rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Pacific Northwest marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Pacific Northwest order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Pacific Northwest order, as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary in the public interest to make these amendments to the Pacific Northwest order effective May 1, 2005. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on December 23, 2004.

The changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective May 1, 2005. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk that is marketed within the specified marketing area to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Pacific Northwest order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the order amending the Pacific Northwest order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1124

Milk marketing orders.

Order Relative to Handling

■ *It is therefore ordered,* that on and after the effective date hereof, the handling of milk in the Pacific Northwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

■ The interim final rule amending 7 CFR Part 1124 which was published at 69 FR 1654 on January 12, 2004, is adopted as a final rule without change.

Dated: April 6, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–7272 Filed 4–11–05; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 617

RIN 3052–AC24

Borrower Rights

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or Agency) issues this final rule to allow a borrower to waive borrower rights when receiving a loan from a qualified lender as part of a loan syndication with non-Farm Credit System (System) lenders that are otherwise not required by section 4.14A(a)(6) of the Farm Credit Act of 1971, as amended (Act), to provide borrower rights. This rule will provide qualified lenders needed flexibility to meet the credit needs of borrowers seeking financing from a qualified lender as part of certain syndicated lending arrangements.

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

FOR FURTHER INFORMATION CONTACT: Mark Johansen, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or

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

SUPPLEMENTARY INFORMATION:

I. Background

On November 16, 2004, we published a proposed regulation (69 FR 67074) that would permit a borrower to waive part 617, Borrower Rights, when receiving a loan from a qualified lender as part of a loan syndication with non-System lenders that are otherwise not required by the Act to provide borrower rights.[1] As discussed in the preamble to the proposed rule, we have determined that the borrower in these transactions generally possess a very high level of business sophistication. As a result, these borrowers are in a reasonably equal bargaining position with the qualified lender and are able to provide a knowing, voluntary, and intelligent waiver of these rights. To ensure that the borrower understands the rights being waived and is freely and intelligently waiving those rights, we proposed, in addition to the current notice requirement in § 617.7010(c), to require that the borrower certify that he/she was advised by legal counsel at the time of the waiver.

We received 23 comments on the proposed rule: 20 from System institutions, one from the Farm Credit Council (FCC), one from the Independent Community Bankers of America (ICBA), and one from a private citizen (whose comment was not

[1] Title IV, part C of the Act (subchapter IV, part C of title 12 of the United States Code) requires ''qualified lenders'' to provide for certain ''rights of borrowers.'' Section 4.14A(a)(6) (12 U.S.C. 2202a(a)(6)) defines ''qualified lenders'' to include: (1) A System institution, except a bank for cooperatives, that makes loans authorized by the Act; and (2) each bank, institution, corporation, company, credit union, and association described in section 1.7(b)(1)(B) of the Act (12 U.S.C. 2015(b)(1)(B)) (commonly referred to as an other financing institution (OFI)), but only with respect to loans discounted or pledged under section 1.7(b)(1).

germane to the subject of the rule). While all but two commenters generally supported the proposed rule, every comment letter raised concerns and some offered specific suggestions about particular issues. We discuss the individual comments and our responses below. In addition, we reorganized the final rule, combined the requirements of existing § 617.7010(b) and (c) together (while making a grammatical correction to remove the redundant phrase ''and provide an explanation of such right'') and added a new paragraph (c) applicable solely to loan syndications.

II. General Comments

A. Extent of FCA Discretion

Numerous commenters stated that FCA should use its discretionary authorities to not require borrower rights, borrower stock, or territorial concurrence in instances where a qualified lender is engaging in a multi-lender transaction, especially when the borrower has not made a loan application to a qualified lender and where the lead lender in the syndicate is not a qualified lender. Commenters also stated that multi-lender transactions where the qualified lender is not the lead lender closely resemble a loan participation and as such should not be treated as a direct loan requiring borrower stock, borrower rights, and territorial concurrence. This approach, these commenters stated, elevates form over substance. Lastly, one commenter stated that the proposal to waive borrower rights is not a panacea for the issues qualified lenders face in the syndication marketplace and that a borrower may ask for concessions from the entire lending group in exchange for a waiver or the lending group may not be willing to wait for the qualified lender to obtain the waiver.

FCA previously addressed the issue of borrower rights applicability to borrowers in loan syndications in our final notice on Loan Syndication Transactions (69 FR 8407, February 24, 2004). In this notice, we stated that loan syndication transactions come under the Act's loan-making authority and as such require, among other things, qualified lenders to provide borrower rights to each borrower. Therefore, FCA concluded that it has no discretion to eliminate statutory borrower rights' requirements for loan syndication transactions. The Agency has not changed its legal interpretation on this issue.

B. Definition of ''Participation''

One commenter asked FCA to apply the definition of ''participate'' and ''participation'' in the similar entity provisions of the Act to syndications for eligible borrowers so that borrower rights, stock purchase, and territorial concurrence would not apply. This commenter stated that section 3.1(11)(B)(iii) of the Act demonstrates Congress' intent to treat syndications and participations identically for all multi-lender transactions that System banks and associations engage in.

FCA also previously addressed this issue in our final notice on Loan Syndication Transactions (69 FR 8407, February 24, 2004) where we stated that section 3.1(11)(B)(iii) of the Act explicitly applies this definition to similar entities only, and not to extensions of credit to eligible borrowers. The Agency has not changed its legal interpretation on this issue.

C. Legal Authority for Waivers

One commenter stated that there is no authority in the Act for FCA to provide for waivers of borrower rights and as such the proposed rule does not comply with the Act. The commenter is correct in that there is no explicit waiver provision in the Act. However, the Supreme Court has clearly stated that ''in the context of a broad array of constitutional and statutory provisions'' courts should ''presume the availability of waiver.'' [2] The Court has further stated that ''absent some affirmative indication of Congress' intent to preclude waiver, we have presumed that statutory provisions are subject to waiver by voluntary agreement of the parties.'' [3] The Court has upheld waivers of procedural due process rights concerning property upon evidence that the waiver was ''voluntary, intelligent and knowing.'' [4] Therefore, no specific statutory language in the Act is necessary to allow enforceable waivers.

However, FCA has generally prohibited, on public policy grounds, qualified lenders from seeking or accepting waivers of statutory borrower rights. Current § 617.7010(b) provides two exceptions allowing waivers. First, a waiver is allowed when a loan is sold to a non-System lender that is otherwise not required to provide borrower rights (the borrower can either waive his or her rights or the qualified lender and borrower may agree to contractually obligate the buying lender to provide borrower rights). Second, a waiver is allowed when a loan is guaranteed by the Small Business Administration (SBA) (borrowers receive similar protections under SBA rules and would be unable to obtain the guarantee without the waiver). New § 617.7010(c) adds a third limited exception applicable to sophisticated transactions where the borrower is in a reasonably equal bargaining position with the lender and therefore public policy concerns do not arise. Additionally, the application of borrower rights in syndicated loans may yield the counterproductive and unintended result of denying qualified lender credit to eligible borrowers who are in a position to knowingly, intelligently, and voluntarily waive their rights.

D. Applicability of Borrower Rights to OFIs

One commenter questioned the authority to require OFIs to provide borrower rights and asked us to provide such authority. Section 4.14A(a)(6)(B) of the Act (12 U.S.C. 2202a(a)(6)(B)), which specifically includes OFIs within the definition of ''qualified lender'' [5] outlines this authority. Sections 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14C, and 4.14D of the Act require qualified lenders to provide specific borrower rights, including disclosure, review of adverse credit decisions, and distressed loan restructuring.

E. Need for Rule

One commenter stated that FCA has not explained why utilizing loan participations is not an adequate substitute for loan syndications. As commented to us in a previous rulemaking, the trend in the markets is away from traditional participations and toward syndications, resulting in both System and non-System institutions looking to syndications more than participations to meet their multi-lender needs.

[2] *New York* v. *Hill*, 528 U.S. 110, 114 (2000) (quoting *United States* v. *Mezzanatto*, 513 U.S. 196, 200–201 (1995)) (upholding waiver of criminal defendants' rights).

[3] *United States* v. *Mezzanatto*, 513 U.S. 196, 200–201 (1995) (multiple citations omitted).

[4] *See Fuentes* v. *Shevin*, 405 U.S. 67, 95 (1972) and *D.H. Overmyer Co.* v. *Frick Co.*, 405 U.S. 174, 186 (1972).

[5] Section 4.14A(a)(6)(B) of the Act defines a qualified lender to include, in addition to any production credit association, each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act, but only with respect to loans discounted or pledged under section 1.7(b)(1). Section 1.7(b)(1)(B) (12 U.S.C. 2015(b)(1)) authorizes Farm Credit Banks to discount loans for any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products, any note, draft, or other obligation with the institution's endorsement or guarantee, the proceeds of which note, draft, or other obligation have been advanced to persons and for purposes eligible for financing by production credit associations as authorized by the Act.

III. Specific Comments

A. Avoidance of Borrower Rights

Two commenters stated that it is logically inconsistent to include the phrase ''* * * does not include a transaction created for the primary purpose of avoiding borrower rights'' in the definition of loan syndication. They further state that capital markets dynamics should shape the appropriate structure of loan transactions. We agree that the capital markets will influence when a loan syndication is used to fund a borrower's credit needs and that it is extremely unlikely that a qualified lender would structure a loan as a loan syndication for the purpose of avoiding borrower rights. However, it is our role to ensure that qualified lenders use the new authority only for the intended limited purpose of helping qualified lenders ensure that there is a dependable source of credit to agriculture and rural America for all eligible borrowers. Therefore, it is prudent for FCA to keep this language in its regulations.

B. Definition of ''Loan Syndication''

One commenter stated that we should add lease transactions to this definition. Borrower rights do not apply to lease transactions and therefore we did not add leases to § 617.7010(c).

Two commenters stated that we should remove the term ''syndicated loan'' in proposed § 617.7010(c) as the definition is broad enough to include syndicated loans and any other multi-lender structures that may develop in the future. They suggested the following language ''a multi-lender transaction in which each member of the lending syndicate has a direct contractual relationship with the borrower.'' They argued that such a definition would clearly include syndicated loans, without creating uncertainty about the applicability of the waiver authority in new forms of lending arrangements that may develop in the future and without injecting ''artificial'' determinants into the selection of the structure of transactions. We do not agree that the commenters' proposed changes are needed at this time. The waiver provision was drafted to address a specific issue, namely the barrier that requiring borrower rights pose on a qualified lender's ability to be involved in loan syndications with sophisticated borrowers. In these instances the borrower is in a reasonably equal bargaining position with the lender and is able to intelligently, knowingly, and voluntarily waive their rights. In the future, the FCA is open to entertaining requests to add additional waiver provisions to address constraints on qualified lenders engaging in other, specific types of multi-lender transactions.

C. Legal Counsel Requirement

A number of commenters stated that the proposed rule's requirement that the borrower certify that he/she had been advised by legal counsel prior to executing the waiver is ''unnecessary and inappropriate'' given the sophistication of the borrowers, is burdensome and costly to the borrowers, and is not applicable to existing waiver opportunities. These commenters suggested that we modify the waiver to replace ''certify'' with a statement that the borrower may wish to consult with legal counsel and to only require that borrowers certify that they were given the opportunity to consult with legal counsel.

Our requirement that a borrower consult with legal counsel before executing a waiver as part of a loan syndication is not intended only for protection of the borrower. It is also intended as a means to help ensure a qualified lender has properly executed steps to prudently implement a waiver of borrower rights. Courts have upheld waivers in a variety of contexts if they are executed knowingly, intelligently, and voluntarily. One element courts have identified as evidence of a knowing and intelligent waiver is representation by legal counsel. An FCA regulation allowing qualified lenders to accept waivers does not insulate the institution from legal challenge to the validity of the waiver. As a safety and soundness regulator, we believe that obtaining a written waiver that states that the borrower was represented by counsel is a prudent way to limit the risk associated with accepting waivers.

Secondly, as pointed out by many commenters, syndicated loan borrowers are almost invariably represented by legal counsel in the transaction and usually obtain a written opinion of counsel before entering into the agreement. Having the borrower sign a statement simply acknowledging that the borrower was, in fact, represented by counsel in the transaction does not appear to significantly increase the burden of doing business with a qualified lender.

One commenter was concerned that the use of the word ''certify'' in the proposed rule suggests some formal process over and above a written representation by a borrower. We did not intend to suggest this meaning by use of the word ''certify.'' To clarify and remove any unintended implication, we have revised the final rule to read that the borrower's written waiver must contain a ''statement'' that the borrower was represented by legal counsel in connection with the waiver.

D. Explanation of Borrower Rights

A number of commenters stated that requiring qualified lenders to explain the borrower rights that the borrower is waiving is burdensome, unnecessary, and may subject an association to a litigation risk for failing to adequately ''explain'' the rights being waived. Three commenters suggested that the lender should only provide a written notice of the borrower rights that the borrower could waive rather than require them to explain these rights. These commenters argued that the borrower's legal counsel should be the one who explains these rights to the borrower.

We agree with this comment and have revised the final rule to provide that the document evidencing the waiver must ''clearly disclose'' the rights being waived. Under the final rule, the lender need only ensure that the written waiver accurately states all rights being waived, for example by reference to the relevant statutory citations, without any further requirement to explain the rights to the borrower. We continue to require that the qualified lender explain the rights being waived with the SBA and loan sale waiver opportunities in new § 617.7010(b) as these borrowers are not typically represented by legal counsel.

E. Form of Waiver

One commenter stated that we should allow the lead lender in a loan syndication to include borrower rights waiver language in the Master Loan Agreement. The commenter argued that this would remove a barrier because it would result in one request to the borrower versus numerous. The proposed rule does not stipulate the exact form of the waiver and certification, it only requires that one exists. Language in the Master Loan Agreement that states the borrower rights the borrower is waiving and provides for the borrower to state that they were advised by legal counsel would comply with the waiver provision in § 617.7010(c).

One commenter stated that we should require that the legal counsel advice be given only by the borrower's legal counsel, not someone like a settlement attorney. We agree that this is the proper interpretation of the requirement and clarify in the final rule that the borrower must be ''represented'' by legal counsel—meaning that borrower received legal advice from his/or her own counsel.

IV. 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. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 617

Banks, banking, Criminal referrals, Criminal transactions, Embezzlement, Insider abuse, Investigations, Money laundering, Theft.

■ For the reasons stated in the preamble, part 617, chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 617—BORROWER RIGHTS

■ 1. The authority citation for part 617 continues to read as follows:

Authority: Secs. 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.36, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2199, 2200, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2219a, 2243, 2252).

Subpart A—General

■ 2. In § 617.7010:

■ a. Paragraph (a) is amended by removing the reference, ''paragraph (b)'' and adding in its place, the reference ''paragraphs (b) and (c)'';

■ b. Paragraphs (b) and (c) are revised to read as follows:

§ 617.7010 May borrower rights be waived?

* * * * *

(b) A borrower may waive rights relating to distressed loan restructuring, credit reviews, and the right of first refusal when a loan is guaranteed by the Small Business Administration or in connection with a loan sale as provided in § 617.7015. Waivers obtained pursuant to this paragraph must be voluntary and in writing. The document evidencing the waiver must clearly explain the rights the borrower is being asked to waive.

(c) A borrower may waive all borrower rights provided for in part 617 of these regulations in connection with a loan syndication transaction with non-System lenders that are otherwise not required by section 4.14A(a)(6) of the Act to provide borrower rights. For purposes of this paragraph, a ''loan syndication'' is a multi-lender transaction in which each member of the lending syndicate has a direct contractual relationship with the borrower, but does not include a transaction created for the primary purpose of avoiding borrower rights. Waivers obtained pursuant to this paragraph must be voluntary and in writing. The document evidencing the waiver must clearly disclose the rights the borrower is waiving. Additionally, the borrower's written waiver must contain a statement that the borrower was represented by legal counsel in connection with execution of the waiver.

Dated: April 5, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–7233 Filed 4–11–05; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20235; Airspace Docket No. 05–ASO–1]

Amendment of Class E Airspace; Parsons, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Parsons, TN. The Beech River Regional Airport is being constructed at Parsons, TN. As a result, airspace must be established to contain the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 19 Standard Instrument Approach Procedure (SIAP) to Beech River Regional Airport. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: *Effective Date:* 0901 UTC, July 7, 2005.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Airspace and Operations Branch, Eastern En Route and Oceanic Service Area, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On February 25, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Parsons, TN, (70 FR 9257). This action provides adequate Class E5 airspace for IFR operations at Parsons, TN, Beech River Regional Airport. Designations for Class E are published in FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Parsons, TN.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.