

# Proposed Rules

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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 2, 30, 40, 50, 52, 63, 70, 72, 73, 76, and 150

RIN 3150-AH57

#### Protection of Safeguards Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Availability of draft proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is making available draft proposed rule language for amendments to 10 CFR part 73, "Physical Protection of Plants and Materials," to provide for further protection of Safeguards Information (SGI). The draft proposed rule also contains draft conforming changes to 10 CFR parts 2, 30, 40, 50, 52, 63, 70, 72, 76, and 150. The NRC is proposing to amend its regulations in part 73 for the protection of SGI to be consistent with recent Commission practices reflected in Orders and Threat Advisories issued since September 11, 2001, and to provide the flexibility afforded the Commission for the protection of such information by the Atomic Energy Act of 1954, as amended (AEA). The proposed amendments would affect licensees, information, and materials not currently specified in the regulations, but are within the scope of the AEA. The proposed amendments are intended to protect SGI from inadvertent release and unauthorized disclosure which might compromise the security of nuclear facilities and materials. The availability of the draft rule language is intended to inform stakeholders of the current status of the NRC's activities, but the NRC is not soliciting formal public comments on the information at this time.

**DATES:** There will be an opportunity for public comment when the notice of proposed rulemaking is published in the **Federal Register**.

**ADDRESSES:** The draft rule language can be viewed and downloaded electronically via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Along with any publicly available documents related to this rulemaking, the draft information may be viewed electronically on public computers in the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Room O-1 F21, and open to the public on Federal workdays from 7:45 a.m. until 4:15 p.m. The PDR reproduction contractor will make copies of documents for a fee.

**FOR FURTHER INFORMATION CONTACT:** Marjorie Rothschild, Division of Rulemaking & Fuel Cycle, Office of General Counsel, U.S. Nuclear Regulatory Commission, Rockville, MD 20555-001, telephone: (301) 415-1633, e-mail [mur@nrc.gov](mailto:mur@nrc.gov) or Bernard Stapleton, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, telephone (301) 415-2432, e-mail [BWS2@nrc.gov](mailto:BWS2@nrc.gov).

**SUPPLEMENTARY INFORMATION:** In a staff requirements memorandum of June 18, 2004, the Commission directed the Office of the General Counsel (OGC) to expedite rulemaking to develop, in consultation with the NRC staff, amendments to modify 10 CFR part 73 regarding protection of Safeguards Information. The SRM further directed that the amendments are to utilize the flexibility of section 147 of the Atomic Energy Act and are to be consistent with the practices of the Commission in various Orders and Advisories issued since September 11, 2001. The proposed amendments would affect licensees, information, and materials not currently specified in the regulations, but are within the scope of the AEA. The proposed amendments are intended to protect SGI from inadvertent release and unauthorized disclosure which might compromise the security of nuclear facilities and materials.

The NRC is making a preliminary version of the draft proposed rule language available to inform stakeholders of the current status of this 10 CFR part 73 proposed rulemaking. This draft rule language may be subject to significant revisions during the rulemaking process. To meet the Commission's schedule, the NRC is not soliciting early public comments on this

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draft rule language. No stakeholder requests for a comment period will be granted at this stage in the rulemaking process. Stakeholders will have an opportunity to comment on the rule language when it is published as a proposed rule.

The NRC's draft proposed rule, including early draft rule language, will be posted on the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. The NRC may post updates to the draft proposed rule language on the rulemaking Web site.

Dated at Rockville, Maryland, this 9th day of November, 2004.

For the Nuclear Regulatory Commission.

**E. Neil Jensen,**

*Acting Assistant General Counsel, Division of Rulemaking & Fuel Cycle, Office of the General Counsel.*

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## FARM CREDIT ADMINISTRATION

### 12 CFR Part 615

RIN 3052-AC22

#### Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investments, Liquidity, and Divestiture

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA, we, or our) proposes to amend our liquidity reserve requirement for the banks of the Farm Credit System (System). The proposed rule would increase the minimum liquidity reserve requirement to 90 days. We also propose to change the eligible investment limit from 30 percent of total outstanding loans to 35 percent of total outstanding loans.

**DATES:** You may send your comments on or before January 3, 2005.

**ADDRESSES:** Comments may be sent by electronic mail to [reg-comm@fca.gov](mailto:reg-comm@fca.gov), through the Pending Regulations section of our Web site at <http://www.fca.gov> or through the Government-wide <http://www.regulations.gov> portal. You may also send written comments to S. Robert Coleman, 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 we receive 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 Laura McFarland, 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 this proposed rule are to:

1. Ensure Farm Credit banks have adequate liquidity in the case of market disruption or other extraordinary situations;
2. Improve the flexibility of Farm Credit banks to meet liquidity reserve requirements;
3. Strengthen the safety and soundness of Farm Credit banks; and,
4. Enhance the ability of the System to supply credit to agriculture and rural America in all economic conditions.

**II. Background**

The System is a nationwide network of borrower-owned lending cooperatives. Congress created the System as a Government-sponsored enterprise (GSE) to provide a permanent, reliable source of credit and related services to American agriculture and aquatic producers. The System meets this broad public need by financing agriculture and related businesses in rural areas. The System obtains funds to provide this financing through the issuance of Systemwide debt securities.<sup>1</sup> Section 1.5(15) of the Farm Credit Act of 1971, as amended, (the Act) permits Farm Credit banks to make investments as authorized by FCA.<sup>2</sup> We issue regulations under section 5.17(a)(9) of the Act to ensure the safe and sound operations of the System.

Our regulatory responsibilities include issuing regulations to ensure the System has adequate liquidity during market disruptions or other extraordinary situations so that it can

meet the ongoing financing needs of agriculture and rural America. Under this authority, we issued § 615.5134 requiring Farm Credit banks to maintain a liquidity reserve sufficient to fund operations for approximately 15 days. We also issued § 615.5132 restricting the investment authority of Farm Credit banks to 30 percent of total outstanding loans. The liquidity reserve provision was established to protect the System against potential market disruptions, while the regulatory investment limit prevents Farm Credit banks from using their GSE status to borrow favorably from the capital markets and accumulate large investment portfolios for arbitrage activities.

The liquidity of Farm Credit banks depends largely upon access to the debt markets. Consistent market access is essential to the System's mission of providing financing to agriculture and rural America in both good and bad times. In the event that access to the debt market becomes impeded, Farm Credit banks must have sufficient liquidity to pay for maturing obligations. The importance of sufficient liquidity has become more evident in recent years. Since we established the current minimum liquidity requirement, investors, credit rating agencies, and market participants have become increasingly concerned with liquidity risk in financial institutions, including GSEs.<sup>3</sup> A Basel Committee report also recommends assessing market access under both normal and adverse circumstances.<sup>4</sup> Adverse circumstances directly affecting Farm Credit banks would include systemic events that essentially shut down the financial system, unfavorable events within the agricultural sector, or deterioration in the financial performance of an individual Farm Credit bank that triggers a condition of the Market Access Agreement.<sup>5</sup>

The events of September 11, 2001 led to a significant market disruption causing the normal coordination of payments and funding in the markets to break down. The massive damage to property and communications systems resulted in financial institutions collectively growing short of liquidity. The Federal Reserve supplied significant short-term liquidity to market participants, ensuring that the

financial systems in the United States continued to function. As a result, the Farm Credit banks and other GSEs continued to raise funds by issuing short-term debt securities.

The events of September 11, 2001, as well as geopolitical instability, corporate scandals, problems of the telecommunications industry, and widespread credit deterioration contributed to a reduction in investors' risk tolerance. Investors were concerned that corporations were overly dependent on short-term debt. Credit rating agencies downgraded several non-financial commercial paper issues, effectively shutting many corporations out of the short-term debt market. By September 2002, the commercial paper market had shrunk by more than 50 percent. Investors also questioned liquidity risk associated with the GSEs' heavy reliance on short-term debt. Most GSEs, including the System, responded by increasing longer term debt issuances and decreasing short-term debt outstanding.

In response to market events, Farm Credit banks also entered a voluntary Common Minimum Liquidity Standard (CMLS) agreement to maintain more than the existing regulatory liquidity reserve requirement.<sup>6</sup> The banks agreed in the CMLS to maintain at least 90 days of liquidity. The two largest housing GSEs had previously implemented similar voluntary liquidity commitments.<sup>7</sup>

While the Farm Credit banks operated during the events of 2001 without accessing their liquidity reserve, we support the current industry trend of building a higher liquidity reserve to reduce potential risks from market disruptions of greater duration or magnitude. We also believe that ongoing investor concerns about the safe and sound operations of financial institutions in times of crisis must be addressed, in part, through regulatory action. If access to the debt markets is hindered or investor confidence in Systemwide debt securities erodes for any reason, the System must have adequate liquidity to sustain operations and fulfill its Congressional mandate.

For these reasons, we propose to increase the regulatory liquidity reserve requirement to 90 days. We note that the proposed change is a minimum reserve level. Farm Credit banks may need to set a higher target liquidity reserve

<sup>1</sup> Farm Credit banks use the Federal Farm Credit Banks Funding Corporation (Funding Corporation) to issue and market Systemwide debt securities. The Funding Corporation is owned by the Farm Credit banks.

<sup>2</sup> Pub. L. 92–181, 85 Stat. 583. Section 4.2 of the Act authorizes Farm Credit banks to issue Systemwide debt securities as a means of obtaining funds for the System's operations and to invest excess funds.

<sup>3</sup> We last amended these regulations in 1999. See 64 FR 28884 (May 28, 1999).

<sup>4</sup> "Sound Practices for Managing Liquidity in Banking Organizations," Basel Committee on Banking Supervision, [www.bis.org](http://www.bis.org) (accessed June 2, 2004).

<sup>5</sup> See 2003 Amended and Restated Market Access Agreement, Articles III, IV, and V (68 FR 2037, January 15, 2003).

<sup>6</sup> Farm Credit System Annual Information Statement, at 49 (2003).

<sup>7</sup> "Freddie Mac and Fannie Mae Announce Enhancements to Risk Management, Capital and Disclosure Practices and Standards," Press Release, October 19, 2000, [www.fanniemae.com](http://www.fanniemae.com) (accessed June 3, 2004).

minimum as part of their investment management policies, recognizing that in adverse situations a significantly higher liquidity reserve may be needed to protect against prolonged market disruptions.

Additionally, we propose to apply discounts on assets used to fund the liquidity reserve. Farm Credit banks may only use cash and eligible investments to fund the liquidity reserve. The discounts approximate the cost of liquidating an investment portfolio over a short period of time in adverse situations. Investments used to fund the liquidity reserve must be readily marketable. We define readily marketable assets to be investments that can be quickly converted into cash at a reasonable cost and in a timely manner.

We are also proposing two other amendments to our regulations: (1) Changing the eligible investment limit from 30 percent of total outstanding loans to 35 percent of total outstanding loans; and (2) requiring Farm Credit banks to establish and maintain a contingency plan. Under current § 615.5132, each Farm Credit bank may only hold investments equaling no more than 30 percent of the bank's total outstanding loans. This limit, when combined with a larger liquidity reserve requirement, may restrict Farm Credit banks' ability to effectively manage their balance sheet. Therefore, we propose changing the limit to 35 percent of a bank's total outstanding loans.

In order to increase liquidity, Farm Credit banks must either increase liquid investments or the duration of their debt. Increasing the liquidity reserve requirement without a corresponding change in the investment limit could reduce the banks' ability to effectively react to a variety of market conditions. For example, in a declining interest rate environment, a bank may want to shorten the duration of its liabilities to more closely match assets that may be subject to faster prepayments in a declining rate environment. However, if a bank has reached its investment limitation, the minimum liquidity reserve requirement would eventually constrain a bank's ability to shorten the duration of its debt. We believe a change in the limit of eligible investments is warranted to provide the banks with additional flexibility to successfully meet their liquidity needs and accomplish their asset/liability management strategies in all economic conditions. While making the limit less restrictive, we also note that the housing

GSE regulatory agencies do not place a ceiling on total investments.<sup>8</sup>

We also propose to require Farm Credit banks to have a liquidity contingency plan as part of their investment policies. The proposed changes to our existing regulations are explained in more detail in the section-by-section analysis below.

### **III. Section-by-Section Analysis**

#### *A. Investment Purposes [§ 615.5132]*

We propose amending § 615.5132 by changing the current eligible investment limit from 30 percent of total outstanding loans to 35 percent of total outstanding loans. Farm Credit banks use investments to manage short-term surplus funds, meet the minimum liquidity reserve requirement and manage interest rate risk. We believe a limit change to 35 percent of total outstanding loans would provide the banks with more flexibility to successfully meet their liquidity needs and accomplish their asset/liability management strategies. This change would allow Farm Credit banks sufficient latitude to effectively react to rapidly changing market conditions that can impact bank performance while still limiting the banks' ability to arbitrage their GSE status in the debt markets.

#### *B. Liquidity Reserve Requirement*

##### *1. Minimum Liquidity Reserve Days [§ 615.5134(a)]*

We propose amending § 615.5134(a) to establish a minimum liquidity reserve sufficient to fund 90 days of maturing obligations and other bank borrowings. We determined that the existing reserve requirement of approximately 15 days of liquidity, while adequate under normal operations and for short-term disruptions, is insufficient for prolonged market disruption. For example, during the agricultural crisis of the 1980s, the System suffered tremendous financial stress and the market required a higher rate of return for System debt. The Farm Credit banks reacted to the crisis by increasing their liquidity reserves over 220 percent between 1985 and 1986 to protect against further market disruption.<sup>9</sup>

<sup>8</sup>The Federal Housing Finance Board limits Federal Home Loan Bank (FHLB) investments in mortgage-backed securities to 300 percent of the bank's previous month-end capital and limits non-mortgage investments to 11 percent of total assets. See 12 CFR 966 and FHLB Financial Report (2003). The Office of Federal Housing Enterprise Oversight provides general guidance pertaining to non-mortgage investments but no limitations. See 12 CFR 1720.

<sup>9</sup>Farm Credit System Annual Information Statement, at 4 (1986).

We propose a mandatory minimum 90-day liquidity reserve to provide a safeguard for borrowers and investors. Under the proposed minimum, Farm Credit banks will be able to continue to fulfill their mission in a safe and sound manner, even under extreme market conditions. The proposed rule specifies that the reserve amount is based on the discounted value of the liquid assets. These discounts are discussed in section III.B.3. of this preamble.

The proposed rule would also remove the existing liquidity reserve calculation in § 615.5134(a). We believe a specific number of days is less burdensome than the procedure of calculating days and will result in greater accuracy when determining reserve levels.

##### *2. Minimum Investment Rating [§ 615.5134(a)]*

The proposed rule would require that certain investments used to fund the liquidity reserve carry one of the two highest ratings from a Nationally Recognized Statistical Rating Organization (NRSRO) in order to be counted toward the reserve requirement. Higher rated investments are generally more liquid, less volatile, and can be quickly converted into cash without significant loss. The proposed rule would also allow Farm Credit banks to include investments that are not rated in their liquidity reserves, if the investments are issued by an issuer that has one of the two highest ratings or they are guaranteed by the full faith and credit of the United States Government.

##### *3. Discounts [§ 615.5134(c)]*

The proposed rule would replace the calculations in § 615.5134(c) with discounts of assets used to fund the liquidity reserve. Each investment would be discounted to consider the cost of liquidating an investment portfolio over a short period of time in adverse situations. We believe a system of discounting assets more accurately reflects true market conditions. For example, investments that are less interest rate sensitive, such as short-term and variable rate instruments that remain below their cap, are given less of a discount because they are exposed to less price risk. The discount for long-term fixed rate instruments is higher because of greater market risk.

The proposed discounting method is calculated as follows:

Instrument	Multiply by (in percent)
Cash and overnight investments .....	100

Instrument	Multiply by (in percent)
Money market instruments & floating rate debt securities below contractual rate .....	95
Fixed rate debt securities .....	90

#### 4. Liquidity Contingency Plan [§ 615.5134(d)]

The proposed rule would add a new § 615.5134(d) requiring each Farm Credit bank to develop a contingency plan in order to ensure the most effective use of the liquidity reserve. The proposed rule would require the plan to be annually reviewed and updated, if necessary. This requirement is similar to the requirement in § 615.5133(a) that the investment management policies be reviewed annually, making all needed changes. We expect a contingency plan to contain a strategy with clear procedures to address liquidity shortfalls in the event of market disruption. The proposed rule would allow the banks to include the contingency plan in their investment policy documents. We encourage the banks to use the Basel Committee report on managing liquidity in banking organizations as a guide when developing the contingency plan.

#### IV. Miscellaneous

##### 1. Technical Changes

We propose replacing “Farm Credit banks, bank for cooperatives, and agricultural credit banks,” in § 615.5132 and § 615.5134 with “Farm Credit bank” pursuant to the definition contained in § 619.9140 of our regulations. As a conforming change, we propose removing the definition for “Bank” from § 615.5131(b) because it is unnecessary and redesignating the subsequent paragraphs. We also propose changing § 615.5174(a) to correct the cross-reference to § 615.5131(g) to reflect the redesignation of paragraphs.

##### 2. Other Issues

We are seeking comments on the procedure for disposing of ineligible investments under § 615.5143. Our existing regulation requires a Farm Credit bank to divest itself of formerly eligible investments that have become ineligible. Divestiture must occur within 6 months unless we have approved a divestiture plan extending the time to divest. Prior to this rulemaking, a Farm Credit bank asked us to provide investment flexibility instead of divestiture when facing unavoidable financial loss. We are seeking comments on this matter, specifically for those situations when general economic

conditions cause an investment to become ineligible or when the eligibility of an investment may be restored.

#### V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the Farm Credit banks, considered with its affiliated associations, has assets and annual income over 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, part 615 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended 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 E—Investment Management

##### § 615.5131 [Amended]

2. Amend § 615.5131 by:
  - a. Removing paragraph (b) and redesignating existing paragraphs (c) through (m) as paragraphs (b) through (l), consecutively; and
  - b. Removing the reference “§ 615.5131(i)” and adding in its place, the reference “§ 615.5131(h)” in paragraph (a).
3. Revise § 615.5132 to read as follows:

##### § 615.5132 Investment purposes.

Each Farm Credit bank is allowed to hold eligible investments, listed under § 615.5140, in an amount not to exceed 35 percent of its total outstanding loans, to comply with the liquidity reserve requirement of § 615.5134, manage

surplus short-term funds, and manage interest rate risk under § 615.5135.

4. Amend § 615.5134 by revising paragraphs (a) and (c) and by adding new paragraph (d) to read as follows:

##### § 615.5134 Liquidity reserve requirement.

(a) Each Farm Credit bank must maintain a liquidity reserve of cash and the eligible investments under § 615.5140, discounted in accordance with paragraph (c) of this section, sufficient to fund 90 days of maturing obligations and other borrowings of the bank. Money market instruments, floating, and fixed rate debt securities used to fund the liquidity reserve must be backed by the full faith and credit of the United States or rated in one of the two highest NRSRO credit categories. If not rated, the issuer’s NRSRO credit rating, if one of the two highest, may be used.

\* \* \* \* \*

(c) The liquid assets of the liquidity reserve are discounted as follows:

(1) Multiply cash and overnight investments by 100 percent.

(2) Multiply money market instruments and floating rate debt securities that are below the contractual cap rate by 95 percent of the market value.

(3) Multiply fixed rate debt securities by 90 percent of the market value.

(4) Multiply individual securities in diversified investment funds by the discounts that would apply to the securities if held separately.

(d) Each Farm Credit bank must have a contingency plan to address liquidity shortfalls during market disruptions. The board of directors must review the plan each year, making all needed changes. Farm Credit banks may incorporate these requirements into their § 615.5133 investment management policies.

#### Subpart F—Property, Transfers of Capital, and Other Investments

##### § 615.5174 [Amended]

5. Amend § 615.5174 by removing the reference “§ 615.5131(g)” and adding in its place, the reference “§ 615.5131(f)” in paragraph (a).

Dated: November 10, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.  
[FR Doc. 04-25395 Filed 11-15-04; 8:45 am]

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