

Subject H—Capital Adequacy

2. Add new paragraph (f)(2)(ii)(L) to § 615.5210 to read as follows:

§ 615.5210 Computation of the permanent capital ratio.

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(f) * * *

(2) * * *

(ii) * * *

(L) Asset- or mortgage-backed securities (not issued or guaranteed by the United States Government, a Government agency, or a Government-sponsored agency).

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Dated: March 24, 2003.

Jeanette C. Brinkley,
Secretary, Farm Credit Administration Board.
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SMALL BUSINESS ADMINISTRATION**13 CFR Part 121**

RIN 3245-AE84

Small Business Size Regulations; Petroleum Refiners

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is modifying the small business size standard for petroleum refiners for purposes of Federal government procurement. The modification consists of the following: Increasing the capacity component of the standard from 75,000 barrels per day (bpd) to 125,000 barrels per calendar day (bpcd); defining capacity in bpcd; and measuring a refiner's total Operable Atmospheric Crude Oil Distillation Capacity. This is a better definition of what size a refiner must be to qualify as a small refiner for the Federal government's procurement of refined petroleum products. SBA is not changing the 1,500 employee size standard for this industry.

DATES: This rule is effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Carl J. Jordan, Office of Size Standards, (202) 205-6618 or sizestandards@sba.gov.

SUPPLEMENTARY INFORMATION:

Introduction: SBA is modifying the small business size standard for North American Industry Classification System (NAICS) 324110, Petroleum Refineries, for purposes of the Federal Government's procurement of refined petroleum products. The revised size

standard replaces current footnote 4 to SBA's Table of Small Business Size Standards, contained in 13 CFR 121.201. The footnote will now read as follows:

NAICS code 324110—For purposes of Government procurement, the petroleum refiner must be a concern that has no more than 1,500 employees nor more than 125,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

Background: On February 12, 2002, SBA proposed in the **Federal Register** (67 FR 6437): (1) To increase the capacity component of the standard from 75,000 bpd to 155,000 bpcd; (2) to clarify that the capacity component is measured in bpcd as defined by the U.S. Department of Energy, Energy Information Administration (EIA); and (3) to clarify that the capacity component is a measure of a refiner's total Operable Atmospheric Crude Oil Distillation Capacity, as used by EIA. The proposed rule included the history of this small business size standard, the reasons for the proposed changes, a description of how SBA establishes and evaluates small business size standards, and alternatives that SBA considered proposing.

Summary of Comments: SBA received 15 comments to the proposed rule, which are discussed below. They were received from the following organizations: one industry association, six small refiners, six other-than small refiners, one Federal agency, and a United States Senator. The comments reflect no prevailing opinion about the level to which SBA should increase the capacity component, nor even whether or not SBA should increase it at all. Below SBA summarizes the four significant issues raised by the comments and provides SBA's consideration of those comments.

1. Whether SBA Should Retain Refiners' Capacity as a Component of the Size Standard

Comments received: All commenters but one stated that capacity is a valid and meaningful size measure for purposes of the Federal government's procurement of refined petroleum products. One commenter pointed out that other regulations, such as the Clean Air Act and the Emergency Petroleum Allocation Act, define small refiners and small refineries in terms of their

capacity. Another commenter supported that point by stating that it "is always helpful to the public for Federal agencies to clarify and standardize their definitions and measures." Another commenter stated that capacity is and has been the historical basis for small business determinations in the refinery industry, and believes that it is the best method for doing so.

SBA's position: SBA concurs with these commenters. Refining capacity is a relevant measure for the petroleum refining industry. Consistency with the historical size standard and with measurements used by other Federal agencies such as EIA and the Environmental Protection Agency (EPA) is important.

2. Whether SBA Should Replace "Barrels Per Day" With "Barrels Per Calendar Day"

Comments received: SBA received eight comments on this subject, four of which support and four of which do not support the change of term. Supporters favored the change as a useful standardization among Federal government agencies. Opponents believed it could allow for "gaming" and permit other than small refiners to qualify as small by reducing output, and that it relies too heavily on representations made to EPA.

SBA's position: SBA does not agree that the use of "barrels per calendar day" (bpcd) would necessarily lead to gaming. Bpcd measures a refiner's present capacity to produce, not its actual production. It is a static amount, that a refiner uses when it self-certifies that it is small to a Federal procuring agency, which is generally when it submits its initial offer including price (13 CFR 121.404). Since it could change, it may or may not be the same as what it stated in its annual certification to EIA. Nor is bpcd a measure of how much a refiner has produced, but rather how much a refiner "can process under usual operating conditions * * *" allowing for a number of limitations, as stated in EIA's definition of "Barrels Per Calendar Day." This term is also consistent with the standard measure that EIA uses to rank U.S. refiners by size, and that other agencies, such as EPA, use when applicable to enforcement of their regulations.

Bpcd, which includes both the refiners' operating and idle capacity, is an estimate (as are bpd and barrels per stream day), taking into consideration anticipated downtime, etc. Further, EIA's definition of "Barrels Per Calendar Day" takes into consideration, " * * * the environmental constraints associated with refinery operations"