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FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC14

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy—ABS and MBS Investments

AGENCY: Farm Credit Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: The Farm Credit Administration (FCA or agency) is issuing an interim final rule to amend our regulatory capital standards to allow Farm Credit System (FCS or System) institutions to use a lower risk weighting for highly rated investments in non-agency asset-backed securities (ABS) and mortgage-backed securities (MBS) that have reduced exposure to credit risk. We are adopting this rule so that the capital requirements for risk weighting of highly rated non-agency ABS and MBS investments will more closely reflect an institution's relative exposure to credit risk and help achieve a more consistent regulatory capital treatment with the other financial regulatory agencies. This interim rule will be effective until we take final action on planned further amendments to our capital regulations.

DATES: This regulation will become effective 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. We will publish notice of the effective date in the **Federal Register**. Please send your comments to the FCA by April 28, 2003.

ADDRESSES: Please send comments by electronic mail to ''reg-comm@fca.gov'' or through the Pending Regulations section of FCA's Web site, *http://www.fca.gov.* You may also send comments to Thomas G. McKenzie, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by fax to (703) 734–5784. You may review copies of all comments at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Laurie A. Rea, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498; TTY (703) 883–4434; or Jennifer A. Cohn, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our interim final rule are to:

- Ensure FCS institutions maintain capital levels commensurate with their relative exposure to credit risk by allowing them to use a lower risk weighting for highly rated non-agency [1] ABS and MBS investments that have reduced exposure to credit risk;
- Help achieve a more consistent regulatory capital treatment with the other financial regulatory agencies; [2]
- Allow FCS institutions' capital to be used more efficiently in serving agriculture and rural America and support of other System mission activities; and
- Reduce regulatory burden on FCS institutions.

II. Background

Section 615.5210 specifies the risk weightings that FCS institutions must use to calculate capital ratios for meeting our minimum risk-based capital standards. This regulation requires institutions to risk-weight their investments in non-agency ABS and MBS (including commercial MBS) as follows:

Investment type	Current risk weighting (Percent)
Non-agency ABS and MBS with maturities under 1 year	50
Non-agency ABS and MBS with maturities of 1 year or more	100

Section 615.5140 permits System institutions to invest in non-agency ABS and MBS only if these securities are rated in the highest credit rating by a nationally recognized statistical rating organization (NRSRO),[3] are marketable,[4] and satisfy certain other requirements.

In November 2001, the other financial regulatory agencies adopted amendments to their regulatory capital standards that, among other changes, allow banking organizations [5] to apply a lower risk weighting to certain transactions that have reduced exposure to credit risk (including highly rated non-agency ABS and MBS investments).[6] These changes were implemented so that the capital requirements would more closely reflect a banking organization's relative exposure to credit risk and help achieve a consistent regulatory capital treatment among the financial regulatory agencies for transactions involving similar risk. The changes were effective for banking organization transactions settled after January 1, 2002.

In a letter dated August 26, 2002, the Farm Credit Council (Council), on behalf of the FCS banks, asked the FCA to allow FCS banks to apply a lower risk weighting for capital computation purposes to investments in non-agency ABS and MBS that satisfy our criteria for eligible investments. The Council specifically asked the FCA to allow the banks to apply a 20-percent risk weighting to these investments.

Since fiscal year 2001, the FCA Board's regulatory plan has included a rulemaking project that would address many of the changes implemented by

[1] Non-agency securities are securities not issued or guaranteed by the United States Government, a Government agency (as defined in § 615.5201(f)), or a Government-sponsored agency (as defined in § 615.5201(g)).

[2] We refer collectively to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision as the ''other financial regulatory agencies.''

[3] Section 615.5131 defines NRSRO as a rating organization that the Securities and Exchange Commission recognizes as an NRSRO.

[4] Section 615.5140(c) provides that an investment is marketable if you can sell it quickly at a price that closely reflects its fair value in an active and universally recognized secondary market.

[5] We refer collectively to commercial banks, bank holding companies, and thrifts as ''banking organizations.''

[6] *See* 66 FR 59614, November 29, 2001.

the other financial regulatory agencies, to the extent appropriate for System institutions. In the interim, the FCA Board has decided to allow FCS institutions to apply the risk-based capital treatment adopted by the other financial regulatory agencies to non-agency ABS and MBS investments the institutions are authorized to purchase and hold under § 615.5140. Accordingly, upon the effective date of this interim final rule, FCS institutions will be authorized to apply a 20-percent risk-weight to highly rated non-agency ABS and MBS investments.

In formulating regulations, we strive continually to maintain approaches consistent with the other financial regulatory agencies. We have indicated in previous rulemakings that we intend to make our risk-based capital requirements generally consistent with the requirements of the other financial regulatory agencies, to the extent appropriate to the System institutions. Lowering the capital requirements on high quality investments would increase the lending capacity of FCS institutions by freeing up capital. The additional lending capacity could be used to serve agriculture and rural America and support other mission activities of the System.

In general, the FCA believes that allowing FCS institutions to apply a 20-percent risk weighting for non-agency ABS and MBS in which the institutions are authorized to invest would not adversely affect the risk-absorbing capacity or overall capitalization of the institutions. To apply the 20-percent risk-weighting treatment, the non-agency ABS and MBS investments must be eligible investments in accordance with § 615.5140. Under § 615.5140, a non-agency ABS or MBS investment is eligible only if it satisfies the following requirements, among others. It must:

- Satisfy the criteria specified for its asset class;
- Be marketable (*i.e.*, it must be able to be sold quickly at a price that closely reflects its fair value in an active and universally recognized secondary market); and
- Be rated at the highest credit rating by an NRSRO.

Investments that become ''ineligible'' investments under § 615.5140 must be immediately assigned to the 100-percent risk-weight category and disposed of in accordance with § 615.5143. Lastly, FCS institutions' application of the 20-percent risk weighting to eligible non-agency ABS and MBS will be subject to the FCA Board's further consideration and approval of a final rule that would amend the current risk-weighting requirements of our capital regulations or other action.

III. Section Analysis

In the section analysis below, we explain our amendments to the current capital regulations.

Section 615.5210(f)(2)(ii)(L)—New Item Added to the 20-Percent Risk-weight Category

We add a new paragraph (L) to the 20-percent risk-weighting category in § 615.5210(f)(2)(ii) for non-agency ABS and MBS investments. We emphasize that the investment must meet the eligibility requirements of § 615.5140 of our investment regulations to be included in the 20-percent risk-weighting category. As mentioned previously, under § 615.5140, a non-agency ABS or MBS investment must receive the highest credit rating by an NRSRO and must be marketable (*i.e.*, may be able to be quickly sold at a price that closely reflects its fair value in an active and universally recognized secondary market).

IV. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), we find good cause exists for waiving the notice of proposed rulemaking as to this interim final rule because the notice is impracticable, unnecessary, and contrary to the public interest.

The other financial regulatory agencies recently adopted extensive amendments to their regulatory capital standards governing banking organizations so these standards would more closely reflect a banking organization's relative exposure to credit risk. Those amendments, among others, include lowering to 20 percent the risk weighting for highly rated non-agency ABS and MBS investments, which have reduced exposure to credit risk. The changes were effective for transactions settled after January 1, 2002.

In addition, as discussed previously, since fiscal year 2001 the FCA Board's regulatory plan has included a rulemaking project that would address many of the changes implemented by the other financial regulatory agencies and, to the extent appropriate for System institutions, make our risk-based capital requirements generally consistent with the other agencies' requirements. In the interim, we believe good cause exists to allow FCS institutions to risk-weight non-agency ABS and MBS investments at 20 percent. As the other financial regulatory agencies have concluded, these investments have reduced exposure to credit risk. It is appropriate to have consistent regulatory capital treatment for transactions involving similar risk among lenders. Finally, lowering the capital requirements on high quality investments would increase the lending capacity of FCS institutions by freeing up capital. The additional lending capacity can be used to serve agriculture and rural America and support other mission activities.

Accordingly, because this change is narrow and non-controversial, will relieve a regulatory burden, and will immediately further the mission of the System, we find that pre-promulgation comment is impracticable, unnecessary, and contrary to the public interest.

We are issuing these regulations with a request for comments and will consider all comments received (in response to both this request and to our future notice of proposed rulemaking) when adopting the regulations in final form.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

■ For the reasons stated in the preamble, we propose to amend part 615 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

2. Add new paragraph (f)(2)(ii)(L) to § 615.5210 to read as follows:

§ 615.5210 Computation of the permanent capital ratio.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(L) Asset- or mortgage-backed securities (not issued or guaranteed by the United States Government, a Government agency, or a Government-sponsored agency).

* * * * *

Dated: March 24, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–7387 Filed 3–27–03; 8:45 am]

BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE84

Small Business Size Regulations; Petroleum Refiners

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is modifying the small business size standard for petroleum refiners for purposes of Federal government procurement. The modification consists of the following: Increasing the capacity component of the standard from 75,000 barrels per day (bpd) to 125,000 barrels per calendar day (bpcd); defining capacity in bpcd; and measuring a refiner's total Operable Atmospheric Crude Oil Distillation Capacity. This is a better definition of what size a refiner must be to qualify as a small refiner for the Federal government's procurement of refined petroleum products. SBA is not changing the 1,500 employee size standard for this industry.

DATES: This rule is effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Carl J. Jordan, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Introduction: SBA is modifying the small business size standard for North American Industry Classification System (NAICS) 324110, Petroleum Refineries, for purposes of the Federal Government's procurement of refined petroleum products. The revised size standard replaces current footnote 4 to SBA's Table of Small Business Size Standards, contained in 13 CFR 121.201. The footnote will now read as follows:

NAICS code 324110—For purposes of Government procurement, the petroleum refiner must be a concern that has no more than 1,500 employees nor more than 125,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

Background: On February 12, 2002, SBA proposed in the **Federal Register** (67 FR 6437): (1) To increase the capacity component of the standard from 75,000 bpd to 155,000 bpcd; (2) to clarify that the capacity component is measured in bpcd as defined by the U.S. Department of Energy, Energy Information Administration (EIA); and (3) to clarify that the capacity component is a measure of a refiner's total Operable Atmospheric Crude Oil Distillation Capacity, as used by EIA. The proposed rule included the history of this small business size standard, the reasons for the proposed changes, a description of how SBA establishes and evaluates small business size standards, and alternatives that SBA considered proposing.

Summary of Comments: SBA received 15 comments to the proposed rule, which are discussed below. They were received from the following organizations: one industry association, six small refiners, six-other-than small refiners, one Federal agency, and a United States Senator. The comments reflect no prevailing opinion about the level to which SBA should increase the capacity component, nor even whether or not SBA should increase it at all. Below SBA summarizes the four significant issues raised by the comments and provides SBA's consideration of those comments.

1. Whether SBA Should Retain Refiners' Capacity as a Component of the Size Standard

Comments received: All commenters but one stated that capacity is a valid and meaningful size measure for purposes of the Federal government's procurement of refined petroleum products. One commenter pointed out that other regulations, such as the Clean Air Act and the Emergency Petroleum Allocation Act, define small refiners and small refineries in terms of their capacity. Another commenter supported that point by stating that it ''is always helpful to the public for Federal agencies to clarify and standardize their definitions and measures.'' Another commenter stated that capacity is and has been the historical basis for small business determinations in the refinery industry, and believes that it is the best method for doing so.

SBA's position: SBA concurs with these commenters. Refining capacity is a relevant measure for the petroleum refining industry. Consistency with the historical size standard and with measurements used by other Federal agencies such as EIA and the Environmental Protection Agency (EPA) is important.

2. Whether SBA Should Replace ''Barrels Per Day'' With ''Barrels Per Calendar Day''

Comments received: SBA received eight comments on this subject, four of which support and four of which do not support the change of term. Supporters favored the change as a useful standardization among Federal government agencies. Opponents believed it could allow for ''gaming'' and permit other than small refiners to qualify as small by reducing output, and that it relies too heavily on representations made to EPA.

SBA's position: SBA does not agree that the use of ''barrels per calendar day'' (bpcd) would necessarily lead to gaming. Bpcd measures a refiner's present capacity to produce, not its actual production. It is a static amount, that a refiner uses when it self-certifies that it is small to a Federal procuring agency, which is generally when it submits its initial offer including price (13 CFR 121.404). Since it could change, it may or may not be the same as what it stated in its annual certification to EIA. Nor is bpcd a measure of how much a refiner has produced, but rather how much a refiner ''can process under usual operating conditions * * *'' allowing for a number of limitations, as stated in EIA's definition of ''Barrels Per Calendar Day.'' This term is also consistent with the standard measure that EIA uses to rank U.S. refiners by size, and that other agencies, such as EPA, use when applicable to enforcement of their regulations.

Bpcd, which includes both the refiners' operating and idle capacity, is an estimate (as are bpd and barrels per stream day), taking into consideration anticipated downtime, *etc.* Further, EIA's definition of ''Barrels Per Calendar Day'' takes into consideration, '' * * * the environmental constraints associated with refinery operations''