outstanding for assets and liabilities for that date.

[63 FR 39229, July 22, 1998]

§ 615.5336 Compliance and reporting.

(a) *Noncompliance and reporting.* An institution that meets the minimum applicable surplus ratios and net collateral ratio established in §§ 615.5330 and 615.5335 at or after the end of the quarter in which these regulations become effective and subsequently falls below one or more minimum requirements shall be in violation of the applicable regulations. Such institution shall report its noncompliance to the Farm Credit Administration within 20 calendar days following the month end in which the institution initially determines that it is not in compliance with the requirements.

(b) *Initial compliance and reporting requirements.* (1) An institution that fails to satisfy one or more of its minimum applicable surplus and net collateral ratios at the end of the quarter in which these regulations become effective shall report its initial noncompliance to the Farm Credit Administration within 20 days following such quarter end and shall also submit a capital restoration plan for achieving and maintaining the standards, demonstrating appropriate annual progress toward meeting the goal, to the Farm Credit Administration within 60 days following such quarter end. If the capital restoration plan is not approved by the Farm Credit Administration, the Agency shall inform the institution of the reasons for disapproval, and the institution shall submit a revised capital restoration plan within the time specified by the Farm Credit Administration.

(2) *Approval of compliance plans.* In determining whether to approve a capital restoration plan submitted under this section, the FCA shall consider the following factors, as applicable:

(i) The conditions or circumstances leading to the institution's falling below minimum levels, the exigency of those circumstances, and whether or not they were caused by actions of the institution or were beyond the institution's control;

(ii) The overall condition, management strength, and future prospects of the institution and, if applicable, affiliated System institutions;

(iii) The institution's capital, adverse assets (including nonaccrual and nonperforming loans), allowance for loss, and other ratios compared to the ratios of its peers or industry norms;

(iv) How far an institution's ratios are below the minimum requirements;

(v) The estimated rate at which the institution can reasonably be expected to generate additional earnings;

(vi) The effect of the business changes required to increase capital;

(vii) The institution's previous compliance practices, as appropriate;

(viii) The views of the institution's directors and senior management regarding the plan; and

(ix) Any other facts or circumstances that the FCA deems relevant.

(3) An institution shall be deemed to be in compliance with the surplus and collateral requirements of this subpart if it is in compliance with a capital restoration plan that is approved by the Farm Credit Administration within 180 days following the end of the quarter in which these regulations become effective.

Subpart L—Establishment of Minimum Capital Ratios for an Individual Institution

SOURCE: 62 FR 4448, Jan. 30, 1997, unless otherwise noted.

§ 615.5350 General—Applicability.

(a) The rules and procedures specified in this subpart are applicable to a proceeding to establish required minimum capital ratios that would otherwise be applicable to an institution under §§ 615.5205, 615.5330, and 615.5335. The Farm Credit Administration is authorized to establish such minimum capital requirements for an institution as the Farm Credit Administration, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the institution. Proceedings under this subpart also may be initiated to require an institution having capital ratios greater than those set forth in §§ 615.5205, 615.5330, or 615.5335 to continue to maintain those higher ratios.

(b) The Farm Credit Administration may require higher minimum capital ratios for an individual institution in view of its circumstances. For example, higher capital ratios may be appropriate for:

(1) An institution receiving special supervisory attention;

(2) An institution that has, or is expected to have, losses resulting in capital inadequacy;

(3) An institution with significant exposure due to operational risk, interest rate risk, the risks from concentrations of credit, certain risks arising from other products, services, or related activities, or management's overall inability to monitor and control financial risks presented by concentrations of credit and related services activities;

(4) An institution exposed to a high volume of, or particularly severe, problem loans;

(5) An institution that is growing rapidly; or

(6) An institution that may be adversely affected by the activities or condition of System institutions with which it has significant business relationships or in which it has significant investments.

(7) An institution with significant exposures to declines in net income or in the market value of its capital due to a change in interest rates and/or the exercising of embedded or explicit options.

[62 FR 4448, Jan. 30, 1997, as amended at 63 FR 39229, July 22, 1998]

§ 615.5351 Standards for determination of appropriate individual institution minimum capital ratios.

The appropriate minimum capital ratios for an individual institution cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on subjective judgment grounded in Agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(a) The conditions or circumstances leading to the Farm Credit Administration's determination that higher minimum capital ratios are appropriate or necessary for the institution;

(b) The exigency of those circumstances or potential problems;

(c) The overall condition, management strength, and future prospects of the institution and, if applicable, affiliated institutions;

(d) The institution's capital, adverse assets (including nonaccrual and nonperforming loans), allowance for loss, and other ratios compared to the ratios of its peers or industry norms; and

(e) The views of the institution's directors and senior management.

§ 615.5352 Procedures.

(a) *Notice*. When the Farm Credit Administration determines that minimum capital ratios greater than those set forth in §§ 615.5205, 615.5330, or 615.5335 are necessary or appropriate for a particular institution, the Farm Credit Administration will notify the institution in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable) and will provide an explanation of why the ratios proposed are considered necessary or appropriate for the institution.

(b) *Response*. (1) The institution may respond to any or all of the items in the notice. The response should include any matters which the institution would have the Farm Credit Administration consider in deciding whether individual minimum capital ratios should be established for the institution, what those capital ratios should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the designated Farm Credit Administration official within 30 days after the date on which the institution received the notice. In its discretion, the Farm Credit Administration may extend the time period for good cause. The Farm Credit Administration may shorten the time period with the consent of the institution or when, in the opinion of the Farm Credit Administration, the condition of the institution so requires, provided that the institution is informed promptly of the new time period.

(2) Failure to respond within 30 days or such other time period as may be