

exposure. Any deviations from the board's policy on interest rate risk must be specifically identified in the report and approved by the board or designated committee of the board.

#### § 615.5181 [Removed]

■ 12. Section 615.5181 is removed.

■ 13. Section 615.5182 is revised to read as follows:

#### § 615.5182 Interest rate risk management by associations and other Farm Credit System institutions other than banks.

Any association or other Farm Credit System institution other than Farm Credit banks, excluding the Federal Agricultural Mortgage Corporation, with interest rate risk that could lead to significant declines in net income or in the market value of capital must comply with the requirements of § 615.5180. The interest rate risk management program required under § 615.5180 must be commensurate with the level of interest rate risk of the institution.

■ 14. Section 615.5201 is amended by revising the definitions for "government agency" and "government-sponsored agency" to read as follows:

#### § 615.5201 Definitions.

\* \* \* \* \*

*Government agency* means the United States Government or an agency, instrumentality, or corporation of the United States Government whose obligations are fully and explicitly insured or guaranteed as to the timely repayment of principal and interest by the full faith and credit of the United States Government.

*Government-sponsored agency* means an agency, instrumentality, or corporation chartered or established to serve public purposes specified by the United States Congress but whose obligations are not fully and explicitly insured or guaranteed by the full faith and credit of the United States Government, including but not limited to any Government-sponsored enterprise.

\* \* \* \* \*

Dated: October 25, 2012.

**Dale L. Aultman,**

*Secretary, Farm Credit Administration Board.*

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## FARM CREDIT ADMINISTRATION

### 12 CFR Part 652

RIN 3052-AC56

#### Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Farmer Mac Investment Management

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA, Agency, us, or we) issues this final rule amending our regulations governing investment management practices of the Federal Agricultural Mortgage Corporation (Farmer Mac or Corporation). This final rule will help ensure that Farmer Mac maintains safe and sound non-program investment management practices in accordance with clearly articulated board-established guidance, streamlines the process for handling investments that fail to meet the eligibility criteria after purchase, and modifies the allowable purposes of Farmer Mac's non-program investments to include investments that would complement Farmer Mac's program activities. We are also finalizing the significant reorganization of these regulations that we proposed to make the regulations easier to follow.

**DATES:** 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:

Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4280, TTY (703) 883-4434;

or

Jennifer A. Cohn, Senior Counsel, Office of the General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

#### SUPPLEMENTARY INFORMATION:

##### I. Objective

The objective of this final rule is to ensure that Farmer Mac has appropriate Board policies and operational procedures in place to manage its non-program investment portfolio safely and soundly with appropriate consideration of its public mission as a Government-sponsored enterprise (GSE). This final rule will:

- Revise the permissible purposes of non-program investments;

- Revise board policy requirements, including stress-testing requirements;
- Modify the non-program investment portfolio limit;
- Reduce the regulatory burden associated with investments that fail to meet eligibility criteria after purchase; and
- Reorganize the regulations to make them easier to follow.

## II. History of Rule

On May 19, 2010, we published an Advanced Notice of Proposed Rulemaking that considered revisions to Farmer Mac's non-program investment and liquidity requirements.<sup>1</sup> On November 18, 2011, we published a Notice of Proposed Rulemaking (NPRM) that would have revised these non-program investment and liquidity requirements.<sup>2</sup> After considering the comments we received on the NPRM, we now plan to finalize the proposed provisions contained in the NPRM in phases.

This first phase of final regulations will substantially revise the following regulations:

- § 652.10—Investment Management
- § 652.15—Non-Program Investment Purposes and Limitation (renumbered from § 652.25)
- § 652.25—Management of Ineligible Investments and Reservation of Authority to Require Divestiture (renumbered from § 652.45)
- § 652.30—Interest Rate Risk Management (renumbered from § 652.15)
- § 652.45—Temporary Regulatory Waivers or Modifications for Extraordinary Situations (renumbered from § 652.30)

These revisions will help ensure that Farmer Mac maintains safe and sound non-program investment management practices in accordance with clearly articulated board-established guidance. They also streamline the process for handling investments that fail to meet the eligibility criteria after purchase and modify the allowable purposes of Farmer Mac's non-program investments to include investments that would complement Farmer Mac's program activities.

We are also making minor technical changes to the following provisions:

- § 652.1—Purpose
- § 652.5—Definitions
- § 652.20—Eligible Non-Program Investments (renumbered from § 652.35)

In addition, we are deleting existing § 652.40, entitled "Stress Tests for

<sup>1</sup> 75 FR 27951.

<sup>2</sup> 76 FR 71798.

Mortgage Securities,” and incorporating its provisions into § 652.10(f).

Lastly, we are finalizing the proposed reorganization of the investment management and liquidity regulations to make the sequence of the issues covered more logical.

We intend to address in one or more future rulemakings regulations covering all the areas of the proposed rule not covered in this final rule, including liquidity management and requirements and investment eligibility (including revised creditworthiness requirements). The regulations that we proposed to revise but that we are not issuing as final at this time (except to renumber them and, in some instances, to make minor technical changes) include:

- § 652.5—Definitions
- § 652.20—Eligible Non-Program Investments (renumbered from § 652.35)
- § 652.35—Liquidity Reserve Management and Requirements (renumbered from § 652.20)

III. Guiding Principle of Rule

The FCA is an independent agency in the executive branch of the Federal Government that serves as the regulator of Farmer Mac, as well as of the other institutions of the Farm Credit System (System) including, in pertinent part, Farm Credit banks and direct lender associations. The FCA regulates Farmer Mac through the Office of Secondary Market Oversight (OSMO). Farmer Mac is a stockholder-owned instrumentality

of the United States, chartered by Congress to establish a secondary market for agricultural real estate, rural housing mortgage loans, and rural utilities loans. Farmer Mac also provides a secondary market for USDA-guaranteed farm program and rural development loans.

A guiding principle for FCA in establishing regulations governing Farmer Mac is to maintain an appropriate balance between the Corporation’s mission achievement and risk. We aim to ensure continuity of operations so that Farmer Mac can fulfill its mission during stressful economic conditions that may require sufficient access to secondary sources of liquidity. This final rule is intended to provide a high degree of certainty that Farmer Mac will be able to continue to serve its customers under a wide range of market or economic conditions without the need to issue debt to the Department of Treasury or seek any other form of Government financial assistance.<sup>3</sup>

IV. Discussion of Comments and Section-by-Section Analysis of Rule

We received comment letters from Farmer Mac and from the Farm Credit Council (Council), which, in addition to submitting a comment letter directly responding to the NPRM, also asked us to consider, wherever applicable, comments it had submitted on FCA’s similar proposed rule pertaining to System banks and associations.<sup>4</sup>

In addition to its comments on specific proposed regulation provisions, the Council generally encouraged us to adapt this rule to more closely mirror the requirements for System banks and associations. Although the two final rules continue to differ where appropriate, changes were made to both this rule and the System banks and associations rule to make the requirements more similar.<sup>5</sup>

We will address each specific comment received in our discussion of the regulation provision to which the comment relates. Some of the minor changes we proposed received no comment. Unless otherwise discussed in this preamble, we are finalizing those provisions as proposed without further explanation. Interested persons are directed to our NPRM for a discussion of those changes. Throughout this regulation, we make minor technical, clarifying, and non-substantive language changes that we do not specifically discuss in this preamble.

A. Reorganization of Rule

We are finalizing the rule’s reorganization much the way we proposed it. We provide the following table to orient the reader to the reorganization. The left column of the table contains the existing rule’s section headings, and the right column contains the proposed reorganization of section sequence and heading changes.

Existing regulations	Final reorganization
§ 652.1 Purpose .....	§ 652.1 Purpose.
§ 652.5 Definitions .....	§ 652.5 Definitions.
§ 652.10 Investment management and requirements .....	§ 652.10 Investment management.
§ 652.15 Interest rate risk management and requirements .....	§ 652.15 Non-program investment purposes and limitation.
§ 652.20 Liquidity reserve management and requirements .....	§ 652.20 Eligible non-program investments.
§ 652.25 Non-program investment purposes and limitation .....	§ 652.25 Management of ineligible investments.
§ 652.30 Temporary regulatory waivers or modifications for extraordinary situations.	§ 652.30 Interest rate risk management.
§ 652.35 Eligible non-program investments .....	§ 652.35 Liquidity reserve management and requirements.
§ 652.40 Stress tests for mortgage securities .....	§ 652.40 [Reserved].
§ 652.45 Divestiture of ineligible non-program investments .....	§ 652.45 Temporary regulatory waivers or modifications for extraordinary situations.

Generally, the reorganization is meant to address sequentially and as completely as possible the three major categories of management governed in the rule: Investment management; interest rate risk management; and liquidity management.

B. Section 652.1—Purpose

We received no comments on our proposal to delete the first sentence of this section as unnecessary, and we adopt the revision as proposed.

C. Section 652.5—Definitions

Many of the definitions we proposed relate to revisions to regulations that will not be finalized until a later installment of this rulemaking, and we will not finalize those definitions until we finalize the regulations to which they relate. We received no comments

<sup>3</sup> Under certain specific adverse circumstances, Farmer Mac is authorized to issue debt to the Department of the Treasury to meet obligations on guarantees. See section 8.13 of the Farm Credit Act of 1971, as amended (Act) (12 U.S.C. 2279aa–13).

<sup>4</sup> See 76 FR 51289, Aug. 18, 2011.

<sup>5</sup> In the interests of consistency, the FCA Board adopted the final rule governing the investment management of System banks and associations at

the same time it adopted this final rule. That final rule is also published in today’s issue of the **Federal Register**.

on the proposed technical clarification to the definition of FCA or the proposed definition of OSMA as FCA's Office of Secondary Market Oversight that we proposed, and we adopt these revisions as proposed.

We proposed technical clarifications to the definitions of "Government agency" and "Government-sponsored agency." We are finalizing definitions for these terms with additional technical clarifications.

The Council commented that our existing definition of non-program investments, which we did not propose to revise, is overly broad and allows for the holding of investments beyond the regulatory objectives of ensuring safety and soundness and continuity of funding as outlined in § 652.1. It suggested that we modify the definition to clarify that non-program investments are those held for the investment purposes authorized by revised and renumbered § 652.25. We note that as proposed and as discussed above, this final rule deletes the sentence in § 652.1 to which the comment refers. Moreover, the definition of non-program investments does not itself allow for the holding of investments. Rather, Farmer Mac may hold non-program investments only for the permissible investment purposes. Accordingly, we do not change this definition.

#### *D. Section 652.10—Investment Management*

Farmer Mac commented that several of the proposed changes to the rule go well beyond establishing a framework for safety and soundness and instead impose FCA's judgment on proper business operations. Our general response is that we revised some of the proposed requirements in the final rule to make them less prescriptive but that we retain some of the proposed requirements, with clarifications. We respond to the comments on specific provisions below.

The Council requested that FCA follow a similar structure and approach for Farmer Mac as it proposed for the System banks and associations in their investment management rule. In the final rule, we revise the structure and approach of this rule. In addition, the structure and approach of the rule governing System banks and associations has also been revised. We believe the structure and approach of the two rules are now more similar; although, where appropriate, differences still exist.

#### **1. § 652.10(a)—Responsibilities of the Board of Directors**

The Council commented that the proposed requirement that the board must annually review and "affirmatively validate" the sufficiency of its investment policies is overly prescriptive, burdensome, and unclear. We agree that a requirement of annual board review is sufficient and delete "affirmatively validate" from the final rule. With the exception of a few minor technical, clarifying, and non-substantive changes, this paragraph is unchanged from the existing rule.

#### **2. § 652.10(b)—Investment Policies—General Requirements**

The Council commented that the requirement (an existing requirement for Farmer Mac that had been proposed for System banks and associations) that Farmer Mac must document in its "records or minutes" any analyses used in formulating investment policies or amendments is burdensome and does not enhance the investment management process. We agree that specifying minutes as a possible location for this documentation is unnecessary. Accordingly, we are deleting "or minutes" from the final rule.

We are moving the requirement (most of which is contained in existing § 652.10(f)(1)) that Farmer Mac's investment policies must fully address the extent of pre-purchase analysis that management must perform for various types, classes, and structure of investments from proposed § 652.10(f)(1)(i) to this paragraph because it is a more logical location.

With these exceptions, we are adopting § 652.10(b) as proposed, including several minor technical and clarifying changes. A discussion of these minor changes may be found in the preamble to the proposed rule.<sup>6</sup>

#### **3. § 652.10(c)—Investment Policies—Risk Tolerance**

Proposed § 652.10(c) would have required Farmer Mac's investment policies to ensure that the Corporation maintains prudent diversification of its investment portfolio and that its asset allocations and investment portfolio strategies do not expose its capital or earnings to excessive risk of loss. In final § 652.10(c), we revise this requirement to provide that Farmer Mac's investment policies must include concentration limits to ensure prudent diversification of credit, market, and liquidity risks in its investment portfolio. We believe this language is

more specific, better reflects requirements that are necessary for safety and soundness, and provides consistency with the rule governing System banks and associations. We emphasize, however, that the objective of this requirement remains ensuring that Farmer Mac's asset allocations and investment portfolio strategies do not expose its capital or earnings to excessive risk of loss.

In addition, our proposed rule, as well as our existing rule, provides that risk limits must be based on Farmer Mac's objectives, capital position, and risk tolerance. In the final rule, we further specify that risk limits must be based on all relevant factors, including Farmer Mac's objectives, capital position, earnings, and quality and reliability of risk management systems.

Existing § 652.10(c)(1)(ii) requires Farmer Mac's board (or a designated subcommittee) to review annually the criteria for selecting securities firms and the board to approve any changes to the criteria. It also requires that the board (or subcommittee) review annually the existing relationships with securities firms and be notified before any changes to securities firms are made.

In our NPRM, we proposed clarifying changes to these requirements but did not intend a significant change in the meaning. Both Farmer Mac and the Council objected to the existing requirement that the board must review existing relationships and be notified before changes are made to these relationships. The Council commented that this requirement is confusing, creates an excessive burden, and results in an unnecessary distraction for the board.

We agree that as long as Farmer Mac's board (or a designated committee) reviews the selection criteria on an annual basis, and the board approves any changes to the criteria, the board does not need to be involved in the approval of relationships. Accordingly, we have deleted the existing and proposed requirement that the board (or a subcommittee) must review existing relationships and be notified before changes are made to these relationships.

We adopt several other minor technical, clarifying, and non-substantive changes in this paragraph.

#### **4. § 652.10(e)—Internal Controls**

Existing § 652.10(e)(2) requires Farmer Mac to establish and maintain a separation of duties and supervision between personnel who execute investment transactions and personnel who approve, reevaluate, and oversee investments. Proposed § 652.10(e)(2) would have added to the list of

<sup>6</sup> See 76 FR 71801, Nov. 18, 2011.

personnel whose duties and supervision would have had to be separated from personnel who execute investment transactions. These additional personnel would have been those who post accounting entries, reconcile trade confirmations, and report compliance with investment policy.

Both Farmer Mac and the Council objected to this proposed revision as overly prescriptive. Rather than itemizing all of the possible personnel functions, final § 652.10(e)(2) provides that Farmer Mac must establish and maintain a separation of duties between personnel who supervise or execute investment transactions and personnel who supervise or engage in all other investment-related functions. These other investment-related functions include those itemized in the list in the proposed rule, as well as any other functions that are investment related. This regulation does not prohibit one person from performing or supervising more than one investment-related function (other than executing, or supervising the execution of, investment transactions), if appropriate controls are in place as warranted by the complexity and risk of Farmer Mac's investment operations.

Proposed section 652.10(e)(4) would have added a new requirement that Farmer Mac must implement an effective internal audit program to review, at least annually, its investment controls, processes, and compliance with FCA regulations and other regulatory guidance. The internal audit program would have had to specifically include a review of its process for ensuring all investments were eligible and suitable for purchase under its board's investment policies.

Both Farmer Mac and the Council commented that this requirement was too prescriptive and eliminated the flexibility that is necessary for Farmer Mac's internal auditors to establish their own risk-based approach to audits. Final § 652.10(e)(4) requires Farmer Mac to implement an effective internal audit program to review, at least annually, its investment management functions, controls, processes, and compliance with FCA regulations. The scope of the annual review must be appropriate for the size, risk, and complexity of the investment portfolio.

##### 5. § 652.10(f)—Due Diligence

We made a number of minor technical and non-substantive changes throughout this paragraph to clarify the requirements and to more closely match up with the language of the rule governing the System banks and associations. We do not identify these

minor changes here. Below we discuss our responses to the comments we received, including the changes we make in response to those comments.

Proposed § 652.10(f)(1)(i) would have required Farmer Mac, before it purchased an investment, to conduct sufficient due diligence to determine whether the investment was eligible and suitable under its board-approved investment policies and to document this determination.

This proposed requirement is retained in new § 652.10(f)(1)(i), with minor clarifications. Since we had used the term "suitable" to mean an investment complied with Farmer Mac's board-approved investment policies, we simplify the regulation by eliminating that term and instead requiring Farmer Mac to determine whether an investment complies with those policies. We also clarify that Farmer Mac must determine whether an investment is for an authorized purpose.

The Council commented that eligibility and the other pre-purchase assessments are often established for a class or segment of securities by specifying the criteria (credit risk, liquidity, market risk, etc.) that make a class of securities eligible and suitable per se, and it requested clarification that these pre-purchase assessments may be defined for segments or classes of securities that meet appropriate criteria rather than on a security-by-security basis. We note that the regulation does not prohibit Farmer Mac from establishing criteria for various classes or segments of investments; nonetheless, Farmer Mac must continue to adequately document its evaluation and assessments of investments being purchased.

We also added a sentence to § 652.10(f)(1)(i) specifically authorizing Farmer Mac, with board approval, to hold investments that do not comply with its investment policies. This addition recognizes that such decisions are within the discretion of the board's business judgment. We emphasize that this provision does not authorize the board to approve investments that do not comply with our regulatory eligibility requirements and purpose limitations.

Existing § 652.10(f)(1) requires Farmer Mac to verify the value of a security that it plans to purchase, other than a new issue, with a source that is independent of the broker, dealer, counterparty, or other intermediary to the transaction. We proposed to relocate this requirement to § 652.10(f)(1)(ii) but

proposed no substantive changes to the requirement.<sup>7</sup>

Both Farmer Mac and the Council objected to this existing requirement. The Council commented that verifying value from an independent source is not realistic for investments of tranches of collateralized mortgage obligations (CMOs), including planned amortization class (PAC) bonds, purchased in the primary market. The Council stated that these securities are generally unique in nature and their value, when newly created, will be impossible to verify with a third party prior to purchase.

In response, we reiterate that the third-party, pre-purchase valuation requirement explicitly excludes new issues. Accordingly, Farmer Mac need not seek third-party, pre-purchase valuation for new issues.

Proposed § 652.10(f)(1)(iii) would have contained extensive risk-assessment evaluation and documentation requirements. Both Farmer Mac and the Council objected to these requirements. The Council commented that the detail and prescriptiveness of this paragraph was unnecessary, burdensome, and redundant to the proposed investment policy requirements. The Council also stated that the proposed rule governing System banks and associations, while still excessive, was more "streamlined" and consistent with the overall objectives of the regulations.

In response, we have revised the requirements of final § 652.10(f)(1)(iii) to be much less detailed than those in the NPRM as well as more similar, but not identical, to those in the final rule governing System banks and associations. The final rule specifies the risks that must be assessed but, other than stress-testing requirements, which are discussed below, it does not specify how these risks must be assessed. We explain in this preamble our expectations for how Farmer Mac should assess its risk. These expectations were stated as requirements in the proposed rule.

In its assessment of credit risk, Farmer Mac should consider the nature and type of underlying collateral, credit enhancements, complexity of the structure, and any other available indicators of the risk of default.

In its assessment of liquidity risk, Farmer Mac should consider the investment structure, depth of the market, and ability to liquidate the

<sup>7</sup> The proposed requirement read: "Prior to purchase, you must verify the value of the investment (unless it is a new issue) with a source that is independent of the broker, dealer, counterparty, or other intermediary to the transaction."

position under a variety of economic scenarios and market conditions.

In its assessment of market risk, Farmer Mac should consider how various market stress scenarios including, at a minimum, potential changes in interest rates and market conditions (such as changes in market perceptions of creditworthiness), are likely to affect the cash flow and price of the instrument.

The proposed rule would have required Farmer Mac, in conducting its market risk assessment, to use reasonable and appropriate methodologies for stress testing for the type or class of instrument to ensure the investment complies with risk limits established in its investment and interest rate risk policies. Although we intended that this stress-testing requirement would encompass structured instruments and those with uncertain cash flows, such as mortgage-backed securities and asset-backed securities, the proposed rule did not expressly specify what types or classes of instruments must be stress tested.

The Council commented that this proposal was more lenient than the provisions that were proposed for System banks and associations, which would have expressly required stress testing of all instruments prior to purchase. In response to the Council's comment, and to clarify our intentions in our proposed regulation, final § 651.10(f)(1)(iii) expressly requires Farmer Mac to stress test all investments that are structured or that have uncertain cash flows, including specifically mortgage-backed securities and asset-backed securities, prior to their purchase. The stress test must be commensurate with the risk and complexity of the investment.

Existing § 652.10(f)(2) requires Farmer Mac, at least monthly, to determine the fair market value of each security in its portfolio and the fair market value of its whole investment portfolio. In doing so, Farmer Mac must also evaluate the credit quality and price sensitivity to the change in market interest rates of each security in its portfolio and its whole investment portfolio. We had proposed to delete the entire second sentence. Final § 652.10(f)(3) requires Farmer Mac to establish and maintain processes to monitor and evaluate changes in the credit quality of each security in its portfolio and its whole investment portfolio on an ongoing basis. We delete the price sensitivity evaluation requirement because that is addressed in our final interest rate risk management regulation at § 652.30(c)(3).

Final § 652.10(f)(4)(i) requires Farmer Mac to stress test its entire investment

portfolio, including stress tests of all investments individually and stress tests of the portfolio as a whole, at the end of each quarter. The stress test must enable Farmer Mac to determine that its investment securities, both individually and on a portfolio-wide basis, do not expose its capital, earnings, or liquidity to risks that exceed the risk tolerance specified in its investment policies. These requirements combine and clarify the existing § 652.40(a) requirement that Farmer Mac be able to identify individual securities that expose it to a high level of risk with the portfolio-wide stress testing required by proposed § 652.10(f)(3)(i).

The Council commented that the stress-testing requirements in proposed § 652.10(f)(3)(ii) differed in subtle but important ways from what was proposed for System banks and associations, and it stated that this inconsistency was not supported by any business difference between Farmer Mac and System banks and associations. The Council did not, however, either specify the differences or explain why the differences were important. We have made a few minor changes in the final rule. We believe the final rule is substantially similar to the final rule governing the System banks and associations; any differences are not intended to be material.

#### 6. § 652.10(g)—Reports to the Board of Directors

Farmer Mac commented that the board reporting requirements in proposed § 652.10(g) go beyond establishing a framework for safety and soundness and instead effectively supplant Farmer Mac's business judgment with FCA's, but the Corporation provided no specific comments on the requirements. The Council, commenting on the proposed rule governing System banks and associations—which was somewhat more detailed than the proposed rule governing Farmer Mac—stated that the board reporting requirements were exceedingly prescriptive and limiting of the board's authority to direct management, and it requested that the provisions be generalized and simply require that the board receive a quarterly report containing information on the investment portfolio as the board deems appropriate.

We are finalizing § 651.10(g) as proposed. We believe this level of reporting is necessary to ensure the board has the information it needs about Farmer Mac's investments.

#### E. Section 652.15—Non-Program Investment Purposes and Limitation

We are finalizing our proposal to renumber existing § 652.25 as § 652.15.

We proposed in § 652.15(a) to add a new permissible purpose for Farmer Mac's non-program investments—investments that complement program business activities. In the preamble to the proposed rule, we stated that this purpose would recognize that certain investments, such as investments with a rural focus that are backed by the full faith and credit of the United States Government, could advance Farmer Mac's mission by complementing its program business activities. We believe that even if an investment is not held for the purposes of complying with interest rate risk management requirements, complying with liquidity requirements, or managing surplus short-term funds, mission advancement could nevertheless be an appropriate purpose for which to hold investments.<sup>8</sup>

Section 8.3(c)(12) of the Act permits Farmer Mac to “purchase or sell any securities or obligations \* \* \* necessary and convenient to the business of the Corporation.” We believe this proposed broadening of investment purposes is compatible with Farmer Mac's statutory mandate and consistent with congressional intent.

We emphasized in the preamble to the proposed rule that this provision would not add any new eligible investments to our authorized list; Farmer Mac would still need to seek FCA's prior approval for any investments not explicitly authorized on the list of eligible investments.

In addition, we stated in the preamble to the proposed rule that neither the proposed purpose nor any of the three existing purposes authorize Farmer Mac to accumulate investment portfolios for arbitrage activities or to engage in trading for speculative or primarily capital gains purposes. We stated that realizing gains on sales before investments mature is not a regulatory violation as long as the profits are incidental to the specified permissible investment purposes. And we emphasized that Farmer Mac's internal controls must ensure that eligible investments clearly fulfill one or more of the authorized investment purposes.

The Council strongly objected to the proposed purpose, stating that FCA “specifically states” that the purpose will allow Farmer Mac to use non-program investments as a business strategy to enhance returns for investors.

<sup>8</sup> FCA has also approved mission-related investments for System banks and associations on a case-by-case basis.

The Council stated that this purpose would authorize Farmer Mac to assume additional risk in its non-program investments and that Farmer Mac's authorized investment purposes should be the same as those for System banks. The Council also expressed concern that FCA did not define what constitutes "business activities." The Council asked us to delete this proposed purpose entirely.

We adopt this provision as proposed. We specifically state that this new purpose is to advance Farmer Mac's mission by complementing Farmer Mac's program business activities—not to enhance returns to investors. Positive returns are permissible only if they are incidental to this purpose or to one of the three existing purposes. FCA will use its supervisory authorities to ensure that all investments held for this purpose actually do complement Farmer Mac's program business activities and that the risk and return characteristics of such investments are appropriate.

As stated above, Farmer Mac may hold only investments that are already on the list of eligible investments unless it seeks FCA's prior approval. In determining whether to grant approval, FCA will consider the risk of the investment and whether it actually does complement Farmer Mac's program business activities; where appropriate, we may impose conditions on the approval. Although System banks do not have such a purpose authorized by regulation, FCA has approved many mission-related investments for System banks and associations. We further emphasize that Farmer Mac's investments held for any of the four permissible purposes will be subject to the 35-percent investment limit in § 652.15(b). We believe this limitation will help ensure that Farmer Mac's mission achievement continues to be centered on providing a source of liquidity and credit support for agriculture and rural lenders directly through its secondary market and guarantee programs. Investments that complement program business activities should have an agricultural or rural focus.

We adopt as final our proposal to change the current regulatory maximum non-program investment parameters in paragraph (b) to delete the alternate maximum of a fixed \$1.5 billion. While we continue to believe that excessive or inappropriate use of non-program investments is not consistent with the Corporation's statutory mission and status as a Government-sponsored enterprise (GSE), we believe the maximum investment parameter of 35 percent of program volume alone is

sufficient and that there is no longer a need for the \$1.5-billion ceiling on that maximum calculation. This change is based on Farmer Mac's growth since the \$1.5 billion ceiling was established in 2005. We received no comment on this proposal.

Also in paragraph (b), we adopt as final our proposal to permit Farmer Mac to exclude investments pledged to meet margin requirements for derivative transactions (collateral) when calculating the 35-percent investment limit under paragraph (b).<sup>9</sup> We note that investments that are pledged as collateral do not count toward Farmer Mac's compliance with its liquidity requirements.<sup>10</sup> We make this change because the Dodd-Frank Act may result in additional margin requirements for Farmer Mac, and we want to avoid the unintended consequence of discouraging the use of derivatives as an appropriate risk management tool. We received positive comments on this proposal from the Council.

The Council requested that we also exclude various other investments from the investment limit calculation. The Council requested that we exclude securities purchased and designated for the primary purpose of posting collateral for derivative positions, even if the collateral is returned or the securities are never posted. The Council stated that including these securities in the limit would require Farmer Mac to maintain a cushion under the limit to accommodate the possibility of return, thereby limiting the amount of other investments it can hold to manage its liquidity position and derivative counterparty exposures.

Both Farmer Mac and the Council asked that Treasury securities also be excluded from the 35-percent limit. Farmer Mac stated that the proposed rule would require it to hold significant amounts of Treasury securities to meet FCA's liquidity requirements, thereby utilizing a large portion of its liquidity and investment portfolio capacity. The Council stated that the 35-percent limit creates an economic constraint and disincentive to holding Treasury securities, even though they are the most liquid and marketable investment.

Finally, the Council also requested that investment securities pledged in secured borrowing relationships be excluded from the 35-percent limit. The

Council cited State Ag-Linked lending programs and repurchase agreements as examples of these secured borrowing relationships. Under both arrangements, according to the Council, the pledging of securities acts as an alternative means of obtaining cash for operations. Under § 652.35(b) (renumbered from § 652.20(b)), these investments may not be counted in the liquidity reserve because they are not unencumbered. The Council asserts that excluding securities pledged in secured borrowing relationships from the 35-percent limit would be consistent with use of the securities as an alternative method to secure financing and their treatment under the FCA regulatory liquidity measurement.

We decline to exclude these investments from the investment limit. We view these types of transactions as part of Farmer Mac's normal cash management operations. Thus, under normal conditions, we expect Farmer Mac to manage the level of its investments within FCA's portfolio size limits to ensure regulatory compliance. If, in unusual business environments, Farmer Mac were to experience the unexpected need for a significant increase in pledgeable assets, and that increase could result in a short-term need for regulatory flexibility regarding the 35-percent maximum limit, § 652.45 of this regulation provides for FCA discretion to allow that flexibility.

#### *F. Section 652.20—Eligible Non-Program Investments*

As proposed, we renumber existing § 652.35, Eligible Non-Program Investments, as § 652.20. We delete the reference to divestiture that was contained in § 652.35(a)(5), because we no longer require divestiture of investments that were eligible when purchased, and the treatment of investments that were ineligible when purchased is specified in § 652.25(a). We also delete the references to stress-testing mortgage securities that were contained in § 652.35(a)(6), because new § 652.10(f) sets forth stress-testing requirements for investments. We are reprinting this provision because of these changes, but we are making no other changes to the provision.

#### *G. Section 652.25—Management of Ineligible Investments and Reservation of Authority To Require Divestiture*

As proposed, we delete existing § 652.45 and replace it with new § 652.25. Existing § 652.45(a)(2) requires Farmer Mac to dispose of an investment that is ineligible<sup>11</sup> within 6 months

<sup>9</sup> Paragraph (b) permits Farmer Mac to hold eligible non-program investments, for specified purposes, up to 35 percent of program volume.

<sup>10</sup> Under new § 652.35(b) (renumbered from existing § 652.20(b)), all investments held for the purpose of meeting the liquidity reserve requirement must be free of liens or other encumbrances.

<sup>11</sup> Under existing § 652.35.

unless we approve, in writing, a plan that authorizes divestment over a longer period of time. An acceptable divestiture plan generally must require Farmer Mac to dispose of the ineligible investment as quickly as possible without substantial financial loss. Until it actually disposes of the ineligible investment, Farmer Mac must report on specified matters to its board of directors and to FCA at least quarterly.

New § 652.25(b) no longer requires Farmer Mac to divest of (or to receive approval of a divestiture plan for) an investment that was eligible<sup>12</sup> when purchased but that no longer satisfies the eligibility criteria.<sup>13</sup> Rather, Farmer Mac would be required to notify the OSMO within 15 calendar days of determining that the investment no longer satisfies the eligibility criteria, and the investment would be subject to specified requirements that are discussed below. This approach provides the Corporation with greater flexibility to manage its position and mitigate losses as compared with a forced divestiture during a specific time period (or the need to devote resources to developing and submitting a divestiture plan for FCA to consider).

The proposed rule would have required Farmer Mac to notify the OSMO “promptly” if an investment no longer satisfied the eligibility criteria. Farmer Mac commented that the term “prompt” leaves significant room for interpretation as to practical application, and it requested a specific timeframe. The Council commented that it was unsure what “prompt” meant in the context of the rule, and it stated that notification is redundant and unnecessary given the requirements of the regulation and the ongoing nature of FCA’s examination function. If FCA retained this requirement, the Council suggested a 60-calendar-day notice period.

In response to these comments, we make the notification period 15 calendar days after Farmer Mac determines that the investment no longer satisfies the eligibility criteria. We believe this notification period is adequate, since the timeframe does not begin until Farmer Mac makes the determination. Moreover, notification can be as simple as a telephone call or an email.

The proposed rule would also have required notification to the OSMO when an investment that satisfied the regulatory eligibility criteria was not suitable because it did not satisfy the risk tolerance established in the

institution’s required board policy, and the investment would have been subject to the same specified requirements discussed below. We are deleting this notification requirement from the final rule because we do not want to create a disincentive for Farmer Mac to establish a risk tolerance that is stricter than FCA’s regulatory eligibility criteria. Under the final rule, Farmer Mac does not have to notify the OSMO when an investment that satisfies FCA’s regulatory eligibility criteria does not satisfy its own risk tolerance, nor is the investment subject to the other specified requirements discussed below.

As we proposed, final § 652.25(a) provides that an investment that does not satisfy the regulatory eligibility criteria at the time of purchase is ineligible. Under the final rule (as under the existing regulation), Farmer Mac may not purchase ineligible investments. If Farmer Mac does purchase an ineligible investment, it must notify the OSMO within 15 calendar days after determining that the investment was ineligible and must divest of the investment no later than 60 calendar days after the determination unless we approved, in writing, a plan that authorizes divestiture over a longer period of time.

Although it is not stated in the regulation, we clarify here that an acceptable divestiture plan would have to require Farmer Mac to dispose of the investment as quickly as possible without substantial financial loss. The plan would also have to contain sufficient analysis to support continued retention of the investment, including its effect on the institution’s capital, earnings, liquidity, and collateral position. Our decision would not be based solely on financial loss and would include consideration of all circumstances surrounding the purchase. Until Farmer Mac divests of the investment, it would be subject to the same specified requirements discussed below.

Furthermore, we emphasize that any purchase of an ineligible investment would indicate weaknesses in Farmer Mac’s internal controls and due diligence and would trigger increased FCA oversight if it occurs. We expect such a purchase to occur rarely, if ever. For this reason, we are retaining the divestiture requirement from the existing and proposed rules, despite the Council’s request that we treat investments that are ineligible when purchased in the same manner as we treat investments that are eligible when purchased but that subsequently fail to meet the eligibility criteria. Furthermore, in response to the

Council’s comment that this provision essentially authorizes Farmer Mac to purchase ineligible investments that could be held for 60 calendar days, we emphasize that this provision does not authorize such a purchase. As stated, if Farmer Mac makes such a purchase, it should expect increased FCA oversight of its internal controls and due diligence process, as well as other enforcement actions as appropriate.

The specified requirements that apply to investments retained by Farmer Mac that are ineligible or that no longer satisfy the eligibility requirements are specified in § 652.25(c). We believe these specified requirements are warranted by safety and soundness concerns.

Section 652.25(c)(1) contains reporting requirements. Each quarter, Farmer Mac is required to report to FCA and to its board on the status of all such investments. The report must demonstrate the effect that the investments may have on the Corporation’s capital, earnings, and liquidity position. Additionally, the report must address how the Corporation plans to reduce its risk exposure from these investments or exit the position.

Section 652.25(c)(2) provides that the investments may not be used to satisfy Farmer Mac’s liquidity requirement(s) in § 652.40 and that they must continue to be included in the investment portfolio limit calculation established in § 652.15(b).

Finally, § 652.25(d) reserves FCA’s authority to require Farmer Mac to divest of any investment at any time for failure to comply with § 652.15(a) or for safety and soundness purposes. Although we did not propose failure to comply with the permissible investment purposes specified in § 652.15(a) as a basis for requiring divestiture, this change makes explicit our authority to require divestiture of an investment that does not comply with our investment regulations. The timeframe FCA sets would consider the expected loss on the transaction (or transactions) and the effect on Farmer Mac’s financial condition and performance. Because the final rule does not require automatic divestiture of any investment that was eligible when purchased, FCA is making express our authority to require divestiture of investments when necessary.

#### *H. Section 652.30—Interest Rate Risk Management*

We renumber existing § 652.15 as § 652.30. No comments were received on the proposed revisions to this section, and we finalize them as

<sup>12</sup> Under renumbered § 652.20.

<sup>13</sup> Such an investment would no longer be considered “ineligible.”



proposed, with a minor, non-substantive change. The preamble to our proposed rule explains our changes.

*I. Section 652.35—Liquidity Reserve Management and Requirements*

As proposed, we renumber existing § 652.20, Liquidity Reserve Management and Requirements, as § 652.35. We are reprinting this provision because of this renumbering, but we are making no other changes to the provision.

*J. Section 642.40—Stress Tests for Mortgage Securities*

As proposed, we remove this standalone section from our regulations and incorporate its requirements into § 652.10(f), as discussed above.

*K. Section 652.45—Temporary Regulatory Waivers or Modifications for Extraordinary Situations*

We adopt the proposed revisions to § 652.45. We relocate existing § 652.30, which authorizes FCA to modify or waive regulatory investment management and liquidity management requirements in extraordinary situations, to new § 652.45. We believe this location is more appropriate for this provision.

In addition to the existing specific modifications and waivers the provision authorizes, we amend § 652.45 to authorize FCA to take other actions as deemed appropriate. This added authority will give FCA additional flexibility to address extraordinary situations.

We received no comments on this revision, and the Council was supportive of similar changes in the proposed rule governing System banks.

**V. Regulatory Flexibility Act**

Farmer Mac has assets and annual income in excess of the amounts that would qualify it as a small entity. Therefore, Farmer Mac is not a “small entity” as defined in the Regulatory Flexibility Act. Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 12 CFR Part 652**

Agriculture, Banks, banking, Capital, Investments, Rural areas.

For the reasons stated in the preamble, part 652 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

**PART 652—FEDERAL AGRICULTURAL MORTGAGE CORPORATION FUNDING AND FISCAL AFFAIRS**

■ 1. The authority citation for part 652 continues to read as follows:

**Authority:** Secs. 4.12, 5.9, 5.17, 8.11, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2279aa–11, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

■ 2. Subpart A, consisting of §§ 652.1 through 652.45, is revised to read as follows:

**Subpart A—Investment Management**

Sec.

652.1 Purpose.

652.5 Definitions.

652.10 Investment management.

652.15 Non-program investment purposes and limitation.

652.20 Eligible non-program investments.

652.25 Management of ineligible investments and reservation of authority.

652.30 Interest rate risk management.

652.35 Liquidity reserve management and requirements.

652.40 [Reserved]

652.45 Temporary regulatory waivers or modifications for extraordinary situations.

**Subpart A—Investment Management**

**§ 652.1 Purpose.**

The purpose of this subpart is to ensure safety and soundness, continuity of funding, and appropriate use of non-program investments considering the Federal Agricultural Mortgage Corporation’s (Farmer Mac or Corporation) special status as a Government-sponsored enterprise (GSE). The subpart contains requirements for Farmer Mac’s board of directors to adopt policies covering such areas as investment management, interest rate risk, and liquidity reserves. The subpart also requires Farmer Mac to comply with various reporting requirements.

**§ 652.5 Definitions.**

For purposes of this subpart, the following definitions will apply:

*Affiliate* means any entity established under authority granted to the Corporation under section 8.3(c)(14) of the Farm Credit Act of 1971, as amended.

*Asset-backed securities (ABS)* mean investment securities that provide for ownership of a fractional undivided interest or collateral interests in specific assets of a trust that are sold and traded in the capital markets. For the purposes

of this subpart, ABS exclude mortgage securities that are defined below.

*Eurodollar time deposit* means a non-negotiable deposit denominated in United States dollars and issued by an overseas branch of a United States bank or by a foreign bank outside the United States.

*Farmer Mac, Corporation, you, and your* means the Federal Agricultural Mortgage Corporation and its affiliates.

*FCA, our, us, or we* means the Farm Credit Administration.

*Final maturity* means the last date on which the remaining principal amount of a security is due and payable (matures) to the registered owner. It does not mean the call date, the expected average life, the duration, or the weighted average maturity.

*General obligations* of a state or political subdivision means:

(1) The full faith and credit obligations of a state, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or a political subdivision thereof that possesses general powers of taxation, including property taxation; or

(2) An obligation that is unconditionally guaranteed by an obligor possessing general powers of taxation, including property taxation.

*Government agency* means the United States or an agency, instrumentality, or corporation of the United States Government whose obligations are fully and explicitly insured or guaranteed as to the timely repayment of principal and interest by the full faith and credit of the United States Government.

*Government-sponsored agency* means an agency, instrumentality, or corporation chartered or established to serve public purposes specified by the United States Congress but whose obligations are not fully and explicitly insured or guaranteed by the full faith and credit of the United States Government, including but not limited to any Government-sponsored enterprise.

*Liquid investments* are assets that can be promptly converted into cash without significant loss to the investor. A security is liquid if the spread between its bid price and ask price is narrow and a reasonable amount can be sold at those prices promptly.

*Long-Term Standby Purchase Commitment (LTSPC)* is a commitment by Farmer Mac to purchase specified eligible loans on one or more undetermined future dates. In consideration for Farmer Mac’s assumption of the credit risk on the specified loans underlying an LTSPC, Farmer Mac receives an annual commitment fee on the outstanding



balance of those loans in monthly installments based on the outstanding balance of those loans.

*Market risk* means the risk to your financial condition because the value of your holdings may decline if interest rates or market prices change. Exposure to market risk is measured by assessing the effect of changing rates and prices on either the earnings or economic value of an individual instrument, a portfolio, or the entire Corporation.

*Maturing obligations* means maturing debt and other obligations that may be expected, such as buyouts of long-term standby purchase commitments or repurchases of agricultural mortgage securities.

*Mortgage securities* means securities that are either:

(1) Pass-through securities or participation certificates that represent ownership of a fractional undivided interest in a specified pool of residential (excluding home equity loans), multifamily or commercial mortgages, or

(2) A multiclass security (including collateralized mortgage obligations and real estate mortgage investment conduits) that is backed by a pool of residential, multifamily or commercial real estate mortgages, pass-through mortgage securities, or other multiclass mortgage securities.

(3) This definition does not include agricultural mortgage-backed securities guaranteed by Farmer Mac itself.

*Nationally recognized statistical rating organization (NRSRO)* means a rating organization that the Securities and Exchange Commission recognizes as an NRSRO.

*Non-program investments* means investments other than those in:

(1) "Qualified loans" as defined in section 8.0(9) of the Farm Credit Act of 1971, as amended; or

(2) Securities collateralized by "qualified loans."

*OSMO* means FCA's Office of Secondary Market Oversight.

*Program assets* means on-balance sheet "qualified loans" as defined in section 8.0(9) of the Farm Credit Act of 1971, as amended.

*Program obligations* means off-balance sheet "qualified loans" as defined in section 8.0(9) of the Farm Credit Act of 1971, as amended.

*Regulatory capital* means your core capital plus an allowance for losses and guarantee claims, as determined in accordance with generally accepted accounting principles.

*Revenue bond* means an obligation of a municipal government that finances a specific project or enterprise, but it is not a full faith and credit obligation.

The obligor pays a portion of the revenue generated by the project or enterprise to the bondholders.

*Weighted average life (WAL)* means the average time until the investor receives the principal on a security, weighted by the size of each principal payment and calculated under specified prepayment assumptions.

#### **§ 652.10 Investment management.**

(a) *Responsibilities of the board of directors.* Your board of directors must adopt written policies for managing your non-program investment activities. Your board must also ensure that management complies with these policies and that appropriate internal controls are in place to prevent loss. At least annually, your board, or a designated committee of the board, must review the sufficiency of these investment policies. Any changes to the policies must be adopted by the board. You must report any changes to these policies to the OSMO within 10 business days of adoption.

(b) *Investment policies—general requirements.* Your investment policies must address the purposes and objectives of investments, risk tolerance, delegations of authority, internal controls, due diligence, and reporting requirements. Moreover, your investment policies must fully address the extent of pre-purchase analysis that management must perform for various types, classes, and structure of investments. Furthermore, the policies must include reporting requirements and approvals needed for exceptions to the board's policies. Investment policies must be sufficiently detailed, consistent with, and appropriate for the amounts, types, and risk characteristics of your investments. You must document in the Corporation's records any analyses used in formulating your policies or amendments to the policies.

(c) *Investment policies—risk tolerance.* Your investment policies must establish risk limits for the various types, classes, and sectors of eligible investments. These policies must include concentration limits to ensure prudent diversification of credit, market, and liquidity risks in the investment portfolio. Risk limits must be based on all relevant factors, including the Corporation's objectives, capital position, earnings, and quality and reliability of risk management systems. Your policies must identify the types and quantity of investments that you will hold to achieve your objectives and control credit, market, liquidity, and operational risks. Your policies must establish risk limits for the following four types of risk:

(1) *Credit risk.* Your investment policies must establish:

(i) Credit quality standards, limits on counterparty risk, and risk diversification standards that limit concentrations in a single or related counterparty(ies), geographical areas, industry sectors, and asset classes or obligations with similar characteristics.

(ii) Criteria for selecting brokers, dealers, and investment bankers (collectively, securities firms). You must buy and sell eligible investments with more than one securities firm. As part of your review of your investment policies required under paragraph (a) of this section, your board of directors, or a designated committee of the board, must review the criteria for selecting securities firms. Any changes to the criteria must be approved by the board.

(iii) Collateral margin requirements on repurchase agreements. You must regularly mark the collateral to market and ensure appropriate controls are maintained over collateral held.

(2) *Market risk.* Your investment policies must set market risk limits for specific types of investments and for the investment portfolio.

(3) *Liquidity risk.* Your investment policies must describe the liquidity characteristics of eligible investments that you will hold to meet your liquidity needs and the Corporation's other objectives.

(4) *Operational risk.* Investment policies must address operational risks, including delegations of authority and internal controls in accordance with paragraphs (d) and (e) of this section.

(d) *Delegation of authority.* All delegations of authority to specified personnel or committees must state the extent of management's authority and responsibilities for investments.

(e) *Internal controls.* You must:

(1) Establish appropriate internal controls to detect and prevent loss, fraud, embezzlement, conflicts of interest, and unauthorized investments.

(2) Establish and maintain a separation of duties between personnel who supervise or execute investment transactions and personnel who supervise or engage in all other investment-related functions.

(3) Maintain records and management information systems that are appropriate for the level and complexity of your investment activities.

(4) Implement an effective internal audit program to review, at least annually, your investment management functions, controls, processes, and compliance with FCA regulations. The scope of the annual review must be appropriate for the size, risk, and complexity of the investment portfolio.

(f) *Due diligence*—(1) *Pre-purchase analysis*—(i) *Objective, eligibility, and compliance with investment policies.* Before you purchase an investment, you must conduct sufficient due diligence to determine whether the investment is eligible under § 652.20, is for an authorized purpose under § 652.15(a), and complies with your board-approved investment policies. You must document its eligibility, purpose, and investment policy compliance and your investment objective. Your investment policies must fully address the extent of pre-purchase analysis that management must perform for various types, classes, and structure of investments. Your board must approve your decision to hold an investment that does not comply with your written investment policy requirements.

(ii) *Valuation.* Prior to purchase, you must verify the value of the investment (unless it is a new issue) with a source that is independent of the broker, dealer, counterparty or other intermediary to the transaction.

(iii) *Risk assessment.* Your risk assessment must be documented and, at a minimum, include an evaluation of credit risk, market risk, and liquidity risk and the underlying collateral of the investment. You must conduct stress testing before you purchase any investment that is structured or that has uncertain cash flows, including all mortgage-backed securities or asset-backed securities. The stress testing must be commensurate with the risk and complexity of the investments and must comply with the requirements of paragraph (f)(4) of this section.

(2) *Monthly fair value determination.* At least monthly, you must determine the fair market value of each investment in your portfolio and the fair market value of your whole investment portfolio.

(3) *Ongoing analysis of credit risk.* You must establish and maintain processes to monitor and evaluate changes in the credit quality of each security and the whole investment portfolio on an ongoing basis.

(4) *Quarterly stress testing.* (i) You must stress test your entire investment portfolio, including stress tests of all

investments individually and stress tests of the portfolio as a whole, at the end of each quarter. The stress tests must enable you to determine that your investment securities, both individually and on a portfolio-wide basis, do not expose your capital, earnings, or liquidity to risks that exceed the risk tolerance specified in your investment policies. If your portfolio risk exceeds your investment policy limits, you must develop a plan to reduce risk and comply with your investment policy limits.

(ii) Your stress tests must be comprehensive and appropriate for the risk profile of your investment portfolio and the Corporation. At a minimum, the stress tests must be able to measure the price sensitivity of investments over a range of possible interest rate/yield curve scenarios. The methodology that you use to analyze investment securities must be appropriate for the complexity, structure, and cash flows of the investments in your portfolio. You must rely to the maximum extent practicable on verifiable information to support all your assumptions, including prepayment and interest rate volatility assumptions, when you apply your stress tests. Your assumptions must be prudent and based on sound judgment, and you must document the basis for all assumptions that you use to evaluate the security and its underlying collateral. You must also document all subsequent changes in your assumptions.

(5) *Presale value verification.* Before you sell an investment, you must verify its value with a source that is independent of the broker, dealer, counterparty, or other intermediary to the transaction.

(g) *Reports to the board of directors.* At least quarterly, executive management must report on the following to the board of directors or a designated committee of the board:

(1) Plans and strategies for achieving the board's objectives for the investment portfolio;

(2) Whether the investment portfolio effectively achieves the board's objectives;

(3) The current composition, quality, and liquidity profile of the investment portfolio;

(4) The performance of each class of investments and the entire investment portfolio, including all gains and losses that you incurred during the quarter on individual securities that you sold before maturity and why they were liquidated;

(5) Potential risk exposure to changes in market interest rates as identified through quarterly stress testing and any other factors that may affect the value of your investment holdings;

(6) How investments affect your capital, earnings, and overall financial condition;

(7) Any deviations from the board's policies. These deviations must be formally approved by the board of directors.

#### **§ 652.15 Non-program investment purposes and limitation.**

(a) Farmer Mac is authorized to hold eligible non-program investments listed under § 652.20 for the purposes of enterprise risk management, including complying with its interest rate risk requirements in § 652.30; complying with its liquidity requirements in § 652.40; managing surplus short-term funds; and complementing program business activities.

(b) Non-program investments cannot exceed 35 percent of program assets and program obligations, excluding 75 percent of the program assets that are guaranteed by the United States Department of Agriculture as described in section 8.0(9)(B) of the Farm Credit Act of 1971, as amended. When calculating the total amount of non-program investments under this section, exclude investments pledged to meet margin requirements on derivative transactions.

#### **§ 652.20 Eligible non-program investments.**

(a) You may hold only the types, quantities, and qualities of non-program investments listed in the following Non-Program Investment Eligibility Criteria Table. These investments must be denominated in United States dollars.

**NON-PROGRAM INVESTMENT ELIGIBILITY CRITERIA TABLE**

Asset class	Final maturity limit	NRSRO issue or issuer credit rating requirement	Other requirements	Maximum percentage of total non-program investment portfolio
(1) Obligations of the United States. • Treasuries	None .....	NA .....	None .....	None.

NON-PROGRAM INVESTMENT ELIGIBILITY CRITERIA TABLE—Continued

Asset class	Final maturity limit	NRSRO issue or issuer credit rating requirement	Other requirements	Maximum percentage of total non-program investment portfolio
<ul style="list-style-type: none"> <li>Other obligations (except mortgage securities) fully insured or guaranteed by the United States Government or a Government agency.</li> </ul>				
(2) Obligations of Government-sponsored agencies.	None .....	NA .....	None .....	None.
<ul style="list-style-type: none"> <li>Government-sponsored agency securities (except mortgage securities).</li> </ul>				
<ul style="list-style-type: none"> <li>Other obligations (except mortgage securities) fully insured or guaranteed by Government-sponsored agencies.</li> </ul>				
(3) Municipal Securities:				
• General obligations .....	10 years .....	One of the two highest .....	None .....	None.
• Revenue bonds .....	5 years for fixed rate bonds and 10 years for index/floating rate bonds.	Highest .....	None .....	15%.
(4) International and Multilateral Development Bank Obligations.	None .....	None .....	The United States must be a voting shareholder.	None.
(5) Money Market Instruments:				
• Federal funds .....	1 day or continuously callable up to 100 days.	One of the two highest short-term.	None .....	None.
• Negotiable certificates of deposit.	1 year .....	One of the two highest short-term.	None .....	None.
• Bankers acceptances ....	None .....	One of the two highest short-term.	Issued by a depository institution.	None.
• Prime commercial paper	270 days .....	Highest short-term .....	None .....	None.
• Non-callable term Federal funds and Euro-dollar time deposits.	100 days .....	Highest short-term .....	None .....	20%.
• Master notes .....	270 days .....	Highest short-term .....	None .....	20%.
• Repurchase agreements collateralized by eligible investments or marketable securities rated in the highest credit rating category by an NRSRO.	100 days .....	NA .....	.....	None.
(6) Mortgage Securities:				
• Issued or guaranteed by the United States or a Government agency.	None .....	NA .....	.....	None.
• Government-sponsored agency mortgage securities.	None .....	One of the two highest .....	.....	50%.
• Non-Government agency or Government-sponsored agency securities that comply with 15 U.S.C. 77d(5) or 15 U.S.C. 78c(a)(41).	None .....	Highest .....	.....	15% combined.
• Commercial mortgage-backed securities.	None .....	Highest .....	<ul style="list-style-type: none"> <li>Security must be backed by a minimum of 100 loans.</li> <li>Loans from a single mortgagor cannot exceed 5% of the pool.</li> <li>Pool must be geographically diversified pursuant to the board's policy.</li> </ul>	

NON-PROGRAM INVESTMENT ELIGIBILITY CRITERIA TABLE—Continued

Asset class	Final maturity limit	NRSRO issue or issuer credit rating requirement	Other requirements	Maximum percentage of total non-program investment portfolio
(7) Asset-Backed Securities secured by: • Credit card receivables • Automobile loans • Home equity loans • Wholesale automobile dealer loans • Student loans • Equipment loans • Manufactured housing loans	None .....	Highest .....	Maximum of 5-year WAL for fixed rate or floating rate ABS at their contractual interest rate caps.	25% combined.
(8) Corporate Debt Securities.	5 years .....	One of the highest two for maturities greater than 3 years, and one of the highest three for maturities of three years or less.	Cannot be convertible to equity securities.	25%.
(9) Diversified Investment Funds. Shares of an investment company registered under section 8 of the Investment Company Act of 1940.	NA .....	NA .....	The portfolio of the investment company must consist solely of eligible investments authorized by this section. The investment company's risk and return objectives and use of derivatives must be consistent with FCA guidance and your investment policies.	None, if your shares in each investment company comprise less than 10% of your portfolio. Otherwise counts toward limit for each type of investment.

**Note:** You must also comply with requirements of paragraphs (b), (c), and (d) of this section, and § 651.40 when applicable. "NA" means not applicable.

(b) *Rating of foreign countries.* Whenever the obligor or issuer of an eligible investment is located outside the United States, the host country must maintain the highest sovereign rating for political and economic stability by an NRSRO.

(c) *Marketable investments.* All eligible investments, except money market instruments, must be readily marketable. An eligible investment is marketable if you can sell it promptly at a price that closely reflects its fair value in an active and universally recognized secondary market. You must evaluate and document the size and liquidity of the secondary market for the investment at time of purchase.

(d) *Obligor limits.* (1) You may not invest more than 25 percent of your regulatory capital in eligible investments issued by any single entity, issuer, or obligor. This obligor limit does not apply to Government-sponsored agencies or Government agencies. You may not invest more than 100 percent of your regulatory capital in any one Government-sponsored agency. There are no obligor limits for Government agencies.

(2) *Obligor limits for your holdings in an investment company.* You must count securities that you hold through an investment company toward the

obligor limits of this section unless the investment company's holdings of the security of any one issuer do not exceed 5 percent of the investment company's total portfolio.

(e) *Preferred stock and other investments approved by the FCA.* (1) You may purchase non-program investments in preferred stock issued by other Farm Credit System institutions only with our written prior approval. You may also purchase non-program investments other than those listed in the Non-Program Investment Eligibility Criteria Table at paragraph (a) of this section only with our written prior approval.

(2) Your request for our approval must explain the risk characteristics of the investment and your purpose and objectives for making the investment.

#### **§ 652.25 Management of ineligible investments and reservation of authority.**

(a) *Investments ineligible when purchased.* Investments that do not satisfy the eligibility criteria set forth in § 652.20 at the time of purchase are ineligible. You must not purchase ineligible investments. If you determine that you have purchased an ineligible investment, you must notify the OSMO within 15 calendar days after such determination. You must divest of the

investment no later than 60 calendar days after the determination unless we approve, in writing, a plan that authorizes you to divest of the investment over a longer period of time.

(b) *Investments that no longer satisfy eligibility criteria.* If you determine that an investment (that satisfied the eligibility criteria set forth in § 652.20 when purchased) no longer satisfies the eligibility criteria, you must notify the OSMO within 15 calendar days of the determination.

(c) *Requirements for investments that are ineligible or no longer satisfy eligibility criteria—(1) Reporting requirements.* Each quarter, you must report to the OSMO and your board on the status of investments identified in paragraph (a) or (b) of this section. Your report must demonstrate the effect that these investments may have on the Corporation's capital, earnings, and liquidity position. Additionally, the report must address how the Corporation plans to reduce its risk exposure from these investments or exit the position(s).

(2) *Other requirements.* Investments identified in paragraph (a) or (b) of this section may not be used to satisfy the liquidity requirement(s) in § 652.40. These investments must continue to be included in the investment portfolio

limit calculation established in § 652.15(b).

(d) *Reservation of authority.* FCA retains the authority to require you to divest of any investment at any time for failure to comply with § 652.15(a) or for safety and soundness reasons. The timeframe set by FCA for such required divestiture will consider the expected loss on the transaction (or transactions) and the effect on the Corporation's financial condition and performance.

#### **§ 652.30 Interest rate risk management.**

(a) The board of directors of Farmer Mac must provide effective oversight (direction, controls, and supervision) of interest rate risk management and must be knowledgeable of the nature and level of interest rate risk taken by Farmer Mac.

(b) The board of directors of Farmer Mac must adopt an interest rate risk management policy that establishes appropriate interest rate risk exposure limits based on the Corporation's risk-bearing capacity and reporting requirements in accordance with paragraphs (c) and (d) of this section. At least annually, the board of directors, or a designated committee of the board, must review the policy. Any changes to the policy must be approved by the board of directors. You must report any changes to the policy to the OSMO within 10 business days of adoption.

(c) The interest rate risk management policy must, at a minimum:

- (1) Address the purpose and objectives of interest rate risk management;
- (2) Identify the causes of interest rate risk and set appropriate quantitative limits consistent with a clearly articulated board risk tolerance;
- (3) Require management to establish and implement comprehensive procedures to measure the potential effect of these risks on the Corporation's projected earnings and market values by conducting interest rate stress tests and simulations of multiple economic scenarios at least quarterly. Your stress tests must gauge how interest rate fluctuations affect the Corporation's capital, earnings, and liquidity position. The methodology that you use must be appropriate for the complexity of the structure and cash flows of your on- and off-balance sheet positions, including the nature and purpose of derivative contracts, and establish counterparty risk thresholds and limits for derivatives. It must also ensure an appropriate level of consistency with the stress-test scenarios considered under § 652.10(f)(4). Assumptions applied in stress tests must, to the maximum extent practicable, rely on

verifiable information. You must document the basis for all assumptions that you use.

(4) Describe and authorize management to implement actions needed to achieve Farmer Mac's desired risk management objectives;

(5) Ensure procedures are established to evaluate and document, at least quarterly, whether actions taken have actually met the Corporation's desired risk management objectives;

(6) Identify exception parameters and approvals needed for any exceptions to the policy's requirements;

(7) Describe delegations of authority; and,

(8) Describe reporting requirements, including exceptions to policy limits.

(d) At least quarterly, management must report to the Corporation's board of directors, or a designated committee of the board, describing the nature and level of interest rate risk exposure. Any deviations from the board's policy on interest rate risk must be specifically identified in the report and approved by the board, or a designated committee of the board.

#### **§ 652.35 Liquidity reserve management and requirements.**

(a) *Minimum liquidity reserve requirement.* Within 24 months of this rule becoming effective, and thereafter, Farmer Mac must hold cash, eligible non-program investments under § 652.35 of this subpart, and/or on-balance sheet securities backed by portions of Farmer Mac program assets (loans) that are guaranteed by the United States Department of Agriculture as described in section 8.0(9)(B) of the Act (in accordance with the requirements of paragraphs (b) and (c) of this section), to maintain sufficient liquidity to fund a minimum of 60 days of maturing obligations, interest expense, and operating expenses at all times. You must document your compliance with this minimum reserve requirement at least once each month as of the last day of the month using month-end data. Liquid asset values must be marked to market. In addition, you must have the capability and information systems in place to be able to calculate the minimum reserve requirement on a daily basis.

(b) *Free of lien.* All investments held for the purpose of meeting the liquidity reserve requirement of this section must be free of liens or other encumbrances.

(c) *Discounts.* The amount that may be counted to meet the minimum liquidity reserve requirement is as follows:

(1) For cash and overnight investments, multiply the cash and investments by 100 percent;

(2) For money market instruments with maturities of 5 business days or less, multiply the instruments by 97 percent of market value;

(3) For money market instruments with maturities greater than 5 business days and floating-rate debt and preferred stock securities, multiply the instruments and securities by 95 percent of market value;

(4) For diversified investment funds, multiply the individual securities in the funds by the discounts that would apply to the securities if held separately;

(5) For fixed-rate debt and preferred stock securities, multiply the securities by 90 percent of market value;

(6) For securities backed by Farmer Mac program assets (loans) guaranteed by the United States Department of Agriculture as described in section 8.0(9)(B) of the Act, multiply the securities by 75 percent; and

(7) We reserve the authority to modify or determine the appropriate discount for any investment used to meet the minimum liquidity reserve requirement if the otherwise applicable discount does not accurately reflect the liquidity of that investment or if the investment does not fit wholly within one of the specified investment categories. In making any modification or determination, we will consider the liquidity of the investment as well as any other relevant factors. We will provide notice of at least 20 business days before any modified discounts will take effect.

(d) *Liquidity reserve policy—board responsibilities.* Farmer Mac's board of directors must adopt a liquidity reserve policy. The board must also ensure that management uses adequate internal controls to ensure compliance with the liquidity reserve policy standards, limitations, and reporting requirements established pursuant to this paragraph and to paragraphs (e), (f), and (g) of this section. At least annually, the board of directors or a designated subcommittee of the board must review and validate the liquidity policy's adequacy. The board of directors must approve any changes to the policy. You must provide a copy of the revised policy to FCA's Office of Secondary Market Oversight within 10 business days of adoption.

(e) *Liquidity reserve policy—content.* Your liquidity reserve policy must contain at a minimum the following:

(1) The purpose and objectives of liquidity reserves;

(2) A listing of specific assets, debt, and arrangements that can be used to meet liquidity objectives;

(3) Diversification requirements of your liquidity reserve portfolio;

(4) Maturity limits and credit quality standards for non-program investments used to meet the minimum liquidity reserve requirement of paragraph (a) of this section;

(5) The minimum and target (or optimum) amounts of liquidity that the board believes are appropriate for Farmer Mac;

(6) The maximum amount of non-program investments that can be held for meeting Farmer Mac's liquidity needs, as expressed as a percentage of program assets and program obligations;

(7) Exception parameters and post approvals needed;

(8) Delegations of authority; and

(9) Reporting requirements.

(f) *Liquidity reserve reporting—periodic reporting requirements.* At least quarterly, Farmer Mac's management must report to the Corporation's board of directors or a designated subcommittee of the board describing, at a minimum, liquidity reserve compliance with the Corporation's policy and this section. Any deviations from the board's liquidity reserve policy (other than requirements specified in § 652.20(e)(5)) must be specifically identified in the report and approved by the board of directors.

(g) *Liquidity reserve reporting—special reporting requirements.* Farmer Mac's management must immediately report to its board of directors any noncompliance with board policy requirements that are specified in § 652.20(e)(5). Farmer Mac must report, in writing, to FCA's Office of Secondary Market Oversight no later than the next business day following the discovery of any breach of the minimum liquidity reserve requirement at § 652.20(a).

#### § 652.40 [Reserved]

#### § 652.45 Temporary regulatory waivers or modifications for extraordinary situations.

Whenever the FCA determines that an extraordinary situation exists that necessitates a temporary regulatory waiver or modification, the FCA may, in its sole discretion:

(a) Modify or waive the minimum liquidity reserve requirement in § 652.40 of this subpart;

(b) Modify the amount, qualities, and types of eligible investments that you are authorized to hold pursuant to § 652.20 of this subpart; and/or

(c) Take other actions as deemed appropriate.

Dated: October 25, 2012.

**Dale L. Aultman,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 2012-26805 Filed 11-2-12; 8:45 am]

**BILLING CODE 6705-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2009-0451; A-1-FRL-9748-2]

### Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Reasonably Available Control Technology for the 1997 8-Hour Ozone Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions consist of a demonstration that New Hampshire meets the requirements of reasonably available control technology for oxides of nitrogen and volatile organic compounds set forth by the Clean Air Act with respect to the 1997 8-hour ozone standard, and revisions to existing rules controlling these pollutants, and source-specific orders for fifteen individual sources. This action is being taken in accordance with the Clean Air Act.

**DATES:** This direct final rule will be effective January 4, 2013, unless EPA receives adverse comments by December 5, 2012. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by the Docket ID Number EPA-R01-OAR-2009-0451 by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *Email*: [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov)

3. *Fax*: (617) 918-0047.

4. *Mail*: "Docket Identification Number EPA-R01-OAR-2009-0451," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912.

5. *Hand Delivery or Courier*. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S.

Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, 5th Floor, Boston, MA 02109-3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R01-OAR-2009-0451. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov), or email, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, 5th Floor, Boston, MA. EPA requests that if at all possible, you contact the