

§ 6.25 Eligibility.

* * * * *

(b) * * *

(4) An application will not be approved if the submission of the evidence and certifications required to establish nonhistorical eligibility is postmarked before October 1 or later than November 1 of the year preceding the quota year for which the license is requested. If October 1 falls on a Saturday, Sunday, Federal holiday or day which is not a full workday for the United States Postal Service, applications postmarked on October 1 or any subsequent day(s) up to and including the next full workday for the United States Postal Service will be treated the same in determining priority in the issuance of licenses, in the issuance of the import licenses.

(c) * * *

(2) * * *

(ii) Providing documentary evidence that the applicant has made at least two separate commercial entries or exports of any dairy product totaling not less than 38,000 kilograms during the 12 month period ending August 1, 1995; or at least eight separate commercial entries or exports totaling not less than 18,000 kilograms, each entry or export being a minimum of 2,200 kilograms, with a minimum of two transactions taking place in each of at least three quarters of the 12 month period ending August 1, 1995.

* * * * *

3. Appendix 3 is revised to read as follows:

Appendix 3—Articles Subject to the Supplementary Licensing Provisions of Import Regulation 1, Revision 7, and Respective Annual Tariff-Rate Import Quotas for the 1996 Quota Year

<i>Article by HTS note number</i>	<i>Annual supplementary quota (kilograms)</i>
Butter (Note 6)	4,256,311
Dried Skim Milk (Note 7)	1,241,359
Dried Whole Milk (Note 8)	958,125
Butter Substitutes Containing over 45% by weight of butterfat and butteroil (Note 14)	4,000,500
Cheese and substitutes for cheese (except cheese not containing cow's milk and soft ripened cow's milk cheese, cheese (except cottage cheese) containing 0.5 percent or less by weight of butterfat, and articles within the scope of other tariff-rate quotas provided for in this subchapter) (Note 16)	4,882,000

Appendix 3—Articles Subject to the Supplementary Licensing Provisions of Import Regulation 1, Revision 7, and Respective Annual Tariff-Rate Import Quotas for the 1996 Quota Year—Continued

<i>Article by HTS note number</i>	<i>Annual supplementary quota (kilograms)</i>
Australia	833,333
Austria	182,000
Costa Rica	1,550,000
Czech Republic	200,000
EC	600,000
Poland	300,000
Slovak Republic	600,000
Switzerland	166,667
Uruguay	250,000
Any Country	200,000
Blue-mold cheese (except Stilton produced in the United Kingdom) and cheese and substitutes for cheese containing, or processed from, blue-mold cheese (Note 17) ..	176,667
Chile	26,667
Czech Republic	50,000
EC	100,000
Cheddar cheese, and cheese and substitutes for cheese containing, or processed from, Cheddar cheese (Note 18)	2,673,333
Australia	416,667
EC	333,333
Chile	73,333
Czech Republic	50,000
New Zealand	1,700,000
Any Country	100,000
American-type cheese, including Colby, washed curd, and granular cheese (but not including cheddar) and cheese and substitutes for cheese containing or processed from such American-type cheese (Note 19)	33,333
EC	33,333
Edam and Gouda cheese, and cheese and substitutes for cheese containing, or processed from, Edam and Gouda Cheese (Note 20)	543,333
Argentina	110,000
Austria	133,333
EC	200,000
Czech Republic	100,000
Italian-Type cheeses, made from cow's milk (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz, and Goya not in original loaves) and cheese and substitutes for cheese containing, or processed from, such Italian-Type cheeses, whether or not in original loaves (Note 21)	4,540,000
Argentina	1,890,000
EC	233,333

Appendix 3—Articles Subject to the Supplementary Licensing Provisions of Import Regulation 1, Revision 7, and Respective Annual Tariff-Rate Import Quotas for the 1996 Quota Year—Continued

<i>Article by HTS note number</i>	<i>Annual supplementary quota (kilograms)</i>
Uruguay	750,000
Hungary	400,000
Poland	1,100,000
Romania	166,667
Swiss and Emmentaler cheese other than with eye formation Gruyere-process, and cheese and substitutes for cheese containing, or processed from such cheese (Note 22)	126,667
Austria	26,667
EC	100,000
Swiss and Emmentaler cheese with eye formation (Note 25)	1,473,333
Austria	73,333
EC	233,333
Sweden	300,000
Switzerland	66,667
Czech Republic	400,000

Signed at Washington, D.C. on September 7, 1995.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 95-22817 Filed 9-11-95; 12:03 pm]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95-22]

RIN 1557-AB14

Risk-Based Capital Requirements—Small Business Loan Obligations

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its risk-based capital standards as required by section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994. The changes will modify the risk-based capital treatment of transfers of small business loans or leases of personal property with recourse, and are intended to facilitate such transfers.

DATES: The interim rule is effective September 13, 1995. Comments must be received on or before November 13, 1995.

ADDRESSES: Written comments should be submitted to Docket No. 95-22, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, Fax (202) 874-5274. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: David Thede, Senior Attorney, Securities and Corporate Practices Division (202/874-5210); Stephen Jackson, National Bank Examiner, (202) 874-5070, Office of the Comptroller of the Currency.

SUPPLEMENTARY INFORMATION: The OCC is amending its risk-based capital standards for transfers of small business obligations with recourse as required by section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994 (the Riegle Act), 12 U.S.C. 1835. Banks typically transfer assets with recourse as part of securitization transactions. Sections 201-210 of the Riegle Act were intended to increase small business access to capital by removing impediments in existing law to the securitization of small business loans and leases.

Under the OCC's current risk-based capital standards, assets transferred with recourse are reported on the balance sheet in regulatory reports. These amounts are thus included in the calculation of banks' risk-based capital and leverage capital ratios.

Section 208 requires the OCC, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Federal Reserve Board (the Federal banking agencies) to change this capital treatment for transfers of small business loans and leases with recourse. Under section 208, a bank may hold capital only against the face amount of a recourse obligation (rather than the amount of the asset transferred with recourse) if the bank establishes a reserve equal to the bank's reasonable estimated liability under the recourse obligation.¹ Section 208 limits the availability of this treatment as follows:

(1) To apply section 208 to a transaction, a bank must be a "qualified insured depository institution" at the time of the sale with recourse. A qualified insured depository institution must be either well capitalized or, with the approval of the OCC, adequately

capitalized (in either case, without regard to section 208). If an institution loses its "qualified" status, transactions completed while the institution was qualified will continue to receive the favorable capital treatment.

(2) The total outstanding amount of recourse retained by a bank with respect to transfers of small business loans and leases of personal property and included in the risk-weighted assets of the bank as described in section 208 may not exceed 15 percent of the risk-based capital of the bank, unless the OCC, by regulation or order, specifies a greater amount.

Prompt Corrective Action

Section 208(f) states that the capital of an insured depository institution shall be computed without regard to section 208 in determining whether the institution is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o). Section 1831o addresses prompt corrective action.

The caption to section 208(f), "Prompt Corrective Action Not Affected," and the legislative history indicate that section 208 was not intended to affect the operation of the prompt corrective action system. See S. Rep. No. 103-169, 103d Cong., 1st Sess. 38, 69 (1993). However, the statute does not include "well capitalized" in the list of capital categories not affected. The prompt corrective action system deals primarily with imposing corrective sanctions on banks that are less than adequately capitalized. Therefore, allowing a bank that is adequately capitalized without the section 208 treatment² to use section 208 for purposes of determining whether the bank is well capitalized generally would not affect the application of the prompt corrective action sanctions to the bank. Other statutes and regulations treat a bank more favorably if it is well capitalized as defined under the prompt corrective action statute, but these provisions are not part of the prompt corrective action system of sanctions. Permitting a bank to be treated as well capitalized for purposes of these other provisions also

will not affect the imposition of prompt corrective action sanctions.

There is one provision of the prompt corrective action system that could be affected by treating a bank as well capitalized rather than adequately capitalized. If the OCC determines that a bank is in an unsafe or unsound condition or is engaging in an unsafe or unsound practice, 12 U.S.C. 1831o(g) authorizes the OCC to require an adequately capitalized bank (but not a well capitalized bank) to comply with certain prompt corrective action provisions as if the bank were undercapitalized. Because the text and legislative history of section 208 indicate that it was not intended to affect prompt corrective action, the OCC believes that section 208 does not affect the capital calculation for purposes of 12 U.S.C. 1831o(g), regardless of the bank's capital level. (The OCC requests comment on this conclusion and also asks that commenters discuss the legal justification for any alternative interpretation that they suggest.)

Thus, a bank may use the capital treatment described in section 208 when determining whether it is well capitalized for purposes of prompt corrective action as well as for other regulations that reference the well capitalized capital category.³ A bank may not use the capital treatment described in section 208 when determining whether it is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized for purposes of prompt corrective action or other regulations that directly or indirectly reference the prompt corrective action capital categories.⁴ The banking agencies will disregard the capital treatment described in section 208 for purposes of 12 U.S.C. 1831o(g).

The OCC requests comments on all aspects of this interim rule.

Summary Outline

(1) Which small business obligations can an institution apply section 208 to? The answer depends on the capital level of the bank without considering section 208.

³ An institution that is subject to a written agreement or capital directive as discussed in the OCC's prompt corrective action regulation would not be considered well capitalized.

⁴ Under section 208, the capital calculation used to determine whether an institution is well capitalized differs from the calculation used to determine whether an institution is adequately capitalized. As a result, it is possible that an institution could be well capitalized using one calculation and adequately capitalized using the other. In this situation, the institution would be considered well capitalized.

¹ For purposes of determining a bank's capital ratio, the reserve would not be subtracted from the amount of the recourse obligation.

² It is very unlikely but theoretically possible that a bank that is undercapitalized without section 208 would become well capitalized if it applied the treatment in section 208. Because section 208 was not intended to affect prompt corrective action, and because allowing an undercapitalized bank to become well capitalized would affect prompt corrective action, the OCC interprets section 208 not to allow an undercapitalized bank to use the capital treatment it describes to become well capitalized for purposes of prompt corrective action.

(a) Bank is *well capitalized* without using section 208: bank is “qualifying” and can apply section 208 to any transfer of small business obligations with recourse, up to the 15% of capital limit.

(b) Bank is *adequately capitalized* without using section 208 and has *permission* from its regulator: bank is

“qualifying” and can apply section 208 to any transfer of small business obligations with recourse, up to the 15% of capital limit.

(c) Other banks: bank is not “qualifying” and so cannot apply section 208 to *new* obligations. However, if the bank was qualifying in the past, it can continue to apply section

208 to obligations arising out of transfers that occurred during the time that the bank was qualified.

(2) If a bank has assets that it can apply section 208 to, for what purposes can the bank use the section 208 treatment? Again, the answer depends on the capital level of the bank without considering section 208.

Capital level	PCA, except 1831o(g)	1831o(g)	Other laws and regulations that reference PCA	Other laws and regulations that do not reference PCA
Well capitalized without using 208 ¹	Yes	N/A ²	Yes	Yes.
Well capitalized using 208 and adequately capitalized without using 208.	Yes	No	Yes	Yes.
Other banks	No	No	No	Yes.

¹ Most banks currently fall into this category and so would be able to use section 208 for all capital calculations.

² If a bank is well-capitalized without using section 208, application of section 208 will not affect the status of the bank under 12 U.S.C. 1831o(g).

Regulatory Flexibility Act

It is hereby certified that this interim rule will not have a significant economic impact on a substantial number of small entities. This rulemaking is required by statute and will not affect a bank’s risk-based capital for Prompt Corrective Action purposes, regardless of bank size.

Administrative Procedure Act

Section 208(g) requires that the Federal banking agencies promulgate rules implementing section 208 no later than March 22, 1995. The OCC has determined that the notice and public participation that are ordinarily required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be impracticable due to the time constraints imposed by section 208(g). In addition, in the OCC’s view, advanced public notice and comment is unnecessary as the interim rule merely restates the statute. Further, the interim rule would permit qualifying institutions to reduce their capital levels, thereby providing these institutions with greater lending flexibility. Consequently, the added delay that would result from providing advance notice and public participation could adversely affect credit availability.

The interim rule is immediately effective upon publication in the **Federal Register**. This action is being taken pursuant to 5 U.S.C. 553(d) of the Administrative Procedure Act which permits the waiver of the 30-day delayed effective date requirement for good cause or where a rule relieves a restriction. The OCC views the limitations of time and the potential loss of benefit to affected parties during the

pendency of this rulemaking as good cause to waive the 30-day delayed effective date. In addition, as the interim rule relieves a restriction, the 30-day delayed effective date may be waived. Nevertheless, the OCC desires to have the benefit of public comment before adoption of a final rule. Accordingly, the OCC invites interested persons to submit comments during a 60-day comment period. In adopting a final rule, the OCC will revise the interim rule as may be appropriate based on the comments received.

Executive Order 12866

The OCC has determined that this interim rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, the interim rule authorizes an alternative method of calculating capital that permits banks to elect to hold less capital for certain recourse obligations. Because the OCC has determined that the interim rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of

more than \$100 million in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and Regulatory Burden

The OCC has determined that this interim rule will not increase the regulatory paperwork burden of national banks.

Section 302 of the Riegle Act requires that new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements take effect on the first day of the calendar quarter following publication of the rule unless, among other things, the agency determines, for good cause, that the regulation should become effective on a day other than the first day of the next quarter. The OCC believes that an immediate effective date is appropriate since the interim rule relieves a regulatory burden on qualifying banks that transfer small business obligations with recourse by significantly reducing the capital requirements on such obligations. This immediate effective date will permit qualifying institutions to reduce the amount of capital they must maintain to support the risk retained in these sales. Moreover, the OCC does not anticipate that immediate application of the rule will present a hardship to qualifying institutions in terms of compliance. Also, there is a statutory requirement for the banking agencies to promulgate final regulations implementing the provisions of section 208 by March 22, 1995. For these reasons, the OCC has determined that there is sufficient good cause to provide for an immediate effective date.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital risk, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, appendix A to part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In appendix A to part 3, section 3 is amended by adding a new paragraph (c) to read as follows:

Appendix A To Part 3—Risk-Based Capital Guidelines

* * * * *

Section 3. Risk Categories/Weights for On-Balance Assets and Off-Balance Sheet Items.

* * * * *

(c) *Alternative Capital Calculation for Small Business Obligations.* (1) *Definitions.* For purposes of this section 3(c):

- (i) *Qualified bank* means a bank that:
 - (A) Is well capitalized as defined in 12 CFR 6.4 without applying the capital treatment described in this section 3(c), or
 - (B) Is adequately capitalized as defined in 12 CFR 6.4 without applying the capital treatment described in this section 3(c) and has received written permission from the appropriate district office of the OCC to apply the capital treatment described in this section 3(c).

(ii) *Recourse* has the meaning given to such term under generally accepted accounting principles.

(iii) *Small business* means a business that meets the criteria for a small business concern established by the Small Business Administration in 13 CFR part 121 pursuant to 15 U.S.C. 632.

(2) *Capital and reserve requirements.* With respect to a transfer of a small business loan or a lease of personal property with recourse that is a sale under generally accepted accounting principles, a qualified bank may elect to apply the following treatment:

- (i) The bank establishes and maintains a non-capital reserve under generally accepted accounting principles sufficient to meet the reasonable estimated liability of the bank under the recourse arrangement;
- (ii) For purposes of calculating the bank's risk-based capital ratio, the bank includes only the amount of its retained recourse in its risk-weighted assets; and
- (iii) For purposes of calculating the bank's tier 1 leverage ratio, the bank excludes from its average total consolidated assets the outstanding principal amount of the small

business loans and leases transferred with recourse.

(3) *Limit on aggregate amount of recourse.* The total outstanding amount of recourse retained by a qualified bank with respect to transfers of small business loans and leases of personal property and included in the risk-weighted assets of the bank as described in section 3(c)(2) of this appendix A may not exceed 15 percent of the bank's total capital after adjustments and deductions, unless the OCC specifies a greater amount by order.

(4) *Bank that ceases to be qualified or that exceeds aggregate limit.* If a bank ceases to be a qualified bank or exceeds the aggregate limit in section 3(c)(3) of this appendix A, the bank may continue to apply the capital treatment described in section 3(c)(2) of this appendix A to transfers of small business loans and leases of personal property that occurred when the bank was qualified and did not exceed the limit.

(5) *Prompt Corrective Action not affected.* (i) A bank shall compute its capital without regard to this section 3(c) for purposes of prompt corrective action (12 U.S.C. 1831o and 12 CFR part 6) unless the bank is an adequately or well capitalized bank (without applying the capital treatment described in this section 3(c)) and, after applying the capital treatment described in this section 3(c), the bank would be well capitalized.

(ii) A bank shall compute its capital without regard to this section 3(c) for purposes of 12 U.S.C. 1831o(g) regardless of the bank's capital level.

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Dated: August 28, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95-22666 Filed 9-12-95; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM-111; Special Conditions No. 25-ANM-106]

Special Conditions: Israel Aircraft Industries Model Galaxy Series Airplane, High Altitude Operation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are for the Israel Aircraft Industries (IAI) Ltd. Model Galaxy airplane. This new airplane will have an unusual design feature associated with an unusually high operating altitude (45,000 feet), for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the additional safety standards that the Administrator considers necessary to

establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: October 13, 1995.

FOR FURTHER INFORMATION CONTACT: Timothy Dulin, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056, telephone (206)227-2141.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1992, IAI Ltd., Ben-Gurion International Airport, 70100, Israel, applied for a new type certificate in the transport airplane category for the Model Galaxy airplane. The IAI Model Galaxy airplane is a derivative of the IAI Model 1125 Westwind Astra and is designed to be a long range, high speed swept low wing airplane with two aft-fuselage mounted Pratt & Whitney PW 306A engines and a conventional empennage.

The type design of the Model Galaxy contains a number of novel and unusual design features for an airplane type certificated under the applicable provisions of part 25 of the Federal Aviation Regulations (FAR). Those features include a high maximum operating altitude. The applicable airworthiness requirements do not contain adequate or appropriate safety standards for the IAI Galaxy; therefore, special conditions are necessary to establish a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, IAI Ltd. must show that the Galaxy meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25-1 through 25-77. The certification basis may also include later amendments to part 25 that are not relevant to these special conditions. In addition, the certification basis for the Galaxy includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification, and part 36, effective December 1, 1969, as amended by Amendments 36-1 through the amendment in effect at the time of certification. These special conditions form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety