

Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand other markets with emphasis on the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of their high quality. Based on Board statistics, Europe has historically been the primary export market for U.S. produced inshell hazelnuts. Shipments have also been relatively consistent, not varying much from the 10 year average of 4,906 tons. Recent years, though, have seen a significant increase in export destinations. Last season, inshell shipments to Europe totaled 4,401 tons, representing just 16 percent of exports, with the largest share going to Germany. Inshell shipments to Southwest Pacific countries—Hong Kong in particular—have increased dramatically in the past few years, rising to 79 percent of total inshell exports of 27,259 tons for the 2006–2007 marketing year. The industry continues to pursue export opportunities.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178, Vegetable and Specialty Crops. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This rule does not change those requirements. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the

meetings and participate in Board deliberations. Like all Board meetings, those held on August 23, 2007, and November 15, 2007, were public meetings and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on February 19, 2008. Copies of the rule were mailed by the Board's staff to all Board members and hazelnut handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended April 21, 2008. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register** (73 FR 9000, February 19, 2008) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

#### PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 982 which was published at 73 FR 9000 on February 19, 2008, is adopted as a final rule without change.

Dated: June 19, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

#### 12 CFR Part 1750

RIN 2550-AA38

#### Risk-Based Capital Regulation—Loss Severity Amendments

**AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Final rule.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight (OFHEO) is amending its regulations related to Risk-Based Capital (Risk-Based Capital Regulation) to enhance the transparency, sensitivity to risk, and accuracy of the calculation of the risk-based capital requirement for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). OFHEO is amending the Risk-Based Capital Regulation by changing the current loss severity equations that understate losses on defaulted single-family conventional and government guaranteed loans and by changing the treatment of Federal Housing Administration insurance in the Risk-Based Capital Regulation to conform the treatment to current law.

**DATES:** *Effective Date:* June 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** David A. Felt, Deputy General Counsel, telephone (202) 414–3750, or Jamie Schwing, Associate General Counsel, telephone (202) 414–3787 (not toll free numbers), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

#### SUPPLEMENTARY INFORMATION:

##### Background

Title XIII of the Housing and Community Development Act of 1992, Public Law 102–550, titled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act) (12 U.S.C. 4501 *et seq.*), established OFHEO as an independent office within the Department of Housing and Urban Development to ensure that Fannie Mae and Freddie Mac (collectively the Enterprises) are adequately capitalized, operate safely and soundly, and comply with applicable laws, rules and regulations. The Act provides that the Director of OFHEO (Director) is authorized to make such determinations

and take such actions as the Director determines necessary with respect to the issuance of regulations regarding, among other things, the required capital levels for the Enterprises. The Act further provides that the Director shall issue regulations establishing the risk-based capital test (Risk-Based Capital Regulation) and that the Risk-Based Capital Regulation, subject to certain confidentiality provisions, shall be sufficiently specific to permit an individual other than the Director to apply the risk-based capital test in the same manner as the Director.

Pursuant to the Act, OFHEO published a final regulation setting forth a risk-based capital test which forms the basis for determining the risk-based capital requirement for each Enterprise. The Risk-Based Capital Regulation has been amended to incorporate corrective

and technical amendments that enhance the transparency sensitivity to risk and accuracy of the calculation of the risk-based capital requirement.

Consistent with the Act and OFHEO's commitment to review, update and enhance the Risk-Based Capital Regulation in order to ensure an accurate risk sensitive and transparent calculation of the risk-based capital requirement, OFHEO published a notice of proposed rulemaking (NPRM) to incorporate amendments to the Risk-Based Capital Regulation. Specifically, OFHEO proposed two changes to the Risk-Based Capital Regulation. The first change was proposed because certain loss severity equations resulted in the Enterprises recording profits instead of losses on foreclosed mortgages during the calculation of the risk-based capital requirement. The current loss severity

equations overestimate Enterprise recoveries for defaulted government guaranteed and low loan-to-value loans. The results generated by the current loss severity equations are not consistent with the Risk-Based Capital Regulation and result in significant reductions in the risk-based capital requirements for the Enterprises. The second change relates to the treatment of Federal Housing Administration insurance associated with single-family loans with a loan-to-value ratio below 78%. OFHEO proposed changes related to these loans that would make the Risk-Based Capital Regulation consistent with current law.

The following table shows the estimated capital impact of all of the amendments at September 30 and December 31, 2006.

TABLE 1.—ESTIMATED CAPITAL IMPACT OF AMENDMENTS  
[Billions of dollars]

	Quarter	Interest rate scenario	RBC requirement		
			Current regulation	Current regulation with proposed amendments	Change *
Fannie Mae .....	2006 3Q .....	Up-Rate .....	\$22.5	\$32.0	\$9.5
		Down-Rate .....	16.4	25.1	8.6
	2006 4Q .....	Up-Rate .....	26.9	36.6	9.8
		Down-Rate .....	9.1	16.6	7.5
Freddie Mac .....	2006 3Q .....	Up-Rate .....	14.9	19.4	4.5
		Down-Rate .....	13.8	18.2	4.4
	2006 4Q .....	Up-Rate .....	15.3	20.7	5.4
		Down-Rate .....	12.9	17.5	4.5

\* Figures may not sum precisely due to rounding.

The amendments substantially increase the RBC Requirement in both the up and down interest rate scenarios for both Enterprises for the two quarters analyzed. However, if the amendments had been in effect during the analyzed periods, total capital would have exceeded the RBC Requirement and the capital classifications of the Enterprises would not have changed.

The 90-day comment period ended March 4, 2008. All comments received have been made available to the public in the OFHEO Public Reading Room and have also been posted on the OFHEO Web site at <http://www.OFHEO.gov>.

**Comments Received**

Comments were received from the American Bankers Association (ABA), Fannie Mae, Freddie Mac, the National Association of Homebuilders (NAHB), and the Mortgage Insurance Companies of America (MICA). All comments were taken into consideration. Significant

comments related to the proposed regulation are discussed below.

**Purpose and Scope**

Fannie Mae commented that the proposed amendments fail to recognize properly its experience during times of credit stress. In support of this statement, Fannie Mae presented data on mortgage defaults that occurred between 1992 and 2006 when home prices declined more than 15% between origination and foreclosure. Within this population of loans, Fannie Mae realized a gain on 20% of the loans with an LTV of 60 percent or less and also realized a gain on six percent of the loans with high levels of third party mortgage insurance.

OFHEO does not find that the comment and data presented by Fannie Mae support a change in OFHEO's proposed amendment to the Risk-Based Capital Regulation. While gains on defaults of individual loans are possible and have occurred in the historical data,

the risk-based capital stress test simulates the average behavior of groups of similar loans, rather than that of individual loans. From that perspective the data presented by Fannie Mae bolsters the OFHEO proposal to restrict negative losses. The data from Fannie Mae show that 80% of defaulted loans with an LTV below 60 percent result in a loss and 94% of defaulted loans with high levels of mortgage insurance result in a loss. Although Fannie Mae did not provide the average gain or loss for these populations, it is unlikely that there was an average gain, given the small percentages of loans with gains.

Fannie Mae also commented that the proposed amendments, by not fully recognizing the Enterprises' loss mitigation practices, do not provide the proper incentive to the Enterprises to engage in those practices. The ABA and the NAHB also raised concerns that the risk-based capital stress test might not fully recognize the benefits of the Enterprises' loss mitigation practices.

OFHEO expects that only rarely, if at all, would the risk-based capital stress test limit the representation of benefits of the Enterprises' loss mitigation practices. This expectation is consistent with the data on loans with high levels of mortgage insurance that Fannie Mae presented in its comment, which showed a gain on only six percent of those loans. OFHEO also acknowledges that the risk-based capital stress test does not capture every detail of the risks and the risk mitigation strategies of the Enterprises, since, of necessity, it is a stylized representation of the financial operations and statements of the Enterprises. As such, the risk-based capital stress test reflects numerous accommodations across the dimensions of accuracy, complexity, transparency, operational workability, and regulatory caution. OFHEO will continue to review the RBC Stress Test Model and will propose enhancements where appropriate. This final amendment is a marked improvement over the prior approach.

Freddie Mac and MICA commented in favor of all of the proposed amendments. In addition to its comments on the proposed amendments, MICA raised additional concerns that were beyond the scope of the current rulemaking. MICA expressed concern that the current Risk-Based Capital Regulation allowed the cross-subsidization of interest-rate and credit risk, thereby allowing the Enterprises to hold an insufficient amount of capital against either risk. MICA also commented that OFHEO should revise the Risk-Based Capital Regulation to apply the regulation on a combined loan-to-value ratio of an Enterprise's position and to develop measures of credit risk that distinguish subprime and non-traditional mortgage structures from less-risky ones. Although these comments are beyond the scope of the current rulemaking, OFHEO nevertheless welcomes MICA's suggestions for possible future rulemaking topics.

OFHEO has taken into consideration all of the comments submitted in connection with this rulemaking, and for the reasons discussed above, OFHEO has determined to issue the amendments as proposed.

### Regulatory Impacts

#### *Executive Order 12866, Regulatory Planning and Review*

The amendments incorporate changes to the loss severity equations used to calculate the risk-based capital

requirement as well as changes to the treatment of Federal Housing Administration insurance in the Risk-Based Capital Regulation in order to conform to current law. The amendments to the Risk-Based Capital Regulation are not classified as an economically significant rule under Executive Order 12866 because they do not result in an annual effect on the economy of \$100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in foreign or domestic markets. Accordingly, no regulatory impact assessment is required. Nevertheless, the amendments were submitted to the Office of Management and Budget (OMB) for review under the provisions of Executive Order 12866 as a significant regulatory action.

#### *Executive Order 13132, Federalism*

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the states, on the relationship or distribution of power between the Federal Government and the states, or the distribution of power and responsibilities among various levels of government. The Enterprises are federally chartered entities supervised by OFHEO. The amendments to the Risk-Based Capital Regulation address matters which the Enterprises must comply with for Federal regulatory purposes. The amendments to the Risk-Based Capital Regulation address matters regarding the risk-based capital calculation for the Enterprises and therefore do not affect in any manner the powers and authorities of any state with respect to the Enterprises or alter the distribution of power and responsibilities between Federal and state levels of government. Therefore OFHEO has determined that the amendments to the Risk-Based Capital Regulation have no federalism implications that warrant preparation of a Federalism Assessment in accordance with Executive Order 13132.

#### *Paperwork Reduction Act*

The amendments do not contain any information collection requirements that

require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities 5 U.S.C. 605(b). OFHEO has considered the impact of the amendments to the Risk-Based Capital Regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the amendments to the Risk-Based Capital Regulation are not likely to have a significant impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for the purposes of the Regulatory Flexibility Act.

#### List of Subjects in 12 CFR Part 1750

Capital classification, Mortgages, Risk-based capital.

■ Accordingly, for the reasons stated in the preamble, OFHEO is amending 12 CFR part 1750 as follows:

#### PART 1750—CAPITAL

■ 1. The authority citation for part 1750 continues to read as follows:

**Authority:** 12 U.S.C. 4513, 4514, 4611, 4612, 4614, 4618.

■ 2. Amend Appendix A to subpart B of part 1750 as follows:

■ a. In paragraph 3.6.3.6.4.3[a]1, under the explanation "Where:  $m' = m$ , except for counterparties rated below BBB, where  $m' = 120$ ", revise the equation;

■ b. In paragraph 3.6.3.6.5.1[a] revise equation;

■ c. In paragraph 3.6.3.6.5.1[b]2 revise equation.

#### Appendix A to Subpart B of Part 1750—Risk-Based Capital Text Methodology and Specifications

\* \* \* \* \*

3.6.3.6.4.3 \* \* \*

[a] \* \* \*

1. \* \* \*

$m' = m$ , except for counterparties rated below BBB, where  $m' = 120$

$MIExp_m^{LG} = 1$  if  $\left( LTV_{ORIG} \times \frac{UPB_m^{LG}}{UPB_{ORIG}^{LG}} \right) < 0.78$  and the loan group comprises conventional loans

$MIExp_m^{LG} = 0$  otherwise

0.78 (78%) = the LTV at which MI is cancelled if payments are current

\* \* \* \* \*  
 3.6.3.6.5.1 \* \* \*  
 [a] \* \* \*

$$LS_m^{SF} = MAX \left[ \left( \frac{1}{\left(1 + \frac{DR_m}{2}\right)^{\frac{MQ}{6}}} + \frac{\left(\frac{MQ}{12} \times PTR_m\right) + F - MI_m}{\left(1 + \frac{DR_m}{2}\right)^{\frac{MF}{6}}} + \frac{R - RP_m - ALCE_m}{\left(1 + \frac{DR_m}{2}\right)^{\frac{MF + MR}{6}}} \right), 0 \right]$$

[b] \* \* \*  
 2. \* \* \*

$$LS_m^{VA} = max \left[ \frac{1 + F + \left(\frac{MQ}{12} \times PTR_m\right) + (R - RP_m) - 0.30}{\left(1 + \frac{DR_m}{2}\right)^{\frac{MF}{6}}}, 0 \right]$$

\* \* \* \* \*

Dated: June 10, 2008.  
**James B. Lockhart III**,  
 Director, Office of Federal Housing Enterprise Oversight.  
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 BILLING CODE 4220-01-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 23**

[Docket No. CE288; Special Conditions No. 23-228-SC]

**Special Conditions: Embraer S.A. Model EMB-500; Full Authority Digital Engine Control (FADEC) System.**

**AGENCY:** Federal Aviation Administration (FAA), DOT.  
**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Embraer S.A. Model EMB-500 airplane. This airplane will have a novel or unusual design feature(s) associated with the use of an electronic engine control system instead

of a traditional mechanical control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is June 16, 2008.

Comments must be received on or before July 25, 2008.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket CE288, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE288. Comments may be inspected in the Rules Docket weekdays, except Federal holidays between 7:30 and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE-111, 901 Locust, Room 301,

Kansas City, Missouri 64106; 816-329-4135, fax 816-329-4090.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

**Comments Invited**

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in