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Handbook Mailing FCSIC-HM-09-01

[6710-01-P]

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1410

RIN 3055-AA10

Premiums

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Direct final rule.

SUMMARY: The Farm Credit System Insurance Corporation (FCSIC or Corporation) is issuing a direct final rule amending its premium regulations to reflect the amendments of the Farm Credit Act of 1971 that were made by the enactment of the Food, Conservation, and Energy Act of 2008. The purpose of the amended rule is to clarify the premium regulations and eliminate provisions of the premium regulations that are obsolete or inconsistent with the Farm Credit Act of 1971, as amended.

DATES: If we receive no significant adverse comment on or before May 15, 2009, these regulations will be effective upon the expiration of 30 days after publication in the Federal Register during which either or both Houses of Congress are in session. We will publish notice of the effective date in the Federal Register.

If we receive significant adverse comment on an amendment, paragraph, or section of the rule, and that provision may be addressed separately from the remainder of the rule, we will withdraw that amendment, paragraph, or section and adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

ADDRESSES: You may send comments by electronic mail through the “Contact Us” section of FCSIC’s Web site, www.fcsic.gov, or through the Governmentwide “www.regulations.gov” portal. You may also send comments to James M. Morris, General Counsel, at “morrisj@fcsic.gov” or by mail at the address listed below. Copies of all comments we receive may be reviewed in our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is certified that the rule will not have significant impact on a substantial number of small entities. Each of the banks in the Farm Credit System (FCS or System), considered together with its affiliated associations, has assets and annual income in excess of the amounts that qualify them as small entities. Therefore, System banks are not “small entities” as defined in the Regulatory Flexibility Act.

Direct Final Rulemaking

We are amending our premium regulations using the “direct final” procedure for rulemaking. Direct final rulemaking permits agencies to adopt noncontroversial rules on an expedited basis, without going through the usual proposed and final stages of notice-and-comment rulemaking. This process enables us to reduce the time and resources we need to develop, review, and publish a noncontroversial final rule while still affording the public an adequate opportunity to comment on or object to the rule. Direct final rulemaking was recommended by the Administrative Conference of the United States.¹

In direct final rulemaking, we notify the public that a rule will become final on a specified future date unless we receive significant adverse comment during the comment period specified in the notice. A significant adverse comment is one where the commenter explains why the rule would be inappropriate (including challenges to its underlying premise or approach), ineffective, or unacceptable without a change. In general, a significant adverse comment would raise an issue serious enough to warrant a substantive response from us in a notice-and-comment rulemaking.

We believe these amendments are noncontroversial. As discussed below, the provisions of the Farm Credit Act of 1971 (Act)² that govern FCSIC premiums were recently amended. Some of FCSIC’s existing premium regulations are inconsistent with the amended provisions of the Act. Generally, regulatory provisions that are inconsistent with subsequent statutory amendments are invalidated by operation of law. The Corporation wishes to amend its regulations in order to minimize any potential for confusion and clarify the regulations. This rule withdraws regulations that are inconsistent with the amended provisions of the Act and clarifies the effect of these amended statutory provisions.

We do not anticipate significant adverse comment on this rulemaking. If we receive no significant adverse comment, we will publish a notice of the effective date of the rule in accordance with applicable law.

If we do receive significant adverse comment during the comment period, we will publish a notice of withdrawal of the relevant portions of this rule. Our notice will also indicate how further rulemaking would proceed.

Background

The Farm Credit System Insurance Corporation (FCSIC or Corporation) insures the timely payment of principal and interest on insured debt obligations issued by Farm Credit System banks.

On March 23, 2007, the Corporation’s Board of Directors adopted a legislative proposal requesting that the Congress amend the Act to, *inter alia*, base premiums on the outstanding insured debt obligations instead of loans, and permit the Corporation to collect a broader range of premiums on insured debt.

Provisions incorporating the legislative proposal became a part of versions of proposed Farm Bills in the House and Senate. Ultimately, enactment of the Food, Conservation, and Energy Act (FCE Act)³ in 2008 amended the provisions of the Farm Credit Act of 1971⁴ that govern FCSIC premiums to include⁵ the Corporation's proposed changes.

As amended, the Act's provisions assess premiums that are generally based on each bank's pro rata share of outstanding insured debt obligations (rather than on loans), aligning premiums with the obligations that FCSIC insures. The amendments reduce the total insured debt obligations on which premiums are assessed by 90 percent of Federal government-guaranteed loans and investments and 80 percent of State government-guaranteed loans and investments, and deduct similar percentages of such guaranteed loans and investments when calculating the "secure base amount." If the Farm Credit Insurance Fund is below the secure base amount, the amended Act requires that each insured Farm Credit System bank pay FCSIC the premium due from the bank, which shall be equal to (a) the adjusted average outstanding insured obligations multiplied by 0.0020; and (b) the average principal outstanding on loans in nonaccrual status and average amount outstanding of other than temporarily impaired investments multiplied by 0.0010; subject to FCSIC's power to reduce the premium in its sole discretion.

The statutory amendments also clarified that FCSIC may collect premiums more frequently than annually. The amended Act provides that each insured System bank shall file with the Corporation a certified statement showing the amount of the premium due the Corporation from the bank. The Act mandates that each insured System bank shall pay to the Corporation the premium payments required under the statute not more frequently than once in each calendar quarter, in such manner and at such one or more times as the Board of Directors shall prescribe. The certified statement is to be filed on a date to be determined in the sole discretion of the Corporation. Under existing regulations, the certified statement and payments must be received by January 31.⁶ No change is being made to this date.

In June 2008, the Corporation's Board of Directors took action to implement the amendments of the Act's premium provisions. The Board implemented (effective on July 1, 2008) the new premium rates and calculation method and adjusted the premiums pursuant to the Corporation's authority under section 5.55(a)(3) of the Act, as amended by the FCE Act. Consistent with the Corporation's past practice of generally adjusting premium rates quarterly, the new rates were made effective at the beginning of the next quarter, July 1, 2008.

The Corporation has existing regulations concerning premiums.⁷ The Corporation has concluded that some of those regulations are inconsistent with the provisions of the Act, as amended by the FCE Act. Generally, regulatory provisions that are inconsistent with subsequent statutory amendments are invalidated by operation of law. The Corporation is amending its regulations in order to minimize any potential for confusion and clarify the regulations. The rule withdraws regulations that are inconsistent with the FCE Act and clarifies the effect of the premium provisions of the Act as amended by the FCE Act.

The provisions of the amended rule are consistent with the June 2008 action of the FCSIC Board of Directors implementing the new statutory premium calculations as of July 1, for the second half of 2008. The amended provisions of the Act are not applied retroactively and premiums are calculated under the old method for the first half of 2008.

In order to provide a measured and structured transition to the new premium levels, the Board of Directors, in its June action, also exercised its discretion under section 5.55(a)(3) of the Act to reduce the premiums from the 20 basis points rate imposed by the amended Act to an annualized rate of 15 basis

points on the adjusted average outstanding insured obligations for the 3rd quarter of 2008, and to an annualized rate of 18 basis points on the adjusted average outstanding insured obligations for the 4th quarter of 2008. The amended rule reflects these rates.

The Corporation is generally limiting its current regulatory amendments to those that are necessary in order to eliminate provisions that are obsolete or inconsistent with the FCE Act. Accordingly, new regulatory definitions are not being added. While two new terms, “investment” and “other than temporarily impaired,” were added by the FCE Act, those terms can be interpreted as accounting terms. If experience under the new statutory provisions leads us to believe that these or other terms should be defined, those definitions will be added later.

A section of the existing regulations⁸ provides that copies of the certified statements are available from the Corporation. The Corporation is amending this section to remove outdated references, but is not otherwise amending this provision. The banks and others may obtain copies of the current certified statements for 2008 by contacting the Corporation.

The FCE Act amendments clarified that, in addition to FCSIC’s regulatory authority under title V of the Farm Credit Act, FCSIC has authority to adopt rules and regulations concerning provisions in title I of the Farm Credit Act that govern Farm Credit System banks passing along cost of insurance premiums. We note that section 1.12(b) of the Act, as amended by the FCE Act, no longer specifies how the Farm Credit System banks pass the cost of premiums to associations and other financing institutions, but requires that the banks do so “in an equitable manner, as determined by the Corporation.” This change gives the Farm Credit System banks flexibility in allocating premium costs to associations and other financing institutions. At this time, the Corporation is not amending regulations concerning section 1.12(b) or the manner in which the cost of such premiums are passed to associations and other financing institutions.

¹Recommendation 95-4, referencing the Administrative Procedure Act (APA) “good cause” exemption at 5 U.S.C. 553(b)(B) (adopted June 15, 1995).

²12 U.S.C. 2001 et seq.

³Pub. L. 110-234 (2008), Pub. L. 110-246, 122 Stat. 1651 (2008).

⁴12 U.S.C. 2001 et seq.

⁵The House and Senate passed H.R. 2419 over veto, enacting 14 of 15 Farm Bill titles into law. On May 22, 2008, H.R. 2419 became Public Law 110-234. Because one title of the Farm Bill was omitted from H.R. 2419, in June 2008, Congress passed a new bill, H.R. 6124, enacting 15 Farm Bill titles. On June 18, 2008, H.R. 6124 became Public Law 110-246. Corresponding amendments of the premium provisions of the Farm Credit Act were included in both H.R. 2419 and H.R. 6124.

⁶12 CFR 1410.4.

⁷12 CFR Part 1410.

⁸12 CFR 1410.6.

List of Subjects in 12 CFR Part 1410

Banks, banking, Insurance, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 1410 of chapter XIV, title 12 of the Code of Federal Regulations is amended as follows:

PART 1410--PREMIUMS

1. The authority citation for part 1410 is revised to read as follows:

Authority: Secs. 12 U.S.C. 2020, 2277a-4, 2277a-5, 2277a-7.

2. Amend § 1410.2 as follows:

- a. Revise paragraph (b);
- b. Add the words “or investments” after the words “Government-guaranteed loans” in the heading of paragraph (d); and
- c. Add the words “or investments” after the words “loans or credits” each place they appear in the introductory text of paragraph (d); and
- d. Remove the words “the Federal Intermediate Credit Bank of Jackson and” from paragraph (e).

§ 1410.2 Definitions.

* * * * *

(b) *Average principal outstanding* means the average annual principal outstanding on a daily basis using balances as of the close of each day. In computing the average annual principal outstanding in this manner, the closing balance of the most recent past business day shall be the closing balance for days when an institution is closed.

* * * * *

3. Revise § 1410.3 to read as follows:

§ 1410.3 Calculation and reporting of premiums due.

(a) *Reporting.* For purposes of computing premiums, each insured bank shall, without limitation, report all information concerning the insured bank; each direct lending association that is receiving (or has received) funds provided through the insured bank; and each other financing institution that is receiving (or has received) funds provided through the insured bank; that the Corporation determines is necessary in order to compute the premiums due under the Act.

(b) *Calculating the premium payment for periods from July 1, 2008 through December 31, 2008*

(1) The premium payment for the 3rd Quarter 2008 (defined for purposes of this section as the period from July 1, 2008 through September 30, 2008) and the premium payment for the 4th Quarter 2008 (defined for purposes of this section as the period October 1, 2008 through December 31, 2008) shall be equal to 25 percent of the amount computed by applying the premium calculation formulas contained in sections 5.55 and 5.56 of the Act (unless reduced by the Corporation acting under section 5.55(a)(3) of the Act or under paragraph (d) of this section) to the insured bank during the 3rd Quarter 2008 or 4th Quarter 2008, respectively.

(2) In accord with paragraph (b)(1) of this section, the premium payment for the 3rd Quarter 2008 (having been reduced by the Corporation acting under section 5.55(a)(3) of the Act) shall be equal to 25 percent of the following amount:

(i) The average outstanding insured obligations issued by the bank for the period, after deducting from the obligations the percentages of the guaranteed portions of loans and investments described in section 5.55(a)(2) of the Act, multiplied by 0.0015; and

(ii) The product obtained by multiplying--

(A) The sum of--

(1) The average principal outstanding for the period on loans made by the bank (computed in accord with section 5.55 of the Act) that are in nonaccrual status; and

(2) The average amount outstanding for the period of other-than-temporarily impaired investments made by the bank (computed in accord with section 5.55 of the Act);

(B) By 0.0010.

(3) In accord with paragraph (b)(1) of this section, the premium payment for the 4th Quarter 2008 (having been reduced by the Corporation acting under section 5.55(a)(3) of the Act) shall be equal to 25 percent of the following amount:

(i) The average outstanding insured obligations issued by the bank for the period, after deducting from the obligations the percentages of the guaranteed portions of loans and investments described in section 5.55(a)(2) of the Act, multiplied by 0.0018; and

(ii) The product obtained by multiplying--

(A) The sum of--

(1) The average principal outstanding for the period on loans made by the bank (computed in accord with section 5.55 of the Act) that are in nonaccrual status; and

(2) The average amount outstanding for the period of other-than-temporarily impaired investments made by the bank (computed in accord with section 5.55 of the Act);

(B) By 0.0010.

(c) **Calculating the premium payment for periods in 2009 and subsequent years.**

(1) The premium payment for periods in calendar year 2009 and subsequent years shall be equal to the amount computed by applying the premium calculation formulas contained in sections 5.55 and 5.56 of the Act (unless reduced by the Corporation acting under section 5.55(a)(3) of the Act or under paragraph (d) of this section) to the insured bank during the period.

(2) In accord with paragraph (c)(1) of this section, the premium payment for the period shall (unless reduced by the Corporation acting under section 5.55(a)(3) of the Act or under paragraph (d) of this section) be equal to:

(i) The average outstanding insured obligations issued by the bank for the period, after deducting from the obligations the percentages of the guaranteed portions of loans and investments described in section 5.55(a)(2), multiplied by 0.0020; and

(ii) The product obtained by multiplying--

(A) The sum of--

(1) The average principal outstanding for the period on loans made by the bank (computed in accord with section 5.55 of the Act) that are in nonaccrual status; and

(2) The average amount outstanding for the period of other than temporarily impaired investments made by the bank (computed in accord with section 5.55 of the Act);

(B) By 0.0010.

(d) **Secure base amount.** In addition to the Corporation's authority to reduce premiums under section 5.55(a)(3) of the Act, upon reaching the secure base amount determined by the Corporation in accordance with section 5.55 of the Act, the annual premium to be paid by each insured bank, computed in accordance with paragraphs (b) and (c) of this section, shall be reduced by a percentage determined by the Corporation so that the aggregate of the premiums payable by all of the Farm Credit banks for the following calendar year is sufficient to ensure that the Insurance Fund balance is maintained at not less than the secure base amount. The Corporation shall announce any such percentage no later than December 31 of the year prior to the January in which such premiums are to be paid.

§ 1410.4 [Amended]

4. Amend § 1410.4 as follows:
 - a. Remove paragraph (a);
 - b. Redesignate paragraphs (b) and (c) as paragraphs (a) and (b), respectively;
 - c. Remove the heading from newly designated paragraph (a) and add the word “Payments.” as the new heading; and
 - d. Add the words, “sections 5.55 and 5.56 of the Act, and” after the words “in accordance with” in the first sentence of newly designated paragraph (a).

§ 1410.6 [Amended]

5. Amend § 1410.6(a) as follows:
 - a. Remove the words “The following forms are available from the Corporation:” from paragraph (a) introductory text; and
 - b. Remove paragraphs (a)(1) and (a)(2).

Dated: April 9, 2009

**Roland E. Smith,
Secretary to the Board,
Farm Credit System Insurance Corporation.**