

Transmittal

TR-410

Federal Register, Vol. 73, No. 29, pp. 8009-8018



Number TR-410

On February 12, 2008 the Board of Governors of the Federal Reserve System issued a notice of proposed rulemaking and request for public comment regarding amendments to Regulation D (Reserve Requirements of Depository Institutions) and Regulation I (Issue and Cancellation of Federal Reserve Bank Capital Stock).

Proposed Rules

Federal Register

Vol. 73, No. 29

Tuesday, February 12, 2008

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

FEDERAL RESERVE SYSTEM

12 CFR Parts 204 and 209

[Regulations D and I; Docket No. R-1307]

Reserve Requirements of Depository Institutions; Issue and Cancellation of Federal Reserve Bank Capital Stock

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Board is publishing for comment proposed amendments to Regulation D (Reserve Requirements of Depository Institutions) and Regulation I (Issue and Cancellation of Federal Reserve Bank Capital Stock). Of these, only two are intended to represent substantive changes from existing law, while the remaining amendments are intended principally as clarifications. The first of the proposed substantive amendments would amend Regulation D to implement Section 603 of the Financial Services Regulatory Relief Act of 2006 by authorizing member banks of the Federal Reserve System to enter into pass-through arrangements. Previously, member banks were statutorily prohibited from passing required reserve balances through a correspondent institution. The second of the proposed substantive amendments would eliminate the provision in the “savings deposit” definition of Regulation D limiting certain kinds of transfers from savings deposits to not more than three per month. As a result, all kinds of transfers and withdrawals from a savings deposit that must be limited in number per month would be subject to the same numeric limitation of not more than six per month. The remaining proposed amendments, intended as clarifications, would reorganize the provisions relating to deposit reporting and the calculation and maintenance of required reserves, clarify the definitions of “time deposit” and “vault cash,” and make other minor editorial changes.

DATES: Comments must be received on or before March 28, 2008.

ADDRESSES: You may submit comments, identified by Docket No. R-1307, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

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

FOR FURTHER INFORMATION CONTACT: Heatherun Sophia Allison, Senior Counsel (202/452-3565), or Kara Handzlik, Attorney (202/452-3852), Legal Division, Seth Carpenter, Assistant Director and Section Chief (202/452-2385), or Margaret Gillis DeBoer, Financial Analyst (202/452-3139), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact (202/263-4869); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 19 of the Federal Reserve Act (the “Act”) imposes reserve requirements for monetary policy purposes only on certain types of deposits and other liabilities of depository institutions. Section 19 also authorizes the Board to define by regulation the terms used in the section.

Currently, reserve requirement ratios for “transaction accounts” (accounts used to make payments to third parties, such as checking accounts) are graduated between three and ten percent. Reserve requirement ratios for “nonpersonal time deposits” and “Eurocurrency liabilities” are currently zero percent. Although Section 19 expressly defines accounts with certain transfer characteristics as “transaction accounts,” Section 19 also authorizes the Board “to determine, by regulation or order, that an account or deposit is a transaction account if such account or deposit may be used to provide funds directly or indirectly for the purpose of making payments or transfers to third persons or others.”¹ The provisions of Section 19 are implemented by the Board’s Regulation D.

Section 11(a)(2) of the Act authorizes the Board to require any depository institution “to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates.”² These provisions are specifically implemented in the computation and maintenance provisions of Regulation D (12 CFR 204.3).

II. Pass-Through Accounts

Section 19(c)(1) of the Act provides that depository institutions shall maintain required reserves in the form of a balance maintained for such purposes by a depository institution in an account at a Federal Reserve Bank or in the form of vault cash. Prior to 2006, Section 19(c)(1)(B) of the Act provided that non-member banks could maintain required reserves in an account at a depository institution that itself maintained required reserve balances at a Federal Reserve Bank, known as a “pass-through account.” The Financial Services Regulatory Relief Act of 2006, Public Law 109-351 (Oct. 13, 2006), amended Section 19(c)(1)(B) of the Act to remove the language restricting pass-through arrangements to non-member banks. Accordingly, all depository institutions may if they choose maintain required reserves in a pass-through

¹ Section 19(b)(1)(F) of the Federal Reserve Act, 12 U.S.C. 461(b)(1)(F).

² 12 U.S.C. 248(a).

account with a correspondent depository institution.

To implement the pass-through provisions of the Financial Services Regulatory Relief Act of 2006, the Board proposes to amend the definition of "pass-through account" in § 204.2(l) and the rules for pass-through arrangements in § 204.3(i) to remove references limiting such arrangements to non-member banks.

III. Transfers From Savings Deposits

A. Six-Three Distinction

The Board has established the criteria for distinguishing between "transaction accounts" and "savings deposits"³ in Regulation D based on the ease with which the depositor may make transfers (payments to third parties) or withdrawals (payments directly to the depositor) from the account. Generally speaking, the more convenient it is to make withdrawals or transfers from an account, the more likely it is that the account will be used for making payments or transfers to third parties as opposed to holding savings. Accordingly, Regulation D limits the number of certain convenient kinds of transfers or withdrawals that may be made in a single month from an account if that account is to be classified as a "savings deposit."⁴ "Convenient" transfers or withdrawals for this purpose include preauthorized or automatic transfers (such as overdraft protection transfers or arranging to have bill payments deducted directly from the depositor's savings account), telephonic transfers (made by the depositor telephoning or sending a fax or online instruction to the bank and instructing the transfer to be made), and transfers by check, debit card, or similar order payable to third parties.

Regulation D currently limits the number of "convenient" transfers and withdrawals from savings deposits (*i.e.*, preauthorized, automatic, or telephonic transfers or withdrawals) to not more than six per month. Within this overall limit of six, not more than three transfers or withdrawals may be made by check, debit card, or similar order made by the depositor and payable to

third parties. Transfers and withdrawals from savings deposits that are less convenient are not limited in number by the "savings deposit" definition in Regulation D. For example, transfers or withdrawals made "by mail, messenger, automated teller machine, or in person or * * * made by telephone (via check mailed to the depositor)" may be made from savings deposits without numerical limit.

The distinction between different types of limited transfers or withdrawals from savings deposits may be referred to as the "six-three distinction" (*i.e.*, six convenient transfers or withdrawals, of which up to three may be by check, debit card, or similar order). The six-three distinction in the Regulation D definition of "savings deposit" is derived from the "money market deposit account" or "MMDA" created by the Garn-St.Germain Depository Institutions Act of 1982 (the "1982 Act"). In the 1982 Act, Congress sought to create an account to meet the perceived market need for an interest-bearing deposit account that was both directly competitive with money market mutual funds and not the functional equivalent of a reservable transaction account. The definition of "transaction account" in Regulation D at that time included any account from which more than three preauthorized, automatic or telephonic transfers or withdrawals per month were permitted. Congress therefore specified in the 1982 Act that the MMDA was not to be considered a "transaction account" (and, therefore, not subject to reserve requirements) even though it permitted "three preauthorized or automatic transfers and three third-party transfers" per month.

The legislative history of the 1982 Act did not clarify whether this authorization was intended to allow "three preauthorized or automatic transfers" and a separate set of "three third-party transfers." It simply noted that "third-party transfers" were intended to include checks. The existing provisions of Regulation D, however, considered "preauthorized or automatic" transfers to include transfers to third parties as well. To harmonize the legislative history of the 1982 Act with the existing provisions of Regulation D, the MMDA was regulatorily defined to permit a depositor who did not write any checks in a particular month to make up to six preauthorized or automatic transfers per month. In no event, however, would more than three checks per month be permitted.

In 1986, the statutory provisions that authorized the MMDA and that

exempted the MMDA from the "transaction account" definition expired. In subsequent rulemakings, however, the Board preserved the transfer and withdrawal characteristics of the MMDA in Regulation D by merging the definition of "MMDA" into the definition of "savings deposit." Thus, any deposit that permitted up to six preauthorized, automatic, or telephonic transfers or withdrawals, including not more than three transfers made by check, debit card, or similar third-party order, was classified under Regulation D as a "savings deposit."

B. Proposed Amendment Eliminating "Three" Limit

Depository institutions have identified the six-three distinction in Regulation D as a regulatory burden in various contexts, as distinctions that have historically been drawn between "six" or "three" transfers or withdrawals are overtaken by developments in payments technology. In light of the foregoing, the Board believes it would now be appropriate to amend Regulation D to do away with the sublimit of three that applies to checks and drafts and simply limit all "convenient" transfers to not more than six per month.⁵ Eliminating the "six-three distinction" and replacing it with a simpler "six-per-month" rule for all types of "convenient" transfers or withdrawals from savings deposits would reduce some aspects of the current limitations that are burdensome to the private sector and that may interfere with the broader use and acceptance of developing electronic payments technologies.

A "six-per-month" rule could result in a slight decrease in aggregate transaction account balances, as those accounts that permit more than three but less than six transfers by check or debit card per month would shift from their current classification as "transaction accounts" to "savings deposits." The extent of such a decrease, if any, is difficult to predict given the lack of data on the distribution of frequency of withdrawals and transfers from various accounts. The net effects, however, seem unlikely to be large.

IV. Other Proposed Amendments

A. Harmonization With Existing Usage or Staff Guidance

Certain proposed amendments would amend definitions of existing terms to harmonize them with existing usage, practice, or staff guidance. For example,

⁵ 12 CFR 204.2(d)(2) (definition of "savings deposit").

³ The Board has by regulation included "savings deposits" held by nonnatural persons (*i.e.*, anyone other than individuals) in the Regulation D definition of "nonpersonal time deposits." Accordingly, such deposits are subject to a zero percent reserve requirement. Savings deposits held by natural persons (individuals), on the other hand, are not subject to reserve requirements at all. As a practical matter, therefore, "savings deposits" of all kinds are not reservable; the distinction between personal and nonpersonal savings deposits is significant for deposit reporting purposes only.

⁴ 12 CFR 204.2(d)(2) (definition of "savings deposit").

the proposed amendments would add new provisions to the definition of "vault cash" in § 204.2(k) in order to incorporate the substance of numerous staff opinions that explain the circumstances under which vault cash held at ATMs and in other arrangements can qualify as "vault cash" for purposes of meeting reserve requirements. Also, the proposed amendments would also clarify the definition of "time deposit" in § 204.2(c) to incorporate staff guidance that has been issued over the years in response to numerous inquiries about the meaning of "additional" early withdrawal penalties and when such penalties must be imposed.

B. Reorganization of Reporting, Computation, and Maintenance Provisions

The remaining proposed amendments would reorganize the existing provisions of Regulation D relating to deposit reporting and to the computation and maintenance of required reserves. These proposed amendments would split the existing provisions on these subjects in current § 204.3 into three separate sections. First, the provisions related to submitting reports of deposits would be set forth in proposed § 204.3. Second, the provisions relating to computation of required reserves would be set forth in proposed § 204.4. Third, the provisions relating to maintenance of required reserves would be set forth in proposed § 204.5. In addition, the proposed amendments would move the reserve requirement ratio provisions of current § 204.9 into the proposed separate section relating to computation of required reserves (proposed § 204.4). Finally, the proposed amendments renumber the provisions of the regulation relating to transitional adjustments, emergency reserves, and supplemental reserves in order to reflect the creation of three separate sections out of current § 204.3.

V. Section-By-Section Analysis

Section 204.2(c)(1) Definition of "Time Deposit"

The Board proposes to amend the definition of "time deposit" to clarify the application of early withdrawal penalties when there has been more than one partial early withdrawal from a time deposit. Current § 204.2(c)(1) provides that an early withdrawal penalty must be charged on any amount withdrawn from a time deposit "from within six days after the date of deposit." The definition contemplates that an early withdrawal might be an early withdrawal of the entire deposit

amount or of a partial withdrawal, that is, a withdrawal of some amount that is not the entire deposit amount. In either case, if part or all of the time deposit is withdrawn within six days after the date of the initial deposit, the specified early withdrawal penalty must be imposed on the amount so withdrawn.

The current definition further states that "[a] time deposit from which partial early withdrawals are permitted must impose additional early withdrawal penalties of at least seven days' simple interest on amounts withdrawn within six days after each partial withdrawal." This provision has led to numerous inquiries about the meaning of the terms "additional" and "early" in this provision.⁶ The Board intends to clarify that withdrawals cannot be made more frequently than every seven days from a deposit that is classified as a "time deposit" unless a penalty of at least seven days' simple interest is charged on amounts so withdrawn. Accordingly, the Board proposes to amend the definition to remove the references to "early" and "additional" in the second sentence of the definition and to clarify that "early" withdrawals, when made other than in the first six days, are withdrawals that are within six days of the last withdrawal.

Section 204.2(d)(2) Definition of "Savings Deposit"

As explained in III.A.–III.B., *supra*, The Board proposes to amend the definition of "savings deposit" to eliminate the provision limiting certain kinds of transfers from savings deposits to not more than three per month. As a result, all kinds of transfers and withdrawals from a savings deposit that must be limited in number per month would be subject to the same numeric limitation of not more than six per month.

Section 204.2(k) Definition of "Vault Cash"

The Board proposes to amend the definition of "vault cash" to incorporate the substance of prior written staff guidance on when currency and coin that is not held at a physical location of the depository institution⁷ may count as "vault cash." The proposed

amendments divide the definition of "vault cash" into two subsections: one dealing with vault cash "held at a physical location of the depository institution * * * from which the institution's depositors may make cash withdrawals;" and the other dealing with vault cash "held at an alternate physical location." The proposed amendments expand primarily the second proposed subsection to incorporate prior guidance.

From 1917 to 1959, the Act permitted member banks to satisfy reserve requirements exclusively with balances in their accounts at Federal Reserve Banks. In 1959, Congress amended Section 19 of the Act to provide that the Board, "under such regulations as it may prescribe, may permit member banks to count all or part of their currency and coin as reserves required under this section."⁸ The 1959 legislation was intended "to remove some generally recognized inequities that now exist in the structure of reserve requirements applicable to member banks * * *." ⁹ Specifically, the legislative history recognized that currency and coin in a member bank's vault and a balance in a member bank's account at a Federal Reserve Bank were "interchangeable" as liabilities of the Reserve Banks.¹⁰ For operational reasons, however, "country banks" generally found it necessary to hold more currency and coin in their vaults than did "reserve city banks" or "central reserve city banks."¹¹ Between 1959 and 1960, the Board promulgated a series of amendments to Regulation D that phased in the ability of member banks to count all of their currency and coin in satisfying reserve requirements.

In 1970, the Board issued an interpretation of Regulation D relating to the eligibility of currency or coin held principally for numismatic value to satisfy member bank reserve requirements.¹² The Board was concerned that permitting silver coin to count towards reserve requirements could encourage speculation in silver; specifically, that the banks were holding either for their own accounts with the expectation of earning a premium over face value, or were holding under written or oral agreements with specific customers whereby the customers retained the right to or an option on

⁶ *E.g.*, whether two penalties (an "early withdrawal penalty" and an "additional early withdrawal penalty") must be charged on any partial early withdrawal; whether one penalty must be charged on a partial early withdrawal within the first six days of the deposit but two must be charged on subsequent partial early withdrawals; the meaning of "early withdrawal" as applied to a partial withdrawal made some time other than within the first six days, etc.

⁷ *See, e.g.*, See FRRS ¶ 2–307.2 (rented vault); Staff Opinion of Aug. 9, 1982 (ATMs).

⁸ Act of July 28, 1959 (73 Stat. 263).

⁹ S. Rep. No. 86–195, at 1 (1959); H. Rep. No. 86–403, at 3 (1959).

¹⁰ S. Rep. No. 86–195, at 3 (1959); H. Rep. No. 86–403, at 3 (1959).

¹¹ S. Rep. No. 86–195, at 3 (1959); H. Rep. No. 86–403, at 3 (1959).

¹² Former 12 CFR 204.116 (1979).

those coins.¹³ Accordingly, the Board specified in the 1970 interpretation that in order for a member bank to count currency or coin towards reserve requirements, the member bank must have “the full and unrestricted right to use [such currency or coin] at any time to meet depositors’ claims * * *.”¹⁴ The 1970 interpretation also specified that a bank does not have such a “full and unrestricted right” if the bank is prevented, legally or practically * * * from using the currency or coin at any time to meet customer’s demands.”¹⁵ The 1970 interpretation further specified that when assessing arrangements with respect to such currency and coin, “[a]n agreement between the bank and its customer that the currency or coin is to be regarded as ‘owned’ by the bank for purposes of reserve requirements is not determinative. Whether currency or coin may be counted as reserves depends on the underlying nature of the transaction * * *.”¹⁶

The 1980 Regulation D amendments implementing the Monetary Control Act of 1980 introduced the term “vault cash” as a defined term. The 1980 amendments defined “vault cash” to mean “currency and coin owned and held by a depository institution that may, at any time, be used to satisfy depositors’ claims,” incorporating into the new definition the principles of bank ownership and availability at any time to satisfy depositors’ claims from the 1970 interpretation. Subsequent Board guidance and staff opinions provided additional clarification of these requirements.

For example, vault cash “owned and held” by the depository institution was further clarified to include the requirements that (A) the depository institution claiming the currency or coin in question as “vault cash” must book the currency or coin as an asset,¹⁷ and that (B) no other institution may claim the currency and coin towards satisfying its reserve requirements.¹⁸ The ability to use vault cash “at any time * * * to satisfy depositor’s claims” was initially viewed as requiring the currency or coin to be “immediately” available for that purpose to the bank or a branch of the bank.¹⁹ For currency and coin to be “immediately available,” subsequent

staff opinions specified that it be “reasonably nearby” a physical location (from which depositors may make cash withdrawals) of the institution claiming the vault cash towards satisfying reserve requirements.²⁰ To be “reasonably nearby,” in turn, staff believed that a depository institution customer who demanded cash at the beginning of a banking day should be able to receive that cash in satisfaction of his or her demand before the close of business on the same calendar day. Accordingly, staff opined that a depository institution must be able to recall the currency and coin in question from the remote location by not later than 4 p.m. if the recall is requested by 10 a.m. on the same calendar day for the currency and coin to constitute “vault cash.” Staff guidance further clarified that depository institutions must establish the ability to recall “vault cash” within the specified time frame by having in place a written cash delivery plan (together with written contractual arrangements necessary to implement the plan) that permits recall of the “vault cash” to the depository institution relying solely on ground transportation.

The proposed amendments would incorporate all of the foregoing clarifications and requirements into six new subsections applicable to “vault cash” held “at an alternate physical location” of the depository institution claiming the currency or coin in question towards satisfying its reserve requirements.²¹ Finally, the proposed amendments re-number current § 204.2(k)(2)–(3) to 204.2(k)(3)–(4), to take into account the new proposed §§ 204.2(k)(1)–(2). The substance of those provisions, however, is unchanged by the proposed amendments.

Section 204.2(l) Definition of “Pass-through Account”

The Board proposes to amend the definition of “pass-through account” to eliminate the language restricting pass-through account arrangements to non-member banks. The proposed amendments would also move the provisions relating to pass-through accounts currently set forth in § 204.3(i)

to a new § 204.5(d), “Maintenance of Required Reserves,” discussed *infra*.

Section 204.2(v) Definition of “Clearing Balance Allowance”

The proposed amendments would add a new definition of “clearing balance allowance” to Regulation D. The term replaces the undefined term “required charge-free band” that appears twice in current § 204.3(h) (concerning carryovers of excess reserves or deficiencies in reserves) because that term is no longer used in current practice. The proposed amendments would also move the existing carryover provisions in current § 204.3(h) to a new paragraph (e) under proposed § 204.5, “Maintenance of Required Reserves,” discussed *infra*.

Section 204.2(w) Definition of “Contractual Clearing Balance”

The proposed amendments would add a new definition of “contractual clearing balance” to Regulation D. The term replaces the undefined term “required clearing balance” in current § 204.3(h) because the term “contractual clearing balance” is more commonly used and more accurately describes the relationship created thereby.

Section 204.3 Reporting and Location

Current § 204.3 of Regulation D sets forth the regulatory provisions governing the calculation of required reserves, the maintenance of required reserves, and the submission of reports of deposits (from which required reserves are calculated). The Board proposes to re-organize these provisions into three separate subsections that address these issues in their chronological order: the submission of reports of deposits, the calculation of required reserves based on those reports of deposits, and the subsequent maintenance of required reserves based on the calculation of required reserves. The proposed amendments are not intended to make substantive changes to these provisions, but rather are intended to re-organize them for greater ease of reference and to make minor editorial changes for clarity.

The first of the proposed three new paragraphs, proposed § 204.3, incorporates the existing regulatory provisions relating to submission of reports of deposits, including provisions on determining the location of the reporting institution for deposit reporting and reserves maintenance purposes.²² The proposed amendments would also include in this paragraph

²⁰ See FRRS ¶ 2–307.2.

²¹ The proposed amendments do not include the “legitimate business purpose” specification from written staff guidance on vault cash held in alternate physical locations (*see, e.g.*, FRRS ¶ 2–365.2). The Board believes that full compliance with the other five specifications proposed to be incorporated into the definition should ordinarily suffice to establish the legitimacy of the arrangement. The Board requests comment on whether this specification should be included in the definition of “vault cash.”

²² Current subsections 204.3(a)(1) last sentence, 204.3(a)(2), and 204.3(b)(2).

¹³ 35 FR 18957 (Dec. 15, 1970).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See, e.g.*, F.R.R.S. ¶ 2–306.9; Staff Op. of Aug. 9, 1982.

¹⁸ *See, e.g.*, F.R.R.S. ¶ 2–307.2; Staff Op. of Aug. 9, 1982.

¹⁹ *See* FRRS ¶ 2–306.9; Staff Opinion of Aug. 9, 1982.

regulatory provisions regarding the allocation of the low reserve tranche among related depository institutions²³ and regarding overdrafts in related transaction accounts²⁴ because these provisions must be applied in determining the appropriate levels of deposits to report.

Proposed § 204.3(a) consists of the text of the first sentence of current § 204.3(a)(2)(i), with two proposed amendments. The first proposed amendment would clarify the authority of the Board or a Federal Reserve Bank to require reports of deposits or any other form or statement from a depository institution relating to reserve requirements. The second proposed amendment would clarify where reports of deposits are to be submitted in light of the account location provisions of the regulation.

Proposed § 204.3(b) sets forth without change the text of the second sentence of current § 204.3(a)(2)(i).

Proposed § 204.3(c) sets forth without change the text of the third (and last) sentence of current § 204.3(a)(1).

Proposed § 204.3(d) sets forth, with one change, the text of current § 204.3(a)(3). The one change would conform the section number reference to the reserve requirement ratios that are currently set forth in § 204.9 but would be moved to proposed § 204.4(f) in the proposed amendments.

No changes are proposed to current § 204.3(e), dealing with computation of transaction accounts for deposit reporting purposes.

Proposed § 204.3(g) sets forth, with two amendments, the text of current § 204.3(b)(2). The first amendment would provide that a depository institution may be considered to be located at the location specified in the institution's articles of incorporation or as specified by the institution's primary regulator. The Board proposes this amendment in light of the fact that an institution may move its head office or primary location from that specified in its charter or organizing certificate, but that the charter or organizing certificate may not reflect that move. In such cases, the move instead may be reflected in the institution's revised articles of incorporation or otherwise as recognized by the institution's primary regulator. The second amendment would conform the internal references to §§ 204.3(b)(2)(i) and 204.3(b)(2)(ii) to §§ 204.3(g)(1) and 204.3(g)(2), respectively.

Section 204.4 Computation of Required Reserves

The Board proposes to move the provisions relating to computation of required reserves from where they appear in current §§ 204.3(c), 204.3(d), and 204.3(f) to a new separate paragraph, proposed § 204.4, "Computation of Required Reserves." No substantive changes are intended.

Proposed § 204.4(a) sets forth, without change, the text of current § 204.3(f)(1).

Proposed § 204.4(b) sets forth, without change, the text of current § 204.3(f)(2).

Proposed § 204.4(c) sets forth, without change, the text of current § 204.3(f)(3).

Proposed §§ 204.4(d) and 204.4(e) set forth the text of current § 204.3(c)(1) and the first sentence of § 204.3, respectively, with editorial amendments for clarity.

Proposed § 204.4(f) sets forth the text of the second sentence of current § 204.3(c)(1), with editorial amendments for clarity. Proposed § 204.4(f) also incorporates, with editorial amendments for clarity, the table of reserve requirements ratios currently set forth in § 204.9 so that all regulatory provisions relating to computation of required reserves are located in the same section.

Section 204.5 Maintenance of Required Reserves

The Board proposes to move the existing provisions regarding maintenance of required reserves, including the provisions on maintenance of required reserves pursuant to pass-through agreements, to a new § 204.5, "Maintenance of Required Reserves." No substantive changes are intended.

Proposed § 204.5(a)(1) sets forth the text of current § 204.3(b)(1) with various amendments. First, the amendments would delete the reference to "non-member institutions" in discussing pass-through arrangements. Second, the amendments would update the language (e.g., "maintain required reserves" rather than "hold reserves") for consistency with current usage. Third, the amendments would conform the numeric reference from current § 204.3(i) to proposed § 204.5(d) for the regulatory provisions on pass-through arrangements.

Proposed § 204.5(a)(2) sets forth the text of current § 204.3(i)(3)(i) with editorial amendments for clarity.

Proposed § 204.5(b)(1) sets forth the text of current § 204.3(c)(2) with editorial amendments for clarity.

Proposed § 204.5(b)(2) sets forth the text of the first and third sentences of current § 204.3(d) with editorial amendments for clarity.

Proposed § 204.5(c) sets forth the text of current § 204.3(g) with an amendment to conform the name of the Board's Regulation J (12 CFR Part 210) to the current version of the regulation.

Proposed § 204.5(d) sets forth the regulatory provisions for "pass-through accounts" in current § 204.3(i), dividing them into four new paragraphs, proposed §§ 204.5(d)(1) through 204.5(d)(4). Proposed § 204.5(d)(1) sets forth the text from current § 204.3(i)(1)(i) with various amendments. First, the amendments would delete the reference to "nonmember" depository institutions, since pass-through arrangements are no longer statutorily restricted to nonmember depository institutions. Second, the amendments would clarify that depository institutions whose required reserve balances are zero may serve as pass-through correspondents. Third, the amendments conform the internal references to section numbers and make other editorial changes for clarity.

Proposed § 204.5(d)(2) sets forth, without change, the text from current § 204.3(i)(1)(ii).

Proposed § 204.5(d)(3) sets forth the text of current § 204.3(i)(2), with an amendment to delete the obsolete reference to Reserve Bank permission for alternate account locations. Determination of account location is addressed in current § 204.3(b) (proposed § 204.3(g)).

Proposed § 204.5(d)(4) sets forth, in four new subsections, the text of current §§ 204.3(i)(3)(ii)–(v). Proposed § 204.5(d)(4)(A) sets forth the text of current § 204.3(i)(3)(ii) with an amendment deleting the reference to more than one depository institution account at a Federal Reserve Bank. Proposed §§ 204.5(d)(4)(B) and 204.5(d)(4)(C) set forth, without change, the text of current §§ 204.3(i)(3)(iii) and 204.3(i)(3)(iv), respectively. Proposed § 204.5(d)(4)(D) sets forth the text of current § 204.3(i)(3)(v) with an amendment conforming the section number reference to the supplemental reserves provisions of the regulation (current § 204.6, proposed § 204.10).

Proposed § 204.5(e) sets forth the text of current § 204.3(h), with amendments deleting obsolete references to "required clearing balance" and to "required charge-free band." Other editorial amendments are made for clarity.

Section 204.6 Charges for Reserve Deficiencies

The Board proposes to move the existing provisions regarding charges for reserve deficiencies from current § 204.7 to proposed § 204.6 and to revise the

²³ Current § 204.3(a)(3).

²⁴ Current § 204.3(e).

current caption of the section (from "Penalties" to "Charges for Reserve Deficiencies"). The four proposed sections in proposed § 204.6 set forth the text of current § 204.7, deleting provisions describing guidelines for waivers by Reserve Banks of small charges. The Board believes that the deletion of this material is appropriate because it describes only in part the extent of the discretion of the Reserve Banks in this regard and to avoid the implication that Reserve Banks must waive charges in certain of the cases described.

Section 204.7 Transitional Adjustments in Mergers

The Board proposes to re-designate the provision from current § 204.4 to proposed § 204.7. No other changes to the section are proposed.

Section 204.8 International Banking Facilities

No changes are proposed to § 204.8.

Section 204.9 Emergency Reserve Requirement

The Board proposes to re-designate the provision from current § 204.5 to proposed § 204.9. No other changes to the section are proposed.

Section 204.10 Supplemental Reserve Requirement

The Board proposes to re-designate the provision from current § 204.6 to proposed § 204.10. No other changes to the section are proposed.

Regulation I Section 209.2(c)(1) Location of Bank—General Rule

The Board proposes to amend this provision of Regulation I to conform it to the proposed § 204.3(g) of Regulation D, discussed *supra*. Specifically, the amendment would provide that a depository institution may be considered to be located at the location specified in the institution's articles of incorporation or as specified by the institution's primary regulator. The Board proposes this amendment in light of the fact that an institution may move its head office or primary location from that specified in its charter or organizing certificate, but that the charter or organizing certificate may not reflect that move. In such cases, the move instead may be reflected in the institution's revised articles of incorporation or otherwise as recognized by the institution's primary regulator.

VI. Form of Comment Letters

Comment letters should refer to Docket No. R-____ and, when possible,

should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to regs.comments@federalreserve.gov.

VII. Solicitation of Comments Regarding Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rule is clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

VIII. Initial Regulatory Flexibility Analysis

In accordance with Section 3(a) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*), the Board has reviewed the proposed amendments to Regulation D and Regulation I. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the objectives of the proposal.* The Board is proposing to amend Regulation D and Regulation I in order to conform the regulation to the provisions of the Financial Services Regulatory Relief Act of 2006, to modernize the regulation in light of technological developments, to reduce regulatory burden, and to simplify regulatory compliance. Section 19 of the Act was enacted to impose reserve requirements on certain deposits and other liabilities of depository institutions for monetary policy purposes. Section 19 also authorizes the Board to promulgate such regulations as it may deem necessary to effectuate the purposes of the section. The Board believes that the proposed amendment to Regulation D is within the Congress' broad grant of authority to the Board to adopt provisions that carry out the purposes of Section 19 of the Act.

2. *Small entities affected by the proposal.* The proposal would affect all depository institutions that are currently subject to transaction account reserve requirements. The Board estimates that there are currently approximately 8,195 depository institutions that are subject to transaction account reserve requirements. The Board estimates that approximately 3,800 of these institutions could be considered small entities with assets of \$165 million or less. The proposed rule, if adopted, may

reduce the level of reservable transaction account balances for all depository institutions because "savings deposits" that previously permitted more than three but less than six "convenient" transfers would be classified as nonreservable "savings deposits" under the proposed rule, but are currently classified as reservable "transaction accounts."

3. *Other federal rules.* The Board believes that no federal rules duplicate, overlap, or conflict with the proposed revisions to the Interpretation.

4. *Significant alternatives to the proposed revisions.* The Board welcomes comment on any significant alternatives that would minimize the impact of the proposed rule on small entities.

IX. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The proposed rule contains no requirements subject to the PRA.

Test of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside arrows while language that would be deleted is set off with brackets.

List of Subjects in 12 CFR Parts 204 and 209

Banks, Banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR parts 204 and 209 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. Section 204.2 is amended by revising paragraphs I(1)(i) introductory text, (d)(2), (k) and (l), and adding new paragraphs (v) and (w) to read as follows:

§ 204.2 Definitions.

* * * * *

(c) * * *

(1) * * *

(i) A deposit [that] ►from which◄ the depositor does not have a right and is not permitted to make withdrawals [from] within six days after the date of

deposit unless the deposit is subject to an early withdrawal penalty of at least seven days' simple interest on amounts withdrawn within the first six days after deposit.¹ A time deposit from which partial [early] withdrawals are permitted ►within six days after the date of the last withdrawal◀ must impose [additional] early withdrawal penalties of at least seven days' simple interest on amounts ►so◀ withdrawn [within six days after each partial withdrawal]. If [such additional] early withdrawal penalties are not imposed, the account ceases to be a time deposit. The account may become a savings deposit if it meets the requirements for a saving deposit; otherwise it becomes a transaction account. Time deposit includes funds—

* * * * *

(d) * * *

(2) The term savings deposit also means: A deposit or account, such as an account commonly known as a passbook savings account, a statement savings account, or as a money market deposit account (MMDA), that otherwise meets the requirements of § 204.2(d)(1) and from which, under the terms of the deposit contract or by practice of the depository institution, the depositor is permitted or authorized to make no more than six transfers and withdrawals, or a combination of such

¹ A time deposit, or a portion thereof, may be paid during the period when an early withdrawal penalty would otherwise be required under this part without imposing an early withdrawal penalty specified by this part:

(a) Where the time deposit is maintained in an individual retirement account established in accordance with 26 U.S.C. 408 and is paid within seven days after establishment of the individual retirement account pursuant to 26 CFR 1.408-6(d)(4), where it is maintained in a Keogh (H.R. 10) plan, or where it is maintained in a 401(k) plan under 26 U.S.C. 401(k); *Provided* that the depositor forfeits an amount at least equal to the simple interest earned on the amount withdrawn;

(b) Where the depository institution pays all or a portion of a time deposit representing funds contributed to an individual retirement account or a Keogh (H.R. 10) plan established pursuant to 26 U.S.C. 408 or 26 U.S.C. 401 or to a 401(k) plan established pursuant to 26 U.S.C. 401(k) when the individual for whose benefit the account is maintained attains age 59½ or is disabled (as defined in 26 U.S.C. 72(m)(7)) or thereafter;

(c) Where the depository institution pays that portion of a time deposit on which federal deposit insurance has been lost as a result of the merger of two or more federally insured banks in which the depositor previously maintained separate time deposits, for a period of one year from the date of the merger;

(d) Upon the death of any owner of the time deposit funds;

(e) When any owner of the time deposit is determined to be legally incompetent by a court or other administrative body of competent jurisdiction; or

(f) Where a time deposit is withdrawn within 10 days after a specified maturity date even though the deposit contract provided for automatic renewal at the maturity date.

transfers and withdrawals, per calendar month or statement cycle (or similar period) of at least four weeks, to another account (including a transaction account) of the depositor at the same institution or to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction, [and no more than three of the six such transfers may be made] ►or◀ by check, draft, debit card, or similar order made by the depositor and payable to third parties. A preauthorized transfer includes any arrangement by the depository institution to pay a third party from the account of a depositor upon written or oral instruction (including an order received through an automated clearing house (ACH)) or any arrangement by a depository institution to pay a third party from the account of the depositor at a predetermined time or on a fixed schedule. Such an account is not a transaction account by virtue of an arrangement that permits transfers for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer) or that permits transfers of funds from this account to another account of the same depositor at the same institution or permits withdrawals (payments directly to the depositor) from the account when such transfers or withdrawals are made by mail, messenger, automated teller machine, or in person or when such withdrawals are made by telephone (via check mailed to the depositor) regardless of the number of such transfers or withdrawals.⁴

* * * * *

(k)(1) *Vault cash* means United States currency and coin owned and [held]

⁴ In order to ensure that no more than the permitted number of withdrawals or transfers are made, for an account to come within the [definitions in paragraph (d)(2) of this section,] ►definition of "savings deposit,"◀ a depository institution must either:

(a) Prevent withdrawals or transfers of funds from this account that are in excess of the limits established by paragraph (d)(2) of this section, or

(b) Adopt procedures to monitor those transfers on an ex post basis and contact customers who exceed the established limits on more than occasional basis. For customers who continue to violate those limits after they have been contacted by the depository institution, the depository institution must either close the account and place the funds in another account that the depositor is eligible to maintain or take away the transfer and draft capacities of the account. An account that authorizes withdrawals or transfers in excess of the permitted number is a transaction account regardless of whether the authorized number of transactions are actually made. For accounts described in paragraph (d)(2) of this section, the institution at its option may use, on a consistent basis, either the date on the check, draft, or similar item, or the date the item is paid in applying the limits imposed by that section.

►booked as an asset◀ by a depository institution that may, at any time, be used to satisfy [depositors'] claims ►of that depository institution's depositors and that meets the requirements of paragraph (k)(2)(i) or (k)(2)(ii) of this section◀.

(2) *Vault cash* ►must be either:

(i) Held at a physical location of the depository institution (including the depository institution's proprietary ATMs) from which the institution's depositors may make cash withdrawals; or

(ii) Held at an alternate physical location if—

(A) The depository institution claiming the currency and coin as vault cash at all times retains full rights of ownership in and to the currency and coin held at the alternate physical location;

(B) The depository institution claiming the currency and coin as vault cash at all times books the currency and coin held at the alternate physical location as an asset of the depository institution;

(C) No other depository institution claims the currency and coin held at the alternate physical location as vault cash in satisfaction of that other depository institution's reserve requirements;

(D) The currency and coin held at the alternate physical location is reasonably nearby a location of the depository institution claiming the currency and coin as vault cash at which its depositors may make cash withdrawals (an alternate physical location is considered "reasonably nearby" if the depository institution that claims the currency and coin as vault cash can recall the currency and coin from the alternate physical location by 10 a.m. and, relying solely on ground transportation, receive the currency and coin not later than 4 p.m. on the same calendar day at a location of the depository institution at which its depositors may make cash withdrawals); and

(E) The depository institution claiming the currency and coin as vault cash has in place a written cash delivery plan, and written contractual arrangements necessary to implement that plan, that demonstrate that the currency and coin can be recalled and received in accordance with the requirements of paragraph (k)(2)(ii)(D) of this section at any time. The depository institution shall provide copies of the written cash delivery plan and written contractual arrangements to the Federal Reserve Bank that holds its account or to the Board upon request.

(3) *Vault cash*◀ includes United States currency and coin in transit to a

Federal Reserve Bank or a correspondent depository institution for which the reporting depository institution has not yet received credit, and United States currency and coin in transit from a Federal Reserve Bank or a correspondent depository institution when the reporting depository institution's account at the Federal Reserve or correspondent bank has been charged for such shipment.

[(3)] (4) Silver and gold coin and other currency and coin whose numismatic or bullion value is substantially in excess of face value is not vault cash for purposes of this part.

(l) Pass-through account means a balance maintained by a depository institution with a correspondent institution under § 204.5(d) [a balance maintained by a depository institution that is not a member bank, by a U.S. branch or agency of a foreign bank, or by an Edge or Agreement Corporation, (1) in an institution that maintains required reserve balances at a Federal Reserve Bank, (2) in a Federal Home Loan Bank, (3) in the National Credit Union Administration Central Liquidity Facility, or (4) in an institution that has been authorized by the Board to pass through required reserve balances if the institution, Federal Home Loan Bank, or National Credit Union Administration Central Liquidity Facility maintains the funds in the form of a balance in a Federal Reserve Bank of which it is a member or at which it maintains an account in accordance with rules and regulations of the Board].

* * * * *

(v) Clearing balance allowance means the greater of \$25,000 or two percent of an institution's contractual clearing balance.

(w) Contractual clearing balance means an amount that a depository institution agrees or is required to maintain in its account at a Federal Reserve Bank in addition to balances the depository institution may hold to satisfy its required reserve balance. A depository institution that has a required reserve balance of zero may still hold a contractual clearing balance.

3. Amend § 204.3 by revising the heading and paragraphs (a) through (d), (f), and (g) to read as follows:

§ 204.3 Reporting and location.

(a) Every depository institution, U.S. branch or agency of a foreign bank, and Edge or Agreement corporation shall file a report of deposits (or any other form or statement that may be required by the Board or by a Federal Reserve Bank) with the Federal Reserve Bank in the Federal Reserve District in which it is

located, regardless of the manner in which it chooses to maintain required reserve balances.

(b) A foreign bank's U.S. branches and agencies and an Edge or Agreement corporation's offices operating within the same state and the same Federal Reserve District shall prepare and file a report of deposits on an aggregated basis.

(c) For purposes of this part, the obligations of a majority-owned (50 percent or more) U.S. subsidiary (except an Edge or agreement corporation) of a depository institution shall be regarded as obligations of the parent depository institution.

(d) A depository institution, a foreign bank, or an Edge or Agreement corporation shall, if possible, assign the low reserve tranche and reserve requirement exemption prescribed in § 204.4(f) to only one office or to a group of offices filing a single aggregated report of deposits. The amount of the reserve requirement exemption allocated to an office or group of offices may not exceed the amount of the low reserve tranche allocated to such office or offices. If the low reserve tranche or reserve requirement exemption cannot be fully utilized by a single office or by a group of offices filing a single report of deposits, the unused portion of the tranche or exemption may be assigned to other offices or groups of offices of the same institution until the amount of the tranche (or net transaction accounts) or exemption (or reservable liabilities) is exhausted. The tranche or exemption may be reallocated each year concurrent with implementation of the indexed tranche and exemption, or, if necessary during the course of the year to avoid underutilization of the tranche or exemption, at the beginning of a reserve computation period.

* * * * *

(f) The Board and the Federal Reserve Banks will not hold a pass-through correspondent responsible for guaranteeing the accuracy of the reports of deposits submitted by its respondents.

(g)(1) For purposes of this section, a depository institution, a U.S. branch or agency of a foreign bank, or an Edge or Agreement corporation is located in the Federal Reserve District that contains the location specified in the institution's charter, organizing certificate, license, or articles of incorporation, or as specified by the institution's primary regulator, or if no such location is specified, the location of its head office, unless otherwise determined by the Board under paragraph (g)(2) of this section.

(2) If the location specified in paragraph (g)(1) of this section, in the Board's judgment, is ambiguous, would impede the ability of the Board or the Federal Reserve Banks to perform their functions under the Federal Reserve Act, or would impede the ability of the institution to operate efficiently, the Board will determine the Federal Reserve District in which the institution is located, after consultation with the institution and the relevant Federal Reserve Banks. The relevant Federal Reserve Banks are the Federal Reserve Bank whose District contains the location specified in paragraph (g)(1) of this section and the Federal Reserve Bank in whose District the institution is proposed to be located. In making this determination, the Board will consider any applicable laws, the business needs of the institution, the location of the institution's head office, the locations where the institution performs its business, and the locations that would allow the institution, the Board, and the Federal Reserve Banks to perform their functions efficiently and effectively.

* * * * *

4. Section 204.7 is removed, § 204.4 is redesignated as § 204.7, and a new § 204.4 is added to read as follows:

§ 204.4 Computation of required reserves.

(a) In determining the reserve balance required under this part, the amount of cash items in process of collection and balances subject to immediate withdrawal due from other depository institutions located in the United States (including such amounts due from United States branches and agencies of foreign banks and Edge and agreement corporations) may be deducted from the amount of gross transaction accounts. The amount that may be deducted may not exceed the amount of gross transaction accounts.

(b) United States branches and agencies of a foreign bank may not deduct balances due from another United States branch or agency of the same foreign bank, and United States offices of an Edge or Agreement Corporation may not deduct balances due from another United States office of the same Edge Corporation.

(c) Balances "due from other depository institutions" do not include balances due from Federal Reserve Banks, pass-through accounts, or balances (payable in dollars or otherwise) due from banking offices located outside the United States. An institution exercising fiduciary powers may not include in balances "due from other depository institutions" amounts of trust funds deposited with other

banks and due to it as a trustee or other fiduciary.

(d) For institutions that file a report of deposits weekly, required reserves are computed on the basis of the institution's daily average balances of deposits and Eurocurrency liabilities during a 14-day computation period ending every second Monday.

(e) For institutions that file a report of deposits quarterly, required reserves are computed on the basis of the institution's daily average balances of deposits and Eurocurrency liabilities during the 7-day computation period that begins on the third Tuesday of March, June, September, and December.

(f) For all depository institutions, Edge and agreement corporations, and

United States branches and agencies of foreign banks, required reserves are computed by applying the reserve requirement ratios below to net transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities of the institution during the computation period.

Reservable liability	Reserve requirement ratio
NET TRANSACTION ACCOUNTS:	
\$0 to reserve requirement exemption amount (\$9.3 million)	0 percent of amount.
Over reserve requirement exemption amount (\$9.3 million) and up to low reserve tranche (\$43.9 million).	3 percent of amount.
Over low reserve tranche (\$43.9 million)	\$1,038,000 plus 10 percent of amount over \$43.9 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

5. Section 204.9 is removed, § 204.5 is redesignated as § 204.9, and a new § 204.5 is added to read as follows:

§ 204.5 Maintenance of required reserves.

(a)(1) A depository institution, a U.S. branch or agency of a foreign bank, and an Edge or agreement corporation shall maintain required reserves in the form of vault cash and, if vault cash does not fully satisfy the institution's required reserves, in the form of a balance maintained

- (i) directly with the Federal Reserve Bank in the Federal Reserve District in which the institution is located, or
- (ii) with a pass-through correspondent in accordance with § 204.5(d).

(2) Each individual institution subject to this part is responsible for satisfying its required reserve balance, if any, either directly with a Federal Reserve Bank or through a pass-through correspondent.

(b)(1) For institutions that file a report of deposits weekly, the balances that are required to be maintained with the Federal Reserve shall be maintained during a 14-day maintenance period that begins on the third Thursday following the end of a given computation period.

(2) For institutions that file a report of deposits quarterly, the balances that are required to be maintained with the Federal Reserve shall be maintained during each of the 7-day maintenance periods during the interval that begins on the fourth Thursday following the end of the institution's computation period and ends on the fourth Wednesday after the close of the institution's next computation period.

(c) Cash items forwarded to a Federal Reserve Bank for collection and credit shall not be counted as part of the

reserve balance to be carried with the Federal Reserve until the expiration of the time specified in the appropriate time schedule established under Regulation J, "Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire" (12 CFR Part 210). If a depository institution draws against items before that time, the charge will be made to its account if the balance is sufficient to pay it; any resulting impairment of reserve balances will be subject to the penalties provided by law and to the reserve-deficiency charges provided by this part. However, the Federal Reserve Bank may, at its discretion, refuse to permit the withdrawal or other use of credit given in an account for any time for which the Federal Reserve Bank has not received payment in actually and finally collected funds.

(d)(1) A depository institution, a U.S. branch or agency of a foreign bank, or an Edge or Agreement corporation required to maintain reserve balances ("respondent") may select only one pass-through correspondent institution to pass through its required reserve balances, unless otherwise permitted by Federal Reserve Bank in whose District the respondent is located. Eligible pass-through correspondent institutions are Federal Home Loan Banks, the National Credit Union Administration Central Liquidity Facility, and depository institutions, U.S. branches or agencies of foreign banks, and Edge and Agreement corporations that maintain required reserve balances, which may be zero, at a Federal Reserve Bank. In addition, the Board reserves the right to permit other institutions, on a case-by-case basis, to serve as pass-through correspondents. The correspondent

chosen must subsequently pass through the required reserve balances of its respondents directly to a Federal Reserve Bank. The correspondent placing funds with a Federal Reserve Bank on behalf of respondents will be responsible for account maintenance as described in paragraph (d)(4) of this section.

(2) Respondents or correspondents may institute, terminate, or change pass-through agreements for the maintenance of required reserve balances by providing all documentation required for the establishment of the new agreement or termination of the existing agreement to the Federal Reserve Banks involved within the time period provided for such a change by those Reserve Banks.

(3) A correspondent that passes through required reserve balances of respondents shall maintain such balances, along with the correspondent's own required reserve balances (if any), in a single commingled account at the Federal Reserve Bank in whose District the correspondent is located. The balances held by the correspondent in an account at a Reserve Bank are the property of the correspondent and represent a liability of the Reserve Bank solely to the correspondent, regardless of whether the funds represent the reserve balances of another institution that have been passed through the correspondent.

(4)(i) A pass-through correspondent shall be responsible for assuring the maintenance of the appropriate aggregate level of its respondents' required reserve balances. A Federal Reserve Bank will compare the total reserve balance required to be maintained with the total actual reserve

balance held in such account for purposes of determining required-reserve deficiencies, imposing or waiving charges for deficiencies in required reserves, and for other reserve maintenance purposes. A charge for a deficiency in the aggregate level of the required reserve balance will be imposed by the Reserve Bank on the correspondent maintaining the account.

(ii) Each correspondent is required to maintain detailed records for each of its respondents in a manner that permits Reserve Banks to determine whether the respondent has provided a sufficient required reserve balance to the correspondent. A correspondent passing through a respondent's required reserve balance shall maintain records and make such reports as the Board or Reserve Bank requires in order to ensure the correspondent's compliance with its responsibilities for the maintenance of a respondent's reserve balance. Such records shall be available to the Reserve Banks as required.

(iii) The Federal Reserve Bank may terminate any pass-through agreement under which the correspondent is deficient in its recordkeeping or other responsibilities.

(iv) Interest paid on supplemental reserves (if such reserves are required under § 204.10) held by a respondent will be credited to the account maintained by the correspondent.

(e) Any excess or deficiency in an institution's required reserve balance shall be carried over and applied against the balance maintained in the next maintenance period as specified in this paragraph. The amount of any such excess or deficiency that is carried over shall not exceed the greater of:

(1) The amount obtained by multiplying .04 times the sum of depository institution's required reserves and the depository institution's contractual clearing balance, if any, and then subtracting from this product the depository institution's clearing balance allowance, if any; or

(2) \$50,000, minus the depository institution's clearing balance allowance, if any. Any carryover not offset during the next period may not be carried over to subsequent periods.▶

6. Section 204.6 is redesignated as § 204.10, and a new § 204.6 is added to read as follows:

▶ **§ 204.6 Charges for reserve deficiencies.**

(a) Deficiencies in a depository institution's required reserve balance, after application of the carryover provided in § 204.5(e) are subject reserve-deficiency charges. Federal Reserve Banks are authorized to assess

charges for deficiencies in required reserves at a rate of 1 percentage point per year above the primary credit rate, as provided in § 201.51(a) of this chapter, in effect for borrowings from the Federal Reserve Bank on the first day of the calendar month in which the deficiencies occurred.—Charges shall be assessed on the basis of daily average deficiencies during each maintenance period. Reserve Banks may, as an alternative to levying monetary charges, after consideration of the circumstances involved, permit a depository institution to eliminate deficiencies in its required reserve balance by maintaining additional reserves during subsequent reserve maintenance periods.

(b) Reserve Banks may waive the charges for reserve deficiencies except when the deficiency arises out of a depository institution's gross negligence or conduct that is inconsistent with the principles and purposes of reserve requirements. If a depository institution has demonstrated a lack of due regard for the proper maintenance of required reserves, the Reserve Bank may decline to exercise the waiver privilege and assess all charges regardless of amount or reason for the deficiency.

(c) In individual cases, where a federal supervisory authority waives a liquidity requirement, or waives the penalty for failing to satisfy a liquidity requirement, the Reserve Bank in the District where the involved depository institution is located shall waive the reserve requirement imposed under this part for such depository institution when requested by the federal supervisory authority involved.

(d) Violations of this part may be subject to assessment of civil money penalties by the Board under authority of Section 19(1) of the Federal Reserve Act (12 U.S.C. 505) as implemented in 12 CFR part 263. In addition, the Board and any other Federal financial institution supervisory authority may enforce this part with respect to depository institutions subject to their jurisdiction under authority conferred by law to undertake cease and desist proceedings.◀

PART 209—ISSUE AND CANCELLATION OF FEDERAL RESERVE BANK CAPITAL STOCK (REGULATION I)

7. The authority citation for part 209 continues to read as follows:

Authority: 12 U.S.C. 2222, 248, 282, 286–288, 321, 323, 327–328, 333, and 466.

8. Section 209.2 is amended by revising paragraph (c)(1) to read as follows:

§ 209.2 Banks desiring to become member banks.

* * * * *

(c) * * *

(1) *General rule.* For purposes of this part, a national bank or a state bank is located in the Federal Reserve District that contains the location specified in the bank's charter or organizing certificate,▶ or as specified by the institution's primary regulator,◀ or if no such location is specified, the location of its head office, unless otherwise determined by the Board under paragraph (c)(2) of this section.

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 7, 2008.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. E8–2558 Filed 2–11–08; 8:45 am]

BILLING CODE 6210–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0185; FRL–8528–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Incorporation of On-Board Diagnostic Testing and Other Amendments to the Motor Vehicle Emission Inspection Program for the Northern Virginia Program Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve three State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. These revisions pertain to the Commonwealth's motor vehicle inspection and maintenance (I/M) program for the Northern Virginia area, which had previously been SIP-approved by EPA. These revisions incorporate several changes made by the Commonwealth since EPA last approved the I/M program as part of the SIP in 2002. The most significant change to the program is the incorporation of on-board diagnostic computer checks of 1996 and newer model year vehicles as an element of the emission inspection process for the Northern Virginia program area. In addition, Virginia has also made numerous minor changes to the program, including several changes to test procedures and standards, as well as changes to its roadside testing regimen. The I/M program helps to