

Farm Credit Administration

Plan for Retrospective Analysis of Existing Rules

October 12, 2011

I. Executive Summary of Plan.

Executive Orders (EO) 13579 and 13563 recognize the importance of maintaining a consistent culture of retrospective review and analysis throughout the federal government. The Farm Credit Administration's (FCA or Agency) plan for continuing its retrospective analysis of existing rules will ensure a defined method for identifying rules that are obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. The review processes are intended to facilitate the identification of rules that warrant repeal, amendment, or revision as needed, as well as facilitating the strengthening or modernization of rules as appropriate.

II. Scope of Plan.

- a. Offices within the FCA that are included in this plan.
 - 1. All Agency offices.
 - 2. Office of Secondary Market Oversight (OSMO).
- b. The following documents are covered under this plan.
 - 1. Existing regulations.
 - 2. Significant guidance documents such as Bookletters, Informational Memorandums and Policy Statements.
 - 3. Unfinished proposed rules.

III. Rules for Retrospective Review.

Pursuant to the Farm Credit System Reform Act of 1996, FCA is statutorily required to continue its "comprehensive review of regulations governing the Farm Credit System to identify and eliminate, consistent with law, safety and soundness, all regulations that are unnecessary, unduly burdensome or costly, or not based on law." 12 U.S.C. § 2252. The FCA conducts this review every five years.

IV. Public Access and Participation.

- a. On October 12, 2011, FCA posted this plan on its website announcing its regulatory review efforts as required by the Farm Credit System Reform Act of 1996 and EOs 13579 and 13563 and inviting public comment thereon.

- b. The FCA solicits comment on regulations governing the Farm Credit System to identify and eliminate, consistent with law, safety and soundness, all regulations that are unnecessary, unduly burdensome or costly, or not based on law by posting notice in the Federal Register at least once every five years. The last notice and request for comment was published in the Federal Register on June 23, 2008, at 73 FR 35361 [<http://www.regulations.gov>].

V. Current Agency Efforts Already Underway Independent of EO 13579.

- a. The following items are a summary of pre-existing Agency efforts independent of EO 13579 already underway to conduct retrospective analysis of existing rules.
 1. Before issuing a notice of proposed rulemaking, the FCA often seeks the views of those who are likely to be most affected, including those who are likely to benefit from and those who are potentially subject to the rulemaking.
 2. The FCA publishes rules for comment, which solicit input from State, local, and tribal officials, from experts in relevant disciplines, from affected stakeholders in the private sector, from the public as a whole and from nontraditional commenters.
 3. The FCA generally provides a comment period of at least 60 days and often extends the comment period to afford the public a meaningful opportunity to comment.
 4. The FCA seeks to utilize diverse approaches to encourage public participation in the development and review of regulatory proposals in appropriate circumstances.
 5. The FCA develops regulations based on a reasoned determination that the benefits of any proposed regulation justify its cost.
 6. At least once every five years, the FCA reviews existing regulations in order to eliminate unnecessary regulations that impair the ability of the Farm Credit System (System) to accomplish its mission to serve agriculture and rural America and any regulations that are unduly burdensome, costly, or not based on the law.
 7. All of FCA's proposed and final regulations and other public guidance are posted on the Agency's website, including news releases, FCA's Board meeting schedule and agenda, rulemaking fact sheets, FCA's operating budget, speeches and statements by Agency officials and Congressional testimony by the Chairman.
 8. In the Spring and Fall of each calendar year, the FCA publishes its Abstract of the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda) and the Regulatory Performance Plan (RPP), which describe proposed regulatory and deregulatory changes of all rulemaking items that the Agency is considering or reviewing within the next 12 months.

9. The FCA provides online access to the Unified Agenda at <http://www.reginfo.gov> and RPP at http://www.fca.gov/law/perf_plan.html to further the public interest by providing a single source of information concerning current and projected rulemaking and reviews of existing regulations pursuant to section 4 of EO 12866.
 10. The FCA conducts a review of all regulatory actions in its Unified Regulatory Agenda to determine whether any regulatory action under development or review meets the definition of “significant regulatory action” under EO 12866.
 11. The FCA’s internal website also contains a link for employees to provide suggestions for existing or new regulations and policies, which allows anyone in the Agency to comment or question a regulation or policy. In addition, the link permits FCA employees to express concerns about statutory issues. These comments and suggestions are incorporated into the development of FCA’s Unified Agenda and RPP.
 12. The FCA publishes and posts on its website its Strategic and Annual Performance Plan at <http://www.fca.gov/Download/StrategicPlan.pdf>, which lays out the principles guiding the agency and provides performance measures including the development of regulatory guidance and examination procedures that keep pace with evolving strategies and new programs to meet the changing needs of agriculture and rural America.
 13. Pursuant to one of its performance measures, the FCA will perform follow-up evaluations on appropriate rules and regulations to determine whether they meet the intended outcome.
 14. The FCA publishes and posts on its website the FCA Performance and Accountability Report at http://www.fca.gov/reports/performance_reports.html, which provides detailed information to Congress, the Office of Management and Budget, FCA stakeholders, and the public as to what the FCA has done and how well it has carried out its mission.
 15. The FCA continues to balance the costs required to operate the Agency against the benefits provided to stakeholders, but in no case does the Agency compromise the safety and soundness of the System.
 16. The FCA also permits members of the public to contact the Agency through its website at http://www.fca.gov/law/public_comment.html.
- b. The following specific rules were already under consideration for retrospective analysis.
1. Review begun to evaluate whether changes to the current FCA foreign exchange rules are necessary to implement provisions of the Dodd-Frank

- Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)¹ relating to off-exchange retail foreign currency transactions.
2. Review begun to evaluate FCA data needs for determining risk in Farm Credit System (FCS) loan portfolios, including sufficiency of data to evaluate shared assets and collateral risk.
 3. Notice of Proposed Rule Making (NPRM) that would consider regulatory changes to ensure that FCS funding and liquidity requirements are safe, sound, and appropriate, including the discounts applied to investments to ensure they reflect marketability in volatile financial markets and economic conditions. NPRM would also consider removing references to credit ratings as required by section 939A of the Dodd-Frank Act.
 4. NPRM that would consider regulatory changes relating to eligible investment assets to ensure that prudent practices are in place for the safe and sound management of investment portfolios, and divestiture procedures. NPRM would also consider removing references to credit ratings as required by section 939A of the Dodd-Frank Act.
 5. NPRM that would consider removing references to credit ratings as required by section 939A of Dodd-Frank Act.
 6. End review to consider removing credit ratings data as inputs in the Risk Based Capital model for the Federal Agricultural Mortgage Corporation (Farmer Mac) pursuant to section 939A of the Dodd-Frank Act.
 7. NPRM that would consider revisions to regulations in Part 611 on the requirements for the merger or consolidation of banks and of associations.
 8. Proposed rule that would make regulatory changes to clarify and strengthen the existing standards of conduct regulations at Subpart A, Part 612, including issues surrounding director fiduciary duties.
 9. Final rule that would make changes related to liquidity investment operations for Farmer Mac to ensure that appropriate guidance is in place covering diversification, eligible investment types, and purchase and divestiture procedures. Final rule would also consider removing references to credit ratings as required by section 939A of the Dodd-Frank Act.

VI. Elements of FCA's Plan.

a. **Development of a strong, ongoing culture of retrospective analysis.**

The procedures outlined below describe the FCA's plan for creating a strong, ongoing culture of retrospective analysis by implementing a process for soliciting recommendations for retrospective review projects from both inside and outside the FCA. The plan provides a mechanism for the regular review of entire parts of

¹ Pub. L. 111-203, H.R. 4173.

the Code of Federal Regulations to ensure that all regulations are reviewed on a regular basis.

b. **Factors and processes that will be used in setting priorities.**

The FCA is a small agency and invites comment on and reviews all its regulations as part of its five year review. Occasionally, it requests the public to focus on topics of current importance, but it invites comments on all regulations.

c. **Structure and Staffing.**

FCA's Director of the Office of Regulatory Policy, Gary Van Meter, with the support of other office directors, is responsible for the regulatory review process.

d. **Agency mechanism for ensuring the independence of regulatory retrospective review process from the offices responsible for writing and implementing regulations.**

The input for the retrospective review process will derive from and be reviewed by multiple sources within the Agency.

e. **Strengthening internal review expertise.**

The Agency is of the view that its internal review process is adequate.

f. **Plans for retrospective analysis over the next two years, and beyond.**

The plan outlined above in response to sections VI.a. and VI.b. is intended to be conducted on an ongoing basis as part of an Agency-wide regulatory review plan. Thus, the retrospective review of the Agency's regulations will be an ongoing and continuing process that will take into account the various factors outlined above.

g. **Actions that will be taken in relation to the analysis.**

See section VI.a above.

h. **Plans for revisiting and revising rules.**

As described in section VI.a. above, entire parts of the Code of Federal Regulations will be reviewed at a minimum of every five years to ensure that each regulation is revisited on a regular basis, with the advance publication to solicit public comments on potential revisions.

i. **Coordination of rulemaking with other federal agencies that have jurisdiction or similar interests.**

The Agency coordinates with other Federal financial institution regulatory agencies on rulemaking and policy guidance that overlaps with the jurisdiction of other financial institutions regulators on a regular and as-needed basis.

j. **Plans for peer review.**

The FCA has no plan for peer review of its *Plan for Retrospective Analysis of Existing Rules*. However, the FCA does submit to a periodic review of quality control for the audit organization of the FCA's Office of the Inspector General, which is conducted in accordance with *Government Auditing Standards* and guidelines established by the Council of the Inspectors General on Integrity and Efficiency. The FCA will take into account any public feedback and comments on its plan prior to its finalization and implementation.

VII. Components of Retrospective Cost-Benefit Analysis.

None of the FCA's existing regulations meet the definition of a "significant regulatory action" under EO 12866, which is supplemented and reaffirmed by EO 13563. However, the FCA historically has reviewed its regulations to eliminate those that are ineffective or burdensome and the Farm Credit System Reform Act of 1996 requires the FCA to continue its comprehensive review of regulations governing the FCS to identify and eliminate unnecessary and burdensome or costly regulations, or regulations not based on law.

VIII. Publishing the Agency's Plan Online.

The Agency will publish this retrospective review plan on its website at <http://www.fca.gov>.