

as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year, or the amount of net increase in the estate's or trust's value resulting from its business or investment interests.

(c) For purposes of applying this subpart and calculating the three-year average referenced in § 1400.600, that average shall be for the adjusted gross income for the three tax years immediately preceding the applicable crop, program or fiscal year, as determined by CCC. For an entity that is not required to file a federal income tax return, or an individual or entity that did not have taxable income in one or more tax years, the average shall be the adjusted gross income, including losses, averaged for the three tax years immediately preceding the applicable crop, program or fiscal year, as determined by CCC. However, a new entity will have its adjusted gross income averaged only for those years of the base period for which it was in business, but a new entity shall not be considered "new" to the extent it takes over an existing operation and has any elements of common ownership or interests with the preceding entity, or with individuals or entities with an interest in the "old" entity. When there is such commonality, income of the "old" entity will be averaged with that of the "new" entity for the base period.

#### § 1400.602 Compliance.

(a) To comply with the average adjusted gross income limitation, an individual or entity, including all interest holders in an entity, general partnership or joint venture, shall provide the following as required by CCC:

(1) A certification in the manner prescribed by CCC from a certified public accountant or attorney that the average adjusted gross income of the individual or entity does not exceed this limitation;

(2) A certification in the manner prescribed by CCC from the individual or entity that the average adjusted gross income of the individual or entity does not exceed this limitation; or

(3) Submission to CCC of the relevant Internal Revenue Service documents and supporting financial data as requested by CCC. Supporting financial data may include State income tax returns, financial statements, balance sheets, reports prepared for or provided to another Government agency, information prepared for a private lender, and other credible information relating to the amount and source of the individual's or entity's income.

(b) Audits of certifications of average adjusted gross income may be conducted as necessary to determine compliance with the requirements of this subpart. As a part of this audit income tax returns may be requested and if requested must be supplied. Relevant income tax returns and documentation must be retained a minimum of two years after the end of the calendar year corresponding to the year for which payments or benefits are requested. If an individual or entity has submitted information to CCC, including a certification from a certified public accountant or attorney, that relied upon information from a form previously filed with the Internal Revenue Service, such individual or entity shall provide to CCC a copy of any amended form filed with the Internal Revenue Service within 30 days of the filing.

(c) The individual or entity shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this subpart, including all documents referred to in paragraph (a)(2) of this section. Failure to provide necessary and accurate information to verify compliance, or failure to comply with this subpart's requirements, will result in ineligibility for all program benefits subject to this subpart for the year or years subject to the request.

(d) All information provided to CCC for the purposes of determining compliance with this subpart will remain confidential and not be subject to any request submitted under the Freedom of Information Act.

#### § 1400.603 Commensurate reduction.

(a) Any program payment or benefit subject to this subpart provided to an entity, general partnership or joint venture shall be reduced by an amount commensurate with the direct and indirect ownership interest in the entity, general partnership, or joint venture of each individual or entity determined to have an average adjusted gross income in excess of the limitation under the standards provided elsewhere in this subpart for the direct recipient of such payments.

(b) Ownership interest in an entity shall be reviewed to the fifth level of ownership to determine whether a commensurate reduction is applicable and the extent of such reduction. If an ownership interest is not held by an individual in the fifth level of ownership in an entity, no payment or benefit shall be made with respect to such interest.

Signed in Washington, DC, on May 28, 2003.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

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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; Effective Date

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of effective date.

**SUMMARY:** The Farm Credit Administration (FCA) published an interim final rule with request for comments under part 615 on March 28, 2003 (68 FR 15045). This interim final rule amends our regulatory capital standards to allow Farm Credit 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. In accordance with 12 U.S.C. 2252, the effective date of the interim final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 13, 2003.

**EFFECTIVE DATE:** The regulation amending 12 CFR part 615 published on March 28, 2003 (68 FR 15045) is effective May 13, 2003.

**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.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 30, 2003.

**Jeanette C. Brinkley,**

*Secretary, Farm Credit Administration Board.*

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

RIN 3245-AE89

#### Small Business Size Standards; Forest Fire Suppression and Fuels Management Services

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is adopting a size standard of \$15 million in average annual receipts for the activities of "Forest Fire Suppression and Fuels Management Service" classified within the "Support Activities for Forestry" industry (North American Industry Classification System (NAICS) 115310). This action will better define the size of businesses in these activities that the SBA believes should be eligible for Federal small business assistance programs. The size standard for the remainder of activities in this industry remains at \$6 million.

**DATES:** This rule is effective July 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Diane Heal, Program Analyst, Office of Size Standards, at (202) 205-6618 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:** On July 19, 2002, the SBA published a proposed rule in the *Federal Register* (67 FR 47480) to establish a \$15 million size standard for forest fire suppression and fuels management services under NAICS code 115310, the Support Activities for Forestry industry. The SBA proposed to establish a size standard for these activities after reviewing requests from firms in the forestry industry. These firms believe that this action is warranted in light of the increased emphasis by the Federal Government on removing biomass fuels from the Nation's forest, the dramatic increase in funding for this effort, and the Federal Government's growing reliance upon the private sector to perform fuels management tasks and to suppress forest fires.

Based on these concerns, the SBA conducted a review of this industry's size standard. In addition to reviewing patterns of Federal procurement in this

industry, it collected and evaluated data on the industry's structure. This review involved comparisons of average firm size, the size distribution of firms, measures of start-up costs, and the degree of concentration of economic activity among very large firms in the industry. Based on its review of each of these evaluation factors, and the nature and patterns of Federal contracting for forest fire suppression and fuels management services, the SBA concluded that the data supported a size standard for forest fire suppression and fuels management services industry activities of \$15 million in average annual receipts. The SBA did not propose a change to the \$6 million size standard for all the other remaining forestry activities within the industry. (For more information on the reasons for the proposed establishment of a \$15 million size standard, see the July 19, 2002, proposed rule.) After careful consideration of the comments received on the proposed rule, the SBA has decided to adopt its proposed size standard of \$15 million.

#### Discussion of Comments on the Proposed Rule

The SBA received 19 comments on the proposed size standard from eight environmental and economic associations, five firms, three Federal agencies, two individuals, and one trade association. In summary, eight commenters supported the proposed size standard and 11 commenters opposed that change. Below is a summary of the major issues raised by the comments received on the proposed rule and the SBA's response.

#### Comments Supporting a Higher Size Standard

One organization supported the proposed increase in the size standard, but claimed that the increase could be greater than \$15 million due to the 2002 fire season. This commenter did not provide any supporting statistics or documentation.

The SBA does not adopt this comment. In the proposed rule, the SBA discussed the reasons for proposing the size standard at \$15 million. Even though the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) expended record contract dollars for the 2002 fire season, the SBA found that the firms impacted the most were those whose revenues were below \$6 million before the 2002 season. Several of these firms now exceed the current size standard. The increased revenues from this past fire season support the SBA's reasons for establishing a size standard above the current \$6 million level for

forest fire suppression and fuels management services activities. The SBA believes that a \$15 million size standard is sufficient to allow these companies to grow to a size to meet the capital requirements of forest fire suppression and fuels management services contracts. The SBA is reluctant to adopt a higher size standard than it proposed without more information on the structure of the industry that demonstrates a stronger basis for a higher size standard.

Three commenters supported the proposed size standard because of the importance it has on firms engaged in forest fire suppression and fuels management services. One commenter pointed out that the firms performing these tasks have been developed primarily for Federal Government work. The commenter contends "it is a logical extension of the effort that Federal agencies have pursued to allow companies that have been developed for Federal work to continue this work \* \* \* The higher standard allows continued growth as well as expansion of the small business pool through subcontracting." Another commenter added that the Federal Government's reliance on the private sector is expected to significantly increase due to the emphasis on contract use under the National Fire Plan and the effort to outsource commercial work that can be done by private concerns.

One Federal agency expressed concern about the shift in the forestry industries away from logging and into forest fire suppression and fuels management services. The commenter stated that if a firm exceeds the size standard, there is no commercial market for these types of firms, as "The Government is in the only game in town." These firms make up a significant portion of one of its contracting offices' fire fighting resources. It also pointed out that normally small business set-aside programs are designed to help small businesses graduate and go onto bigger and more lucrative commercial contracts. In this industry, the Federal Government far exceeds the amount of work done by private landowners, or even by the states and counties.

The SBA agrees with these comments. As stated in the preamble to the proposed rule, over the last several years the Federal Government has placed greater reliance upon contractors to perform these services, resulting in a dramatic increase in contract funding for forest fire suppression and fuels management activities. This is especially true in the western part of the country where the Federal Government