decommissioned roads being reopened (Jemez National Recreation Area 2002, pp. 10–11).

Using current population and travel trends, the potential visitation demand on the Valles Caldera National Preserve is between 250,000 and 400,000 visits per year (ENTRIX 2009, p. 93). Of this projection, the Valles Caldera National Preserve is expected to realize 120,000 visitors per year by the year 2020 (ENTRIX 2009, p. 94). To put this in context, from 2002 to 2007 the Valles Caldera National Preserve averaged about 7,600 visitors per year (ENTRIX 2009, p. 13). Bandelier National Monument, which has a smaller proportion of salamander habitat relative to the Santa Fe National Forest or Valles Caldera National Preserve, attracts an average annual visitation of more than 250,000 people (ENTRIX 2009, p. 92). Fenton Lake State Park in the western part of the species' range also contains salamander habitat. The park received more than 120,000 visitors on its 70 ac (28 ha) containing hiking trails and a fishing lake (ENTRIX 2009, p. 92).

Campgrounds and associated parking lots and structures have likely impacted the salamander's habitat through modification of small areas by soil compaction and vegetation removal. Similarly, compaction of soil from hiking or mountain biking trails has modified a relatively small amount of habitat. The majority of these trails likely do not act as barriers to movement or create edge effects similar to roads, because they are narrow and do not reduce canopy cover. However, similar to OHV trails, deeply eroded mountain bike trails could act as barriers and entrap salamanders.

The Pajarito Ski Area in Los Alamos County was established in 1957 and expanded through 1994. Ski runs were constructed within salamander habitat. A significant amount of high-quality habitat (north-facing mountain slopes with mixed-conifer forests and many salamander observations (New Mexico Heritage Program 2010a and b, spreadsheets) was destroyed with construction of the ski areas, and the runs and roads have fragmented and created a high proportion of edge areas. Nevertheless, surveys conducted in 2001 in two small patches of forested areas between ski runs detected salamanders (Cummer *et al.* 2001, pp. 1–2). Most areas between runs remain unsurveyed. However, because of the large amount of habitat destroyed, the extremely small patch sizes that remain, and relatively high degree of edge effects and fragmentation, the salamander will likely not persist in these areas in the long term.

Adjacent to the downhill ski runs are cross country ski trails. These trails are on USFS land, but maintained by a private group. In 2001, trail maintenance and construction with a bulldozer was conducted by the group in salamander habitat during salamander aboveground activity period (New Mexico Endemic Salamander Team 2001, p. 1). Trail maintenance was reported as leveling all existing ski trails with a bulldozer, which involved substantial soil disturbance, cutting into slopes as much as 2 ft (0.6 m), filling other areas in excess of 2 ft (0.6 m), widening trails, and downing some large trees (greater than 10 in (25 cm) dbh), ultimately disturbing approximately 2 to 5 ac (1 to 2 ha) of occupied salamander habitat (Sangre de Christo Audubon Society 2001, pp. 2–3). This type of trail maintenance, while salamanders were active above ground, may have resulted in direct impacts to salamanders, and further fragmented and dried habitat. We do not know if there are future plans to modify or expand the existing ski area.

The Jemez Mountains are currently heavily used for recreational activities, and, as human populations in New Mexico continue to expand, demand for recreational opportunities in the Jemez Mountains will likely increase. Individually, recreational activities that are small in scale, such as hunting, hiking, fishing, or dispersed camping are not considered as threats; however, the additive nature of recreational activities that include or contribute to activities that are larger in scale, such as off-road use and ski area expansions, are considered a threat to the species. Therefore, we conclude that recreational activities are currently a threat to the salamander, and will continue to be a threat in the future.

Livestock Grazing

Historical livestock grazing contributed to changes in the Jemez Mountains ecosystem by removing understory grasses, contributing to altered fire regimes and vegetation composition and structure, and increasing soil erosion. Livestock grazing generally does not occur within salamander habitat, because cattle concentrate outside of forested areas where grass and water are more abundant. We have no information that indicates livestock grazing is a direct or indirect threat to the salamander or its habitat. However, small-scale habitat modification, such as livestock trail establishment or trampling in occupied salamander habitat, is possible. The USFS and Valles Caldera National Preserve manage livestock to maintain fine grassy fuels, and should not limit low-intensity fires in the future. Although some small-scale habitat modification is possible, livestock are managed to maintain a grassy forest understory. Therefore, we do not consider livestock grazing to be a current threat to the salamander's habitat, nor do we anticipate that it will be in the future.

Conservation Plans Designed To Protect Salamander Habitat

The New Mexico Endemic Salamander Cooperative Management Plan and Conservation Agreement were completed in 2000 (see *Previous Federal Actions* section in the proposed listing rule for the Jemez Mountains salamander (77 FR 56482; September 12, 2012). These are nonregulatory documents and were intended to be a mechanism to provide for conservation and protection and preclude listing the Jemez Mountains salamander under the Endangered Species Act, as amended,

(U.S. General Accounting Office 1993, p. 9). The goal of these documents was to ''. . . provide guidance for the conservation and management of sufficient habitat to maintain viable populations of the species'' (New Mexico Endemic Salamander 2000, p. i.). The intent of the agreement was to protect the salamander and its habitat on lands administered by the USFS; however, they have been ineffective in preventing the ongoing loss of salamander habitat, and they are not expected to prevent further declines of the species. The Conservation Agreement and the Cooperative Management Plan do not meet the criteria of the Policy for Evaluation of Conservation Efforts policy because the Cooperative Management Plan covers only a portion of the range of the salamander, the Agreement is expired, and the Cooperative Management Plan lacks specificity for conservation actions, and lacks certainty that conservation measures will be implemented or effective.

Nonetheless, the New Mexico Endemic Salamander Team continues to meet to discuss management actions in salamander habitat, mitigation recommendations for actions occurring in salamander habitat, and research needs. Inadequate personnel and financial resources appear to be the greatest limiting factor in salamander conservation efforts.

Also, Los Alamos National Laboratory has a Best Management Practices document whereby they have committed to, whenever possible, retaining trees in order to maintain greater than 80 percent canopy cover, and avoiding activities that either compact soils or dry habitat (Los Alamos National Laboratory 2010, p. 7).

Summary

In summary of Factor A, the Jemez Mountains salamander and its habitat experience threats from historical and current fire management practices; severe wildland fire; forest composition and structure conversions; post-fire rehabilitation; forest management (including silvicultural practices); roads, trails, and habitat fragmentation; and recreation. Because these threats warm and dry habitat, they affect all behavioral and physiological functions of the species, and ultimately reduce the survivorship and reproductive success of salamanders across the entire range of the species, greatly impacting the salamander and its habitat. Further, these significant threats are occurring now and are expected to continue in the future. While conservation plans and agreements have the goal of conserving and managing the salamander, these efforts have been ineffective in preventing ongoing loss and they are not sufficient to ameliorate or remove this threat. We, therefore, determine that the present or threatened destruction, modification, or curtailment of habitat and range represents a current significant threat to the salamander, and will continue to do so in the future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Between 1960 and 1999, nearly 1,000 salamanders were collected from the wild for scientific or educational purposes (Painter 1999, p. 1). The majority (738 salamanders) were collected between 1960 and 1979 (Painter 1999, p. 1). Since 1999, very few salamanders have been collected, and all were collected under a valid permit, issued by either NMDGF or USFS. This species is difficult to maintain in captivity, and we know of no salamanders in the pet trade or in captivity for educational or scientific purposes.

In 1967, salamanders were only known from seven localities (Reagan 1967, p. 13). Only one of these localities (the ''Type Locality'' in the southern portion of the salamanders range) was described as having an ''abundant salamander population'' (Reagan 1967, p. 8). The species was originally described using specimens collected from this population, which is located in the southern portion of the species' range (Stebbins and Reimer 1950, pp. 73–80). Many researchers went to this site for collections and studies. Reagan (1967, p. 11) collected 165 salamanders from this locality between 1965 and 1967, whereas Williams collected an additional 67 of 659 salamanders found at this locality in 1970 (1972, p. 11). The information regarding the disposition of the 659 salamanders in this study is unclear, and it is possible more of these individuals were collected. Nonetheless, an unspecified but ''large percentage'' of the nearly 1,000 collected salamanders were reported from the ''Type Locality'' (Painter 1999, p. 1) and deposited as museum specimens around the country. Although surveys have been conducted at this locality since the 1990s, no salamanders have been found, suggesting that salamanders in the area may have been extirpated from overcollection. We are not aware of any other localities where the species has been extirpated from overcollection. Nevertheless, it is possible that repeated collections of individuals can lead to extirpation. We believe this is no longer a threat, because collections are stringently regulated through permits issued by NMDGF and the USFS (see Factor D, below). Due to these measures, we do not believe that collection will be a threat in the future.

Survey techniques associated with scientific inquiries and monitoring the salamander can alter salamander habitat by disturbing and drying the areas underneath the objects that provide cover, and by destroying decaying logs as a result of searching inside them. Beginning in 2011, the Service, NMDGF, and other partners are hosting annual training workshops to train surveyors on techniques that will minimize adverse effects to salamanders and their habitat, including replacing cover objects as they were found and leaving part of every log intact; however, impacts will still occur. When surveys are dispersed over multiple intervening years, impacts are likely lessened; however, when a location is repeatedly surveyed, habitat quality is diminished. We are aware of a few locations that have received impacts from repeated surveys for demographic studies conducted by NMDGF, but those studies have since concluded (NMDGF 2000, p. 1). We are currently working with the NMDGF, the USFS, and other partners on a survey protocol testing the efficacy of artificial cover objects to further minimize impacts to the salamander and its habitat.

We do not have any recent evidence of threats to the salamander from overutilization for commercial, recreational, scientific, or educational purposes, and we have no reason to believe this factor will become a threat to the species in the future. Therefore, based on a review of the available information, we do not consider overutilization for commercial, recreational, scientific, or educational purposes to be a threat to the salamander now or in the future.

C. Disease or Predation

The amphibian pathogenic fungus *Batrachochytrium dendrobatidis* (*Bd*) was found in a wild-caught Jemez Mountains salamander in 2003 on the east side of the species' range and again in another Jemez Mountains salamander in 2010 on the west side of the species' range (Cummer *et al.* 2005, p. 248; Pisces Molecular 2010, p. 3). *Batrachochytrium dendrobatidis* causes the disease chytridiomycosis, whereby the *Bd* fungus attacks keratin in amphibians. In adult amphibians, keratin primarily occurs in the skin. The symptoms of chytridiomycosis can include sloughing of skin, lethargy, morbidity, and death. Chytridiomycosis has been linked with worldwide

amphibian declines, die-offs, and extinctions, possibly in association with climate change (Pounds *et al.* 2006, p. 161).

In New Mexico, *Bd* has caused significant population declines and local extirpations in the federally threatened Chiricahua leopard frog (*Lithobates chiricahuensis*) (USFWS 2007, p. 14). It is also implicated in the decline of other leopard frogs and the disappearance of the boreal toad (*Bufo boreas*) from the State (NMDGF 2006, p. 13). Prior to the detection of *Bd* in the Jemez Mountains salamander, *Bd* was considered an aquatic pathogen (Longcore *et al.* 1999, p. 221; Cummer *et al.* 2005, p. 248). The salamander does not have an aquatic life stage and is strictly terrestrial; thus, the mode of transmission of *Bd* remains unknown. It is possible that the fungus was transported by other amphibian species that utilize the same terrestrial habitat. Both the tiger salamander (*Ambystoma tigrinum*) and the boreal chorus frog (*Pseudacris maculata*) are amphibians that have aquatic life stages and share terrestrial habitat with the Jemez Mountains salamander. In California, *Bd* has been present in wild populations of another strictly terrestrial salamander since 1973, without apparent population declines (Weinstein 2009, p. 653).

Cummer (2006, p. 2) reported that noninvasive skin swabs from 66 Jemez Mountains salamanders, 14 boreal chorus frogs, and 24 tiger salamanders from the Jemez Mountains were all negative for *Bd.* Approximately 30 additional Jemez Mountains salamanders have been tested through 2010, resulting in the second observation of *Bd* in the salamander. Overall, sampling for *Bd* from Jemez Mountains salamanders has been limited and only observed on two salamanders. The observation of *Bd* in the salamander indicates that the species is exposed to the pathogen and could acquire infection; however, whether the salamander will get or is susceptible to chytridiomycosis remains unknown. Although *Bd* can be highly infectious and can lead to disease and death, the pathogenicity of *Bd* and amphibians varies greatly among and within amphibian species.

Bd may be a threat to the Jemez Mountains salamander, because we know that this disease is a threat to many other species of amphibians, and the pathogen has been detected in the salamander. Currently, there is a lack of sufficient sampling to definitely conclude that *Bd* is a threat, but the best available information indicates that it could be a threat, and additional sampling and studies are needed. We intend to continue monitoring for the prevalence of *Bd* in the salamander to determine if disease rises to a level of a threat to the salamander now or in the future.

Ranavirus is another emerging infectious disease of potential concern for the Jemez Mountains salamander. Pathogens belonging to the genus *Ranavirus* are multi-host (Schock *et al.* 2008, p. 133) and in conjunction with *Bd* are considered the two dominant disease factors in global amphibian declines (Muths *et al.* 2012, p. 2). Like *Bd,* ranaviruses are effectively transmitted in water, and infection and disease varies among host species and developmental stages, ranavirus isolate types, co-evolution factors, and environmental factors (Miller *et al.* 2011, p. 2351). In a targeted study in Great Smokey Mountains National Park, Tennessee, the prevalence of *Ranavirus* in lungless salamanders of the family Plethodontidae was assessed. *Ranavirus* was found in all 10 species tested, including one species of *Plethodon.* While the Jemez Mountains salamander has not been tested for the presence of *Ranavirus,* and the pathogenicity of ranaviruses to plethodontid salamanders remains unknown (Gray *et al.* 2009, p. 318), this pathogen may pose a threat to the Jemez Mountains salamander. Similar to *Bd,* however, is a lack of sufficient sampling to definitely conclude that *Ranavirus* is a threat; additional sampling and studies are needed. Finally, because both *Bd* and *Ranavirus* have the potential to be significant threats to the salamander, biosecurity measures should be strictly followed by field personnel to prevent transmission of the pathogens among populations.

Indirect effects from livestock activities may include the risk of aquatic disease transmission from earthen stock ponds that create areas of standing surface water. Earthen stock tanks are often utilized by tiger salamanders, which are known to be vectors for disease (i.e., they can carry and spread disease) (Davidson *et al.* 2003, pp. 601–607). Earthen stock tanks can also concentrate tiger salamanders, increasing chances of disease dispersal to other amphibian species. Some tiger salamanders use adjacent upland areas and may transmit disease to Jemez Mountains salamanders in areas where they co-occur. However, we do not have enough information to draw conclusions on the extent or role tiger salamanders may play in disease transmission. The connection between earthen stock tanks for livestock and aquatic disease transmission to Jemez Mountains salamanders is unclear.

We are not aware of any unusual predation outside of what may normally occur to the species by predators such as snakes (Squamata) (Painter *et al.* 1999, p. 48), shrews (Soricidae), skunks (Mephitidae), black bears (*Ursus americanus*), and owls (Strigiformes).

In summary, we have no information indicating that predation is a threat to the Jemez Mountains salamander now or in the future. Also, the best available information does not indicate that disease is a threat to the salamander's continued existence now, but it could be a threat in the future. However, additional sampling and studies are needed.

D. The Inadequacy of Existing Regulatory Mechanisms

State Regulations

New Mexico State law provides some protection to the salamander. The salamander was reclassified by the State of New Mexico from threatened to endangered in 2005 (NMDGF 2005, p. 2). This designation provides protection under the New Mexico Wildlife Conservation Act of 1974 (i.e., State Endangered Species Act) (19 NMAC 33.6.8) by prohibiting direct take of the species without a permit issued from the State. The New Mexico Wildlife Conservation Act defines ''take'' or ''taking'' as harass, hunt, capture, or kill any wildlife or attempt to do so (17 NMAC 17.2.38). In other words, New Mexico's classification as an endangered species only conveys protection from collection or harm to the animals themselves without a permit. New Mexico's statutes are not designed to address habitat protection, indirect effects, or other threats to these species, and one of the primary threats to the salamander is the loss, degradation, and fragmentation of habitat, as discussed in Factor A. There is no provision for formal consultation process to address the habitat requirements of the species or how a proposed action may affect the needs of the species. Because most of the threats to the species are from effects to habitat, protecting individuals, without addressing habitat threats, will not ensure the salamander's long-term conservation and survival.

Although the New Mexico State statutes require the NMDGF to develop a recovery plan that will restore and maintain habitat for the species, the Jemez Mountains salamander does not have a finalized recovery plan. The Wildlife Conservation Act (N.M. Stat. Ann. §§ 17–2–37–46 (1995)) states that, to the extent practicable, recovery plans

shall be developed for species listed by the State as threatened or endangered. While the species does not have a finalized recovery plan, NMDGF has the authority to consider and recommend actions to mitigate potential adverse effects to the salamander during its review of development proposals. However, there is no requirement to follow the State's recommendations, as was demonstrated during the construction and realignment of Highway 126, when NMDGF made recommendations to limit impacts to the salamander and its habitat, but none of the measures recommended were incorporated into the project design (New Mexico Game Commission 2006, pp. 12–13) (see *A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range* section, above).

Federal Regulations

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the National Forest Management Act of 1976 (16 U.S.C. 1600 et seq.), the USFS is directed to prepare programmatic-level management plans to guide long-term resource management decisions. However, in practice, the provisions of these statutes that require consideration of rare species have not been able to address the threats to the Jemez Mountains salamander.

The Jemez Mountains salamander has been on the Regional Forester's Sensitive Species List since 1990 (USFS 1990, 1999, p. 14; 2007, p. 1), the same time period when the species was being reviewed for listing under the Act, as amended (See *Previous Federal Actions* above). The Regional Forester's Sensitive Species List policy is applied to projects implemented under the 1982 National Forest Management Act Planning Rule (49 FR 43026, September 30, 1982).

All existing plans continue to operate under the 1982 Planning Rule and all of its associated implementing regulations and policies; however, all new plans and plan revisions must conform to the new 2012 planning requirements (68 FR 21162; April 9, 2012). As Forest Plans are revised under this new planning requirement, National Forests will develop coarse-filter plan components, and fine-filter plan components where necessary, to contribute to the recovery of listed species and conserve proposed and candidate species (68 FR 21162; April 9, 2012). National Forests will also provide the desired ecological conditions necessary to maintain viable populations of species of conservation concern within the plan area, or to contribute to maintaining a viable population of a species of conservation concern across its range where it is not within the USFS's authority or is beyond the inherent capability of the plan area (68 FR 21162; April 9, 2012). We do not have a schedule for the Forest Plan revisions on the Santa Fe National Forest. As the Forest Plan is revised, it is unclear whether the 2012 planning requirements will provide adequate protection of the salamander on National Forest System lands. In the interim, the Forest Plans will continue to operate under the 1982 planning rule. The Santa Fe National Forest will continue developing biological evaluation reports and conducting analyses under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) for each project that will affect the salamander or its habitat. As noted above, the Santa Fe National Forest may implement treatments under the Collaborative Forest Landscape Restoration project that, if funded and effective, have the potential to reduce the threat of severe wildland fire in the southern and western part of the salamander's range over the next 10 years (USFS 2009c, p. 2). At this time, matching funding for the full implementation of the project is not certain, nor is it likely to address short-term risk of severe wildland fire. While the Regional Forester's sensitive species designation provides for consideration of the salamander during planning of activities, it does not preclude activities that may harm salamanders or their habitats on the Santa Fe National Forest.

In summary, while the New Mexico Wildlife Conservation Act provides some protections for the Jemez Mountains salamander, specifically against take, it is not designed nor intended to protect the salamander's habitat, and one of the primary threats to the salamander is the loss, degradation, and fragmentation of habitat. Further, while NMDGF has the authority to consider and recommend actions to mitigate potential adverse effects to the salamander during review of development proposals, there is no requirement to follow these recommendations. With respect to Federal protections, the salamander has been on the Regional Forester's Sensitive Species List since 1990 (USFS 1990), but while this designation provides for consideration of the salamander during planning of activities, it does not prevent activities that may harm salamanders or their habitats on the Santa Fe National Forest.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Chemical Use

The salamander has the potential to be impacted by chemical use. Chemicals are used to suppress wildfire and for noxious weed control. Because the salamander has permeable skin, and respiration occurs through the skin and physiological functions are carried out with its skin, it may be susceptible if it comes in contact with fire retardants or herbicides. Chemicals may impact individual salamanders and their habitat, but based the best available scientific and commercial data does not indicate that it is a threat to the species as a whole. Many of these chemicals have not been assessed for effects to amphibians, and none have been assessed for effects to terrestrial amphibians. We do not currently have information that chemical use is a threat to the salamander.

Prior to 2006 (71 FR 42797, July 28, 2006), fire retardant used by the USFS contained sodium ferrocyanide, which is highly toxic to fish and amphibians (Pilliod *et al.* 2003, p. 175), but its impacts on terrestrial salamanders is not known. In 2000, fire retardant was used in salamander habitat for the Cerro Grande Fire, but we have no information on the quantity or location of its use (USFS 2001, p. 1). While sodium ferrocyanide is no longer used by USFS to suppress wildfire, similar retardants and foams may still contain ingredients that are toxic to the salamander. Beginning in 2010, the USFS began phasing out the use of ammonium sulfate because of its toxicity to fish and replacing it with ammonium phosphate (USFS 2009e, p. 1), which may have adverse effects to the salamander. We do not have any scientific reports indicating whether the chemicals currently used in fire retardants or foams adversely impact terrestrial salamanders, but it is possible.

The USFS is in the process of completing an Environmental Impact Statement regarding the use of herbicides to manage noxious or invasive plants (Orr 2010, p. 2). Chemicals that could be used include 2,4,D; Clopyralid; Chorsulfuron; Dicamba; Glyphosate; Hexazinone; Imazapic; Imazapyr; Metasulfuron Methyl; Sulfometuron Methyl; Picloram; and Triclopyr (Orr 2010, p. 2). We reviewed the ecological risk assessments for these chemicals at *http://www.fs.fed.us/foresthealth/pesticide/risk.shtml,* but found few studies and data relative to amphibians. We found a single study for Sulfometuron Methyl

conducted on the African clawed frog (*Xenopus laevis*) (an aquatic frog not native to the United States). This study resulted in alterations in limb and organ development and metamorphosis (Klotzbach and Durkin 2004, pp. 4–6, 4–7). The use of chemicals listed above by hand-held spot treatments or roadside spraying (Orr 2010, p. 2) in occupied salamander habitat could result in impacts to the salamander. Because of the lack of toxicological studies of these chemicals, we do not have information indicating that these chemicals pose a threat to the salamander. However, we will continue to evaluate whether these chemicals are a threat to the salamander.

Climate Change

Our analyses under the Endangered Species 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). ''Climate'' refers to the average 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 (International Panel on Climate Change 2007, p. 78). The term ''climate change'' thus refers to a change in the average 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 (International Panel on Climate Change 2007, p. 78). Various types of changes in climate can 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 the effects of interactions of climate with other variables (e.g., habitat fragmentation) (International Panel on Climate Change 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Habitat drying affects salamander physiology, behavior, and viability; will affect the occurrence of natural events such as fire, drought, and forest die-off; and will increase the risk of disease and infection. Trends in climate change and drought conditions have contributed to temperature increases in the Jemez Mountains, with a corresponding decrease in precipitation. Because the salamander is terrestrial, constrained in range, and isolated to the higher elevations of the Jemez Mountains, continued temperature increases and precipitation decreases could threaten the viability of the species over its entire range.

Climate simulations of the Palmer Drought Severity Index (PSDI) (a calculation of the cumulative effects of precipitation and temperature on surface moisture balance) for the Southwest for the periods of 2006–2030 and 2035–2060 show an increase in drought severity with surface warming. Additionally, drought still increases during wetter simulations because of the effect of heat-related moisture loss (Hoerling and Eicheid 2007, p. 19). Annual average precipitation is likely to decrease in the Southwest as well as the length of snow season and snow depth (International Panel on Climate Change (2007b, p. 887). Most models project a widespread decrease in snow depth in the Rocky Mountains and earlier snowmelt (International Panel on Climate Change 2007b, p. 891). Exactly how climate change will affect precipitation is less certain, because precipitation predictions are based on continental-scale general circulation models that do not yet account for land use and land cover change effects on climate or regional phenomena. Consistent with recent observations in climate changes, the outlook presented for the Southwest and New Mexico predict warmer, drier, drought-like conditions (Seager *et al.* 2007, p. 1181; Hoerling and Eischeid 2007, p. 19).

McKenzie *et al.* (2004, p. 893) suggest, based on models, that the length of the fire season will likely increase further and that fires in the western United States will be more frequent and more severe. In particular, they found that fire in New Mexico appears to be acutely sensitive to summer climate and temperature changes and may respond dramatically to climate warming.

Plethodontid salamanders have a low metabolic rate and relatively large energy stores (in tails) that provide the potential to survive long periods between unpredictable bouts of feeding (Feder 1983, p. 291). Despite these specializations, terrestrial salamanders must have sufficient opportunities to forage and build energy reserves for use during periods of inactivity. As salamander habitat warms and dries, the quality and quantity of habitat decreases along with the amount of time that salamanders could be active above ground. Wiltenmuth (1997, pp. ii–122) concluded that the Jemez Mountains salamanders likely persist by utilizing moist microhabitats and they may be near their physiological limits relative to water balance and moist skin. During field evaluations, the species appeared to be in a dehydrated state. If the species has difficulty maintaining adequate skin moisture (e.g., see Wiltenmuth 1997, pp. ii–122), it will likely spend less time being active. As a result, energy storage, reproduction, and long-term persistence would be reduced.

Wiltenmuth (1997, p. 77) reported rates of dehydration and rehydration were greatest for the Jemez Mountains salamander compared to the other salamanders, and suggested greater skin permeability. While the adaptation to relatively quickly rehydrate and dehydrate may allow the salamander to more quickly rehydrate when moisture becomes available, it may also make it more susceptible and less resistant to longer dry times because it also quickly dehydrates. Dehydration affects the salamander by increasing heart rate, oxygen consumption, and metabolic rate (Whitford 1968, p. 249), thus increasing energy demand, limiting movements (Wiltenmuth 1997, p. 77), increasing concentration and storage of waste products (Duellman and Trueb 1986, p. 207), decreasing burst locomotion (stride length, stride frequency, and speed) (Wiltenmuth 1997, p. 45), and sometimes causing death. Moisture-stressed salamanders prioritize hydration over all else, thereby reducing salamander survival and persistence. Additional impacts from dehydration could include increased predation because burst locomotion is impaired (which reduces ability to escape) and increased susceptibility to pathogens resulting from depressed immunity from physiological stress of dehydration. Any of these factors, alone or in combination, could lead either to the reduction or extirpation of salamander localities, especially in combination with the threats of habitat-altering activities, as discussed under Factor A.

The International Panel on Climate Change (2007, pp. 12–13) predicts that changes in the global climate system during the 21st century will very likely be larger than those observed during the 20th century. For the next two decades, a warming of about 0.4 degrees Fahrenheit (°F) (0.2 degrees Celsius (°C)) (per decade is projected (International Panel on Climate Change 2007, p. 12). The Nature Conservancy of New Mexico analyzed recent changes in New Mexico's climate. Parts I and II of a three-part series have been completed. In Part I, the time period 1961–1990 was used as the reference condition for analysis of recent departures (1991–2005; 2000–2005). This time period is consistent with the baseline used by the National Oceanic and Atmospheric Administration and the International

Panel on Climate Change for presenting 20th-century climate anomalies and generating future projections (Enquist and Gori 2008, p. 9). In Part II, trends in climate water deficit (an indicator of biological moisture stress, or drying), snowpack, and timing of peak stream flows were assessed for the period of 1970–2006 (Enquist *et al.* 2008, p. iv). The Nature Conservancy of New Mexico concludes the following regarding climate conditions in New Mexico and the Jemez Mountains:

(1) Over 95 percent of New Mexico has experienced average temperature increases; warming has been greatest in the Jemez Mountains (Enquist and Gori 2008, p. 16).

(2) Ninety-three percent of New Mexico's watersheds experienced increasing annual trends in moisture stress during 1970–2006, that is, they have become relatively drier (Enquist *et al.* 2008, p. iv).

(3) Snowpack has declined in 98 percent of sites analyzed in New Mexico; the Jemez Mountains has experienced significant declines in snowpack (Enquist *et al.* 2008, p. iv).

(4) In the period 1980–2006, the timing of peak runoff from snowmelt occurred 2 days earlier than in the 1951–1980 period (Enquist *et al.* 2008, pp. 9, 25).

(5) The Jemez Mountains have experienced warmer and drier conditions during the 1991–2005 time period (Enquist and Gori 2008, pp. 16, 17, 23).

(6) The Jemez Mountains ranked highest of 248 sites analyzed in New Mexico in climate exposure—a measure of average temperature and average precipitation departures (Enquist and Gori 2008, pp. 10, 22, 51–58).

Although the extent of warming likely to occur is not known with certainty at this time, the International Panel on Climate Change (2007a, p. 5) has concluded that the summer season will experience the greatest increase in warming in the Southwest (International Panel on Climate Change 2007b, p. 887). Temperature has strong effects on amphibian immune systems and may be an important factor influencing susceptibility of amphibians to pathogens (e.g., see Raffel *et al.* 2006, p. 819); thus, increases in temperature in the Jemez Mountains have the potential to increase the salamander's susceptibility to disease and pathogens. As noted, we have no information that indicates disease is a threat to the species, but we intend to evaluate this issue further.

Climate Change Summary

In summary, we find that current and future effects from warmer climate conditions in the Jemez Mountains could reduce the amount of suitable salamander habitat, reduce the time period when the species can be active above ground, and increase the moisture demands and subsequent physiological stress on salamanders. Warming and drying trends in the Jemez Mountains currently are threats to the species, and these threats are projected to continue into the future.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (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. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Jemez Mountains salamander. Habitat loss, degradation, and modification through the interrelated effects from severe wildland fire, historical and current fire management practices, forest composition and structure conversions, and climate change have impacted the salamander by curtailing its range and affecting its behavioral and physiological functions. Because the salamander has highly permeable skin used for gas exchange and respiration, it must stay moist at all times or it will die. Salamanders have little control in maintaining water balance except through physically changing where they are in the environment, seeking high-moisture areas to hydrate and avoiding warm, dry areas where they would otherwise dehydrate. Warmer temperatures increase water use and dehydration, as well as increase metabolic processes, which then in turn require additional energy for the salamander. These life-history traits make hydration maintenance the most important activity of the salamander life functions. Therefore, any action or factor that warms and dries its habitat adversely affects the Jemez Mountains salamander and its ability to carry out normal behavior (foraging and reproduction).

Furthermore, historical silvicultural practices removed most of the large-diameter Douglas fir trees from the Jemez Mountains, and this change affects the salamander now and will continue to do so in the future, because a lack of these trees results in a lack of the highest quality cover objects available to Jemez Mountains salamanders now and in the future. For other related plethodontid salamanders, these types of cover objects were an important component in providing resiliency from the effects of factors that warm and dry habitat, such as climate change (See Factor A).

Finally, this species has a restricted range within one small mountain range in northern New Mexico, with no movement or expansion potential to other areas outside of its current range. This species is not able to tolerate the hot dry conditions at lower elevations that completely surround the Jemez Mountains and occupies habitat to the highest elevations in this mountain range. Within its occupied habitat where habitat features are continuous, Jemez Mountains salamander observations are often isolated. Within the restricted habitat of the Jemez Mountains, this species likely makes only very small movements. We are aware of only three populations, the two in Valles Caldera National Preserve mentioned earlier and one in Alamo Canyon, that have higher relative densities compared to all other known Jemez Mountains salamander occurrences (and even these areas are not considered as densely populated as reported from the 1970's). Combined, this information suggests recolonization or expansion opportunities, particularly after habitat alteration, and genetic exchange among populations may be limited.

On the basis of this information, we find that the threats to the Jemez Mountains salamander most significantly result from habitat loss, habitat degradation, and habitat modification, including severe wildland fire, but also alterations to habitat of varying magnitude from fire suppression, forest composition and structure conversions, post-fire rehabilitation, forest and fire management, roads, trails, habitat fragmentation, and recreation (see Factor A). Some of these threats may be exacerbated by the current and projected effects of climate change, and we have determined that the current and projected effects from climate

change are a direct threat to the Jemez Mountains salamander. Habitat drying affects salamander physiology, behavior, and viability; will affect the occurrence of natural events such as fire, drought, and forest die-off; and will increase the risk of disease and infection. Trends in climate change and drought conditions have contributed to temperature increases in the Jemez Mountains, with a corresponding decrease in precipitation. Because the salamander is terrestrial, constrained in range, and isolated to the higher elevations of the Jemez Mountains, continued temperature increases and precipitation decreases, exacerbated by climate change, could threaten the viability of the species over its entire range.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We evaluated whether the Jemez Mountains salamander is in danger of extinction now (i.e., an endangered species) or is likely to become in danger of extinction in the foreseeable future (i.e., a threatened species). The foreseeable future refers to the extent to which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species. A key statutory difference between a threatened species and an endangered species is the timing of when a species may be in danger of extinction (i.e., currently at a high risk of extinction), either now (endangered species) or in the foreseeable future (threatened species). A species that is in danger of extinction at some point beyond the foreseeable future does not meet the definition of either an endangered species or a threatened species.

Because of the fact-specific nature of listing determinations, there is no single metric for determining if a species is ''in danger of extinction'' now. In the case of the Jemez Mountains salamander, the best available information indicates that a major range reduction has not happened. However large-scale habitat destruction or modification within the highly restricted habitat for the salamander has significantly affected the behavior and physiology of the species (including increased oxygen use, increased metabolism, increased desiccation, increased need to hydrate, and reduced opportunities to forage and mate) and has likely resulted in reductions in populations and in total numbers of individuals within its range. These losses are ongoing as habitat conditions necessary for Jemez Mountains salamander survival continue to deteriorate by become warmer and drier. Without substantial conservation efforts, this trend of habitat and population loss is expected to continue and result in an elevated risk of extinction of the species.

Many of the threats faced by the species would not have historically been significant (such as wildfire), but because the entire ecological system in which this species occurs has been significantly altered, and many of the threats are interrelated, when wildfire occurs, it leaves behind a landscape-sized scar of highly modified, possibly unusable habitat for the Jemez Mountains salamander. The Jemez Mountains salamander completely relies on its environment and habitat to maintain physiological functions and to stay alive. All habitat for the Jemez Mountains salamander has been modified to its existing condition, and either has been burned with large-scale high-severity wildfire or is at risk of doing so. Effects from climate change are also resulting in warming and drying of all Jemez Mountains salamander habitat. Because Jemez Mountains salamanders are reliant on their habitat for survival, and all habitat is currently warming, drying, and either at risk of burning in wildfire, or has burned in wildfire, all extant Jemez Mountains salamanders are vulnerable. Since, part of the life-history requirements (including mating, foraging, and dispersal) necessitate the use of above ground habitat and the above ground habitat is impacted by one or more threats, no resilient populations currently exist to support persistence of the Jemez Mountains salamander. Consequently, it is in danger of extinction throughout all of its range now, and appropriately meets the definition of an endangered species (i.e., in danger of extinction).

In conclusion, after a review of the best available scientific and commercial information as it relates to the status of the species and the five listing factors, we find that the Jemez Mountains salamander is presently in danger of extinction now based on the severity of threats currently impacting the salamander. The threats are both current and expected to continue in the future, and are significant in that they limit all behavioral and physiological functions, including breathing, feeding, and reproduction and reproductive success, and extend across the entire range of the species. This meets the definition of endangered. Therefore, on the basis of the best available scientific and commercial information, we are listing the Jemez Mountains salamander as an endangered species, in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The Jemez Mountains is highly restricted in its range, and the threats to its survival occur throughout its range and are not restricted to any particular significant portion of their range. The salamander is in danger of extinction now, and thus meets the definition of endangered, and not threatened. Accordingly, our assessment and determination applies to the species throughout its entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to

the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and tribal lands.

Once this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and non-governmental organizations. In addition, pursuant to section 6 of the Act, the State of New Mexico would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Jemez Mountains salamander. Information on our grant programs that are available to aid species recovery can be found at *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for the Jemez Mountains salamander. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species habitat that may require conference or consultation or both as described in the preceding paragraph include landscape restoration projects (e.g., forest thinning); prescribed burns, wildland-urban-interface projects; forest silvicultural practices; other forest management or landscape-altering activities on Federal lands administered by the National Park Service (Bandelier National Monument), Valles Caldera National Preserve, and the Department of Energy (Los Alamos National Laboratory), and USFS; issuance of section 404 Clean Water Act permits by the Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C 42–43; 16 U.S.C 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62 for endangered plants, and at 17.72 for threatened plants. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species and for incidental take in connection with otherwise lawful activities.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this document are the staff from members of the New

Mexico Ecological Services Field Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. In § 17.11(h), add an entry for ''Salamander, Jemez Mountains'' in alphabetical order under Amphibians to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Salamander, Jemez Mountains.	*Plethodon neomexicanus*.	U.S. (NM)	U.S. (NM)	E	819	NA	NA
*	*	*	*	*	*		*

Dated: August 26, 2013.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–21583 Filed 9–9–13; 8:45 am]

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