

1550–0072. Respondents/recordkeepers are not required to respond to any collection of information unless it displays a currently valid OMB control number.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule makes various changes to OTS application and reporting requirements that reduce regulatory burdens on all savings associations, including small savings associations. These changes will not have a significant impact on small institutions. Accordingly, OTS has determined that regulatory flexibility analysis is not required.

C. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a “significant regulatory action” for purposes of Executive Order 12866.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in 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. The final rule makes various changes that should reduce regulatory burdens on all savings associations. Accordingly, OTS has determined that this rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more and that a budgetary impact statement is not required.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 516

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 528

Advertising, Aged, Civil rights, Credit, Equal employment opportunity, Fair

housing, Home mortgage disclosure, Individuals with disabilities, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination, Signs and symbols.

12 CFR Parts 543 and 544

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Parts 552 and 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 559

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Authority and Issuance

■ Accordingly, the interim final rule amending 12 CFR parts 506, 516, 528, 543, 544, 545, 552, 559, 563, 563b, 567, 574, and 575, which was published at 69 FR 68239 on November 24, 2004, is adopted as final with the following changes:

PART 545—FEDERAL SAVINGS ASSOCIATIONS—OPERATIONS

■ 1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, and 1828.

■ 2. Amend § 545.93 by redesignating paragraph (b)(3)(iii) as paragraph (b)(3)(iv) and adding a new paragraph (b)(3)(iii) to read as follows:

§ 545.93 Application and notice requirements for branch and home offices.

* * * * *

(b) * * *

(3) * * *

(iii) If you intend to change the location of an existing office, you posted a notice of your intent in a prominent location in the existing office to be relocated. You must post the notice for 30 days from the date of publication of the initial public notice described in paragraph (b)(3)(ii) of this section.

* * * * *

■ 3. Amend § 545.95 by revising the heading and adding a new paragraph (b)(1)(iii) to read as follows:

§ 545.95 What processing procedures apply to my home or branch office application or notice?

* * * * *

(b) * * *

(1) * * *

(iii) OTS will review the application or notice under the National Environmental Policy Act (42 U.S.C. 3421 *et seq.*) and the National Historic Preservation Act (16 U.S.C. 470).

* * * * *

Dated: August 25, 2005.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. 05–17334 Filed 8–30–05; 8:45 am]

BILLING CODE 6720–01–P

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: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) issues this final rule amending our liquidity reserve requirement for the banks of the Farm Credit System (System) to ensure the banks have adequate liquidity. The final rule increases the minimum liquidity reserve requirement to 90 days, increases the eligible investment limit to 35 percent of total outstanding loans and requires Farm Credit banks to develop and maintain liquidity

contingency plans. These enhanced requirements will improve the ability of Farm Credit banks to supply agricultural credit in all economic situations.

DATES: This regulation will be effective 30 days after the publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Wade Wynn, Financial Analyst, Office of Regulatory Policy, 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) 883-4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this rule are to:

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

II. Background

Congress created the System as a government-sponsored enterprise (GSE) to provide a permanent, stable, and reliable source of credit and related services to American agriculture and aquatic producers. Farm Credit banks obtain funds to provide this financing through System-wide debt securities.¹ If access to the debt market becomes temporarily impeded, Farm Credit banks must have enough liquidity to continue operations and pay maturing obligations.

In 1993, we issued § 615.5134 requiring each Farm Credit bank to maintain a liquidity reserve sufficient to fund operations for approximately 15 days.² We also issued § 615.5132 restricting eligible investments of Farm Credit banks to 30 percent of total outstanding loans. The investment limit authorizes Farm Credit banks to hold eligible investments for the purposes of

(1) Maintaining a liquidity reserve (2) managing surplus short-term funds, and (3) managing interest rate risk. The liquidity reserve provision ensures the safety and soundness of Farm Credit banks, protecting the System from potential market disruptions, and the 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. To supplement the regulatory minimum liquidity reserve, and to respond to market conditions and expectations, the Farm Credit banks entered into a voluntary Common Minimum Liquidity Standard (CMLS) agreement to maintain at least 90 days of liquidity. All Farm Credit banks currently exceed the voluntary minimum liquidity reserve requirement.³

On November 16, 2004, we published a proposed rule (69 FR 67070) to increase the minimum liquidity reserve requirement to 90 days and raise the maximum eligible investment limit to 35 percent of total outstanding loans. We also proposed that Farm Credit banks develop and maintain contingency plans to ensure the most effective use of the liquidity reserve and to address potential liquidity shortfalls in the event of market disruptions. This final rule addresses the comments received on the proposed rule.

III. Comments and Our Response

We received 5 comments on our proposed rule from three Farm Credit banks, the Farm Credit Council (FCC) representing its membership, and the American Bankers Association (ABA). We also received one comment from a Farm Credit bank as part of our regulatory burden initiative. All commenters supported increasing the liquidity reserve requirement. However, the ABA objected to raising the investment limit, while System commenters asked us to further increase or remove the limit. System commenters also asked us to clarify other aspects of our proposed rule.

We discuss those aspects, along with the individual comments associated with our proposed changes, and our response below. Commenters also responded to our request for comments on the existing rule for disposing of ineligible investments, which we discuss separately below.

Those areas of the proposed rule that did not receive comments are finalized as proposed.

A. Investment Purposes [§ 615.5132]

The FCC and Farm Credit banks generally agreed with increasing the eligible investment limit, but also urged us to remove the limit. One Farm Credit bank stated that the investment limit was arbitrary and does not provide the System with adequate flexibility. Another argued that the limit constrains the bank's ability to achieve a higher level of liquidity if necessary. The FCC commented that investment limits should be set by the bank's board of directors and not by regulation. The FCC argued that an effective risk management program provides a better framework for controlling risk and a regulatory investment limit places an artificial and unnecessary burden on the System with no resulting benefit. Three Farm Credit banks alternatively suggested investment limits of 40 and 50 percent of total outstanding loans if the limit is not removed. One Farm Credit bank further recommended, as an alternative to a 40-percent investment limit, to include unused commitments with total outstanding loans when calculating the percentage of investments.

The ABA opposed increasing the investment limit. The ABA argued that the Farm Credit banks have been able to successfully fund their individual liquidity reserves under the current investment limit. The ABA commented that the increase would allow the System to accumulate larger investment portfolios to further arbitrage profits, thereby diverting financial resources away from farmers, ranchers, and rural homeowners. The ABA also commented that a higher investment limit is unnecessary because the System is a GSE and, during times of systemic stress, investors generally flock to safer investments, including GSE debt securities.

We disagree that an eligible investment limit is unnecessary or that the increase is inappropriate. We believe an investment limit ensures agricultural loans comprise the greatest portion of the System's assets, thereby fulfilling its mission of financing agriculture and rural America. We limit total eligible investments to prevent Farm Credit banks from engaging in inappropriate investment activities that are incompatible with their GSE status. Additionally, we disagree that a higher investment limit is unnecessary. The combination of an increased minimum liquidity reserve requirement and investment limit is designed to address

¹ Farm Credit banks use the Federal Farm Credit Banks Funding Corporation (Funding Corporation) to issue and market System-wide debt securities. The Funding Corporation is owned by the Farm Credit banks.

² 58 FR 63034 (November 30, 1993).

³ The System's liquidity position was 174 days at March 31, 2005. See Farm Credit System Quarterly Information Statement, at 21 (May 9, 2005).

situations where the System's access to the debt market becomes temporarily impeded. We recognize the Farm Credit banks have been successful at maintaining appropriate levels of liquidity and managing their balance sheets under the existing investment limit and current, favorable market conditions. However, a larger liquidity reserve requirement, without a corresponding increase in the investment limit, could constrain the ability of Farm Credit banks to manage operations under different market conditions. Under more adverse market conditions, Farm Credit banks may not be able to increase their days of liquidity through extending the duration of debt without incurring substantial cost. The higher investment limit provides each Farm Credit bank additional flexibility to meet the larger liquidity reserve requirement and to effectively manage their balance sheets in all economic conditions.

Similarly, we reject the suggestions for a higher investment limit than the one proposed.⁴ Increasing the eligible investment limit to 35 percent is appropriate given the six-fold increase in the minimum liquidity reserve requirement. We believe a 5-percent higher investment limit addresses the 90-day minimum liquidity reserve requirement without compromising the System's responsibility to finance agriculture. Should an emergency situation arise when greater investments are necessary, Farm Credit banks may request FCA approval to temporarily increase the investment limit under § 615.5136(a).

The ABA commented that increasing the investment limit allows Farm Credit banks more room to engage in risky on-balance sheet maturity mismatching. The ABA stated that FCA should take steps to reduce the System's dependence on hedge counterparties. Specifically, the ABA noted that the System, by using derivative instruments, has been transforming longer-term debt in the 1-to-5 year repricing interval into shorter-term debt in the 0-to-6 month repricing interval. The ABA argues that an investment limit increase allows even more room to engage in extreme maturity

mismatching, creating the potential for gambling on interest-rate swings.

We do not agree with the commenter that the Farm Credit banks have used their investment authority to engage in inappropriate activity. The transformation of longer-term debt into shorter-term debt using interest rate swaps correlates with the Farm Credit banks' voluntary initiative to increase liquidity reserves. The Farm Credit banks have collectively increased total earning assets and decreased interest-bearing liabilities in the 0-to-6 month bucket to increase days of liquidity. The System has also increased the issuance of synthetic variable rate-debt to compensate for the mismatch.

We have previously stated that any speculative use of derivatives would be considered an unsafe and unsound banking practice.⁵ We recognize that derivative financial instruments are useful risk management tools to hedge against interest rate and liquidity risk and are an essential part of any interest rate risk management program. Each Farm Credit bank is required to establish and maintain investment policies that limit counterparty risk in investments and financial derivatives. We require each Farm Credit bank to establish interest rate risk exposure limits, to determine criteria to comply with the limits, to identify and analyze causes of risk, and to conduct interest rate shock tests. Our examination staff reviews these policies and monitors interest rate risk in Farm Credit banks, including counterparty risk in financial derivatives. We have the appropriate safeguards in place to effectively regulate Farm Credit banks without inhibiting their ability to successfully serve agriculture and rural America.

For the reasons discussed above, this section of the rule is adopted as proposed. In so doing, we emphasize that the original purpose of our investment limit remains unchanged.

B. Liquidity Reserve Requirement

1. Liquidity Reserve Calculation [§ 615.5134(a)]

All commenters supported increasing the minimum liquidity reserve requirement from approximately 15 days to 90 days, adding a rating element to investments used to fund the liquidity reserve, and the method of discounting those investments to reflect market value in the event of liquidation. One Farm Credit bank asked that all investment grade securities be included in the liquidity reserve, not just highly

rated investments. This same commenter asked for clarification on the eligibility of Federal Agricultural Mortgage Corporation (FAMC) agricultural mortgage-backed securities for liquidity purposes.

We believe a regulatory minimum liquidity reserve should be funded with highly rated investments, which are generally more liquid, less volatile, and can be quickly converted to cash without significant loss. We therefore finalize investment rating requirements as proposed. FAMC securities may not be used to fund a Farm Credit bank's liquidity reserve. FAMC securities, while not listed in § 615.5140, are identified as eligible investments under § 615.5174. However, § 615.5174(c)(3) specifically states that FAMC securities may not be used to maintain a Farm Credit bank's liquidity reserve. This prohibition addresses the concern of concentration risk. If the System had real or perceived credit problems due to a crisis in the agricultural economy and could not access the market at reasonable rates, those same economic factors may also adversely affect the price and liquidity of FAMC securities.

System commenters additionally requested clarification of the meaning of the regulatory language "maturing obligations and other borrowings of the bank." They also asked whether proceeds from System debt issuances are applied to the liquidity reserve on the trade date or settlement date.

In response to these requests, we are adding clarifying language to the final rule. The final rule clarifies that "maturing obligations and other borrowings of the bank" excludes both interest receivable and interest payable, since interest received generally offsets interest due. The liquidity reserve calculation should be a simple procedure that excludes both interest receivable and interest payable. The final rule also clarifies that proceeds from debt issuances are to be applied to the liquidity reserve on the contractual trade date. While many longer-term System debt issuances do not trade and settle on the same date, the risk of settlement default is extremely low. The Funding Corporation enters into a contractual agreement with selling group members on the trade date with the firm expectation of receiving cash from System debt issuances on the settlement date. As trades are made, the selling group members are contractually obligated to deliver cash to the Funding Corporation on the settlement date. In the event of a systemic market disruption, cash proceeds from debt issuances are as likely to be delayed as are payments of maturing obligations.

⁴ The FCA has recently authorized, as eligible investments under § 615.5140(e), pilot mission-related investment programs that are not subject to the regulatory investment limit of § 615.5132. Instead, the authorizations provide for a separate, additional investment limit for the duration of the pilot program. Because the investments are limited to mission-related investments, we believe they are compatible with the System's GSE status. See "Investments in Rural America Pilot Investment Programs," FCA Informational Memorandum (January 11, 2005).

⁵ "Guidelines for Using Derivative Products," FCA Bookletter BL-023 (October 31, 1995) and 63 FR 33281.

The FCC further requested we explain what the maturity date would be for obligations that have embedded “put” and “call” options, which give an investor or a Farm Credit bank the option to redeem an obligation before the contractual maturity date. We expect Farm Credit banks to use, for liquidity reserve calculations, the earlier of: the obligation’s contractual maturity date, the “call date” for which the call option has been executed, or the “put date” for securities.

Although we received no comments on the frequency of calculating the liquidity reserve, we are adding language to the final rule to clarify that Farm Credit banks must satisfy the 90-day minimum liquidity reserve requirement on a daily basis. Farm Credit banks are expected to calculate the liquidity reserve on a daily basis to ensure compliance.

2. Discounts [§ 615.5134(c)]

The ABA supported discounting assets used to fund the liquidity reserve. The FCC asked us to clarify how floating rate debt securities, which exceed contractual cap rates, are discounted. The Farm Credit banks made no individual comments on the discounts.

We are adding language to the final rule to clarify that floating rate debt security coupons meeting or exceeding a contractual cap rate are treated as a fixed rate debt security and discounted at 90 percent. Any floating rate debt security that is below the contractual cap rate is discounted at 95 percent.

3. Other Comments—Eligible Investments [§ 615.5140]

Our proposed rule addressed the liquidity of Farm Credit banks; it did not address the eligible investment categories used to fund the liquidity reserve. However, we received comments from the FCC and two Farm Credit banks on existing eligible investments under § 615.5140. The commenters recommended changes to individual investment limits and the inclusion of additional investment authorities. The FCC and one Farm Credit bank specifically recommended allowing loans supported by GSE-issued long-term standby purchase commitments (LTSPCs) to fund the liquidity reserve. The FCC explained that they consider loans supported by GSE-issued LTSPCs as liquid assets suitable for the liquidity reserve.

This final rulemaking does not change § 615.5140, nor add loans that are credit enhanced by GSE LTSPCs to the list of items that may be used to fund the liquidity reserve. However, we intend to reconsider the issue of loans covered by

GSE-issued LTSPCs, as well as the § 615.5140 list of eligible investments, in future rulemaking.

The System commenters also recommended changing the requirements for independently verifying the purchase and sale of investments under § 615.5133(f); obligor limits under § 615.5140(d)(1); and stress testing under § 615.5141. The FCC and a Farm Credit bank commented that § 615.5133(f) adds an unnecessary cost with no resulting benefit. One Farm Credit bank recommended modifying the stress-testing requirements of mortgage-backed securities under § 615.5141 to allow testing on a portfolio basis instead of on individual securities. This same commenter suggested specific obligor limits under § 615.5140(d)(1). We are not addressing these comments in this final rulemaking, but intend to address them in future rulemakings.

C. Liquidity Contingency Plan [new § 615.5134(d)]

Only the ABA commented on the proposed requirement that each Farm Credit bank develop a contingency plan to ensure the most effective use of the liquidity reserve. The ABA supported establishment of such a plan. We adopt this section of the rule as proposed.

D. Disposal of Ineligible Investments [§ 615.5143]

We asked for comments on whether we should change our existing divestiture regulation for those situations when general economic conditions cause investments to become ineligible or when eligibility may be restored. The ABA commented that the existing requirements are sufficient, pointing out that Farm Credit banks may submit individualized plans to divest themselves of investments that become ineligible after acquisition. The FCC commented that mandatory divestiture should be eliminated when investments become ineligible due to credit downgrades or failed stress tests. The FCC recommended replacing the existing rule with a requirement that banks develop a plan to deal with investments that become ineligible. Three Farm Credit banks recommended the mandatory divestiture provision be eliminated and replaced with a general requirement that Farm Credit banks develop their own procedures for handling ineligible investments. One bank recommended the rule distinguish between investments that are ineligible when acquired and those that later become ineligible.

We reviewed the comments submitted and appreciate the perspectives shared.

We are taking the comments under advisement and may propose changes to this area of our regulations in the future.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies the 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 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, discounted in accordance with paragraph (c) of this section, sufficient to fund 90 days of the principal portion of maturing obligations and other borrowings of the bank at all times. The liquidity reserve may only be funded from cash, including cash due from traded but not yet settled debt, and the eligible investments under § 615.5140. 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 and floating rate debt securities that meet or exceed the contractual cap rate 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: August 25, 2005.

Jeanette C. Brinkley,
Secretary, Farm Credit Administration Board.
[FR Doc. 05-17266 Filed 8-30-05; 8:45 am]

BILLING CODE 6705-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AL12

Exceptions to Definition of Date of Receipt Based on Natural or Man-Made Disruption of Normal Business Practices

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms an amendment to the Department of Veterans Affairs (VA) adjudication regulation regarding the definition of “date of receipt” authorizing the Under Secretary for Benefits to establish exceptions to the general rule when a natural or man-made event interferes with the channels through which the Veterans Benefits Administration (VBA) ordinarily receives correspondence, resulting in extended delays in receipt of claims, information, or evidence from claimants served by VBA. Currently, VBA receives correspondence through its 57 Regional Offices and through the Appeals Management Center, which develops claims on appeal to the Board of Veterans Appeals. The intended effect is to ensure that claimants served by the affected VBA office or offices are not deprived of potential entitlement to benefits because of unexpected delays or impediments not caused by the claimants.

DATES: Effective date: August 31, 2005.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-7232.

SUPPLEMENTARY INFORMATION: VA's regulation addressing the date of receipt for purposes of benefit entitlement is located at 38 CFR 3.1(r), which implements the provisions of 38 U.S.C. 5110, the statutory provision regarding effective dates of awards. On July 19, 2004 (69 FR 42879), an interim final rule was published amending § 3.1(r) to provide that the Under Secretary for Benefits may establish exceptions to the rule governing date of receipt in circumstances when he or she determines that a natural or man-made disruption in the normal channels of communication results in one or more VBA offices experiencing extended delays in the receipt of correspondence.

We provided a 60-day comment period that ended September 17, 2004. We received no comments. Based on the

rationale set forth in the interim final rule we now affirm as a final rule the changes made by the interim final rule.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

Administrative Procedure Act

This document without any changes affirms amendments made by an interim final rule that is already in effect. Accordingly, we have concluded under 5 U.S.C. 553 that there is good cause for dispensing with a delayed effective date based on the conclusion that such procedure is impracticable, unnecessary, and contrary to the public interest.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation) in any given year. This final rule would have no such effect on State, local, or tribal governments, or the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: August 11, 2005.

Gordon H. Mansfield,
Deputy Secretary of Veterans Affairs.

■ Accordingly, the interim final rule amending 38 CFR Part 3 that was