Rules and Regulations

Federal Register
Vol. 70, No. 183
Thursday, September 22, 2005

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH75

List of Approved Fuel Storage Casks: NAC–UMS Revision 4, Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of October 11, 2005, for the direct final rule that was published in the **Federal Register** on July 25, 2005 (70 FR 42485). This direct final rule amended the NRC's regulations to revise the NAC–UMS cask system listing to include Amendment No. 4 to Certificate of Compliance (CoC) No. 1015.

EFFECTIVE DATE: The effective date of October 11, 2005, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

SUPPLEMENTARY INFORMATION: On July 25, 2005 (70 FR 42485), the NRC published a direct final rule amending its regulations in 10 CFR part 72 to revise the NAC-UMS cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 4 to CoC No. 1015. This amendment replaces the term ''zircaloy'' with the more generic term ''zirconium alloy'; revises the definitions of ''operable'' and ''site specific fuel''; revises vacuum drying pressure and time limits; revises short-term temperature limits and completion times for the heat removal system; clarifies the surface dose rate surveillance; adds a dissolved boron concentration option; deletes a redundant boron concentration administrative control; adds an alternate site-specific design basis earthquake analysis; and incorporates editorial and administrative changes. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on October 11, 2005. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 18th day of September, 2005.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 05–18914 Filed 9–21–05; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 627

RIN 3052–AC26

Title IV Conservators, Receivers, and Voluntary Liquidations; Receivership Repudiation Authorities

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) issues this final rule amending our regulations governing how the Farm Credit System Insurance Corporation (FCSIC), as receiver or conservator of a Farm Credit System (System) institution, will treat financial assets transferred by the institution in connection with a securitization or in the form of a participation. This final rule will resolve issues raised by Financial Accounting Standards Board (FASB) Statement No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities (SFAS 140). Under conditions described in the final rule, the FCSIC will not seek to recover or reclaim certain financial assets in exercising its authority to repudiate or disaffirm contracts pursuant to 12 CFR 627.2725(b)(2), (b)(14) and 627.2780(b) and (d). Additionally, with this final rule, the FCSIC will not seek to enforce the ''contemporaneous'' requirement of section 5.61(d) of the Farm Credit Act of 1971, as amended (Act) (12 U.S.C. 2277a–10(d)). The final rule is substantially identical to receivership rules issued by the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA).

EFFECTIVE DATE: This regulation will be effective 30 days after 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:

Robert E. Donnelly, Senior Accountant, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434, or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective in this final rule is to give certainty to System institutions regarding how the FCSIC will treat qualifying participations and securitizations if the institution is subsequently placed in conservatorship or receivership. The rule will achieve this by ensuring that the FCSIC will not attempt to ''pull back'' the subject assets into the conservatorship or receivership estate if the transaction meets specified conditions.

There is nothing in this final rule that provides any System institutions with the authority to engage in any transaction that is not otherwise authorized.

II. Background

As discussed in the preamble to the proposed rule (see 70 FR 21685, April 27, 2005), under generally accepted accounting principles (GAAP), a transfer of financial assets is accounted for as a sale if the transferor surrenders control over the assets. This principle is set forth in the SFAS No. 140 issued by the FASB.[1] Under this principle, one of the conditions for determining that the transferor has surrendered control is that the assets have been isolated from the transferor, *i.e.*, put presumptively beyond the reach of the transferor, its creditors, a trustee in bankruptcy, or a receiver. This is known as the ''legal isolation'' condition.

Whether the legal isolation condition has been met is determined primarily from a legal perspective. This determination involves considerations of the kind of receivership into which the transferor may be placed and the powers of the receiver to reach assets that were transferred prior to its appointment. If the available evidence provides reasonable assurance that the transferred assets would be beyond the reach of the powers of a bankruptcy trustee or receiver for the transferor, then a determination that the transferred assets have been legally isolated is appropriate.

When the transferor is a System institution, the FCSIC may be appointed conservator or receiver. The FCSIC has authority to repudiate burdensome contracts under §§ 627.2725(b)(2), (b)(14) and 627.2780(b) and (d) of FCA regulations; and it can repudiate certain other contracts under section 5.61(d) of the Act.[2] Due to these provisions, the question becomes whether financial assets transferred in connection with a securitization or in the form of a participation would be beyond the reach of the FCSIC as conservator or receiver.

Under §§ 627.2725(b)(2) and 627.2780(d), the FCSIC may take any action it considers appropriate or expedient to carry on the business of the institution during the process of liquidation or during the conservatorship. Under § 627.2725(b)(14), the FCSIC, when acting as conservator or receiver of a System institution, has the power to disaffirm or repudiate any contract or lease to which the institution is a party, the performance of which the FCSIC determines to be burdensome. Repudiation of a contract relieves the FCSIC from performing any unperformed obligations remaining under the contract. Section 5.61(d) of the Act provides that no agreement that tends to diminish or defeat the FCSIC's interest in an asset acquired by the FCSIC as conservator or receiver is enforceable against the FCSIC unless the agreement meets certain requirements. One of those requirements is that the agreement must be executed, by the institution and by any person claiming an adverse interest under it, contemporaneously with the acquisition of the asset by the institution. This is referred to as the ''contemporaneous'' requirement. These provisions are discussed below.

III. Description of the Final Rule

This final rule will add a new § 627.2726 to the conservatorship and receivership provisions in part 627 of FCA's regulations. The rule will apply only to those securitizations or participations in which the transfer of financial assets meets all conditions for sale accounting treatment under GAAP, other than the ''legal isolation'' condition as it applies to institutions for which the FCSIC may be appointed as conservator or receiver, which is addressed by this rule. The final rule provides that, for these transfers, the FCSIC will not, by exercise of its authority to repudiate contracts under § 627.2725(b)(2) or (b)(14), reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by a System institution in connection with a securitization or in the form of a participation. Although the repudiation of a securitization or participation will not affect transferred financial assets, repudiation will excuse the FCSIC from performing any continuing obligations imposed by the securitization or participation. If the FCSIC, in order to terminate such continuing obligations or duties, seeks to repudiate an agreement or contract under which a System institution has transferred financial assets in connection with a securitization or in the form of a participation, the FCSIC will not seek to reclaim, recover, or recharacterize as property of the institution or the receivership such financial assets.

The definitions in the final rule are limited to this rule only, and language has been added to the final rule to clarify this point. The definition of ''participation'' is specifically limited to participations that are ''without recourse'' to the selling or ''lead'' institution. ''Without recourse'' means that the participation must not be subject to any agreement that requires the selling or ''lead'' institution to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation. The term ''without recourse'' will not, however, preclude the lead institution from retaining a subordinated interest in the participated obligation, against which losses are initially allocated. The final rule will not apply unless the System institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

The final rule further provides that it will not be construed as waiving, limiting, or otherwise affecting the rights or powers of the FCSIC to take any action or to exercise any power not specifically limited by this section. Such rights or powers include, but are not limited to, any rights, powers or remedies of the FCSIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

The final rule further provides that the FCSIC will not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by a System institution solely because such agreement does not meet the ''contemporaneous'' requirement of section 5.61(d) of the Act.

The final rule will apply to securitizations and participations engaged in by System institutions while the rule is in effect, even if the rule is later amended or repealed. Section 627.2726(g) provides that any repeal or amendment of the rule by the FCA will not apply to any transfer of financial assets made in connection with a securitization or participation that was in effect before such repeal or amendment. As a result of § 627.2726(g), where a transfer of financial assets in connection with a securitization or in the form of a participation is made by a System institution and the securitization or participation was in effect before any repeal or amendment of the rule by the FCA, such transfer

[1] SFAS 140 replaced SFAS 125 (which had covered the same issues and was identically titled) in September 2000. SFAS 140 revised the standards for accounting for securitizations and other transfers of financial assets and collateral and required certain disclosures, but it carried over most of the provisions of SFAS 125 without reconsideration. The FDIC receivership issues and its related rule 12 CFR 360.6, which are discussed later in this preamble, are described in paragraphs 157–160 of SFAS 140.

[2] *See* 12 CFR 627.2725(b)(2), (b)(14) and 627.2780(b) and (d), and 12 U.S.C. 2277a–10(d).

will continue to satisfy the legal isolation requirement notwithstanding the repeal or amendment.

The final rule makes a conforming change to § 627.2780(b) to clarify that the provisions of this final rule apply to a conservatorship as well as to a receivership.

IV. Comments

The FCA received no written comments on the proposed rule. The FCA adopts the rule as final with no substantive changes other than the change to the definitions section described above.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit 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, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 627

Agriculture, Banks, banking, Claims, Rural areas.

■ For the reasons stated in the preamble, part 627 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 627—CONSERVATORS, RECEIVERS, AND VOLUNTARY LIQUIDATIONS

■ 1. The authority citation for part 627 is amended to read as follows:

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58, 5.61 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7, 2277a–10).

Subpart B—Receivers and Receiverships

■ 2. Add a new § 627.2726 to read as follows:

§ 627.2726 Treatment by the conservator or receiver of financial assets transferred in connection with a securitization or participation.

(a) *Definitions.* For the purposes of this section, the following definitions apply:

Beneficial interest means debt or equity (or mixed) interests or obligations of any type issued by a special purpose entity that entitle their holders to receive payments that depend primarily on the cash flow from financial assets owned by the special purpose entity.

Financial asset means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity.

Participation means the transfer or assignment of an undivided interest in all or part of a loan or a lease from a seller, known as the ''lead'', to a buyer, known as the ''participant'', without recourse to the lead, pursuant to an agreement between the lead and the participant. *Without recourse* means that the participation is not subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant due to a default on the underlying obligation.

Securitization means the issuance by a special purpose entity of beneficial interests:

(1) The most senior class of which at the time of issuance is rated in one of the four highest categories assigned to long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by one or more nationally recognized statistical rating organizations, or

(2) Which are sold in transactions by an issuer not involving any public offering for purposes of section 4 of the Securities Act of 1933 (15 U.S.C. 77d), as amended, or in transactions exempt from registration under such Act pursuant to Regulation S thereunder (or any successor regulation).

Special purpose entity means a trust, corporation, or other entity demonstrably distinct from the Farm Credit institution that is primarily engaged in acquiring and holding (or transferring to another special purpose entity) financial assets, and in activities related or incidental thereto, in connection with the issuance by such special purpose entity (or by another special purpose entity that acquires financial assets directly or indirectly from such special purpose entity) of beneficial interests.

(b) The receiver shall not, by exercise of its authority to repudiate contracts under § 627.2725(b)(2) and (b)(14), reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by a Farm Credit institution in connection with a securitization or participation, provided that such transfer meets all conditions for sale accounting treatment under generally accepted accounting principles, other than the ''legal isolation'' condition as it applies to institutions for which the FCSIC may be appointed as receiver which is addressed by this section.

(c) Paragraph (b) of this section shall not apply unless the Farm Credit institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

(d) Paragraph (b) of this section shall not be construed as waiving, limiting, or otherwise affecting the power of the receiver to disaffirm or repudiate any agreement imposing continuing obligations or duties upon the institution in receivership.

(e) Paragraph (b) of this section shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the receiver to take any action or to exercise any power not specifically limited by this section, including, but not limited to, any rights, powers or remedies of the receiver regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

(f) The receiver shall not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by a Farm Credit institution solely because such agreement does not meet the ''contemporaneous'' requirement of section 5.61(d) of the Act.

(g) This section may be repealed or amended by the Farm Credit Administration, but any such repeal or amendment shall not apply to any transfers of financial assets made in connection with a securitization or participation that was in effect before such repeal or modification.

Subpart C—Conservators and Conservatorships

■ 3. Amend § 627.2780(b) by adding a second sentence to read as follows:

§ 627.2780 Powers and duties of conservators.

* * * * *

(b) * * * The provisions of § 627.2726 shall also apply to the conservator of a Farm Credit institution.* * *

* * * * *

Dated: September 16, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–18892 Filed 9–21–05; 8:45 am]

BILLING CODE 6705–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703, 790, 791

Technical Corrections

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) Board is issuing a rule to make certain technical corrections. The rule corrects titles of some NCUA offices and reorganizes the section describing the central and regional office organization. The NCUA Board is also making a minor revision to its own rules of procedure to clarify when notation voting is appropriate.

DATES: This rule is effective September 22, 2005.

FOR FURTHER INFORMATION CONTACT: Moisette Green, Staff Attorney, Division of Operations, Office of General Counsel, at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The NCUA Board reorganized a few offices within the central office of the agency as a result of the fiscal year 2005 (FY05) budget review. The Board's goals included improving the efficiency of NCUA operations, clarifying central office functions and extending assistance to small credit unions.

As part of the reorganization, the Board reassigned some existing NCUA positions and resources to the Office of Credit Union Development and renamed it as the Office of Small Credit Union Initiatives. This change recognizes the important role small credit unions, which represent about one-half of all credit unions, play in the credit union movement and provides additional focus within NCUA on the problems small credit unions face.

The Board also restructured the Office of Strategic Program Support and Planning when it approved the FY05 budget. The Board reorganized this staff to achieve more effective operations and better respond to NCUA's emerging needs and renamed the office as the Office of Capital Markets and Planning to reflect its purpose and function more accurately.

Part 790 describes NCUA's organization. Due to the renaming of these offices, the Board revises §§ 790.2(b)(12) and (13) to delete the references to the ''Office of Credit Union Development'' and ''Office of Strategic Program Support and Planning.'' These references are replaced with ''Office of Small Credit Union Initiatives'' and ''Office of Capital Markets and Planning'' respectively. The Board also makes a conforming change to § 703.19. Accordingly, the Board revises §§ 703.19(c), 790.2(b)(12) and (13) to make this correction.

The Board also revises § 790.2(b)(4) to describe graphics as an example of the administrative services provided by the Office of the Chief Financial Officer instead of a responsibility of the Office of Public and Congressional Affairs.

Additionally, the Board has a policy of continually reviewing NCUA regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' NCUA Interpretive Rulings and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. The NCUA staff's most recent review of NCUA's regulations revealed the need for a few minor updates and corrections.

The description of the NCUA Central Liquidity Facility (CLF) is currently placed within the description of the Office of Examination and Insurance. The CLF is an instrumentality of the United States established under Title III of the Federal Credit Union Act, 12 U.S.C. 1795–1795k, and should be described in a separate paragraph in § 790.2. Accordingly, the Board redesignates § 790.2(b)(5)(ii) as a new paragraph § 790.2(b)(15) to make this correction.

The NCUA Board has reviewed the rules governing its procedures in Part 791. Specifically, Board is revising § 791.4 to reflect when it may consider matters by notation voting. When the rule was approved in 1980, the Board described matters it would consider by notation voting with the word ''routine,'' intending to restrict the use of this method of acting. The Board continues to believe notation voting should not be used for substantive decisions of significant, broad impact on credit unions. To clarify the rule and provide the Board with additional flexibility, while complying the Government in the Sunshine Act, 5 U.S.C. 552b, the Board revises § 791.4(b)(1) by replacing the word ''routine'' with the words ''administrative or time sensitive.''

B. Regulatory Procedures

Final Rule Under the Administrative Procedure Act

The amendments in this rule are technical rather than substantive or involve only agency rules governing internal procedure. NCUA finds good cause that notice and public comment are unnecessary under section 553(b)(B) of the Administrative Procedure Act (APA). 5 U.S.C. 553(b)(B). NCUA also finds good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the APA. The rule will, therefore, be effective immediately upon publication.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities, those credit unions with less than ten million dollars in assets. This rule makes technical corrections and revises the Board's internal procedural rules, so it will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within