

## I. Obtaining Information and Submitting Comments

### A. Obtaining Information

Please refer to Docket ID NRC–2015–0003 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site*: Go to <http://www.regulations.gov> and search for Docket ID NRC–2015–0003.
- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The guidance for conducting technical analyses for 10 CFR part 61, Draft NUREG–2175, is available in ADAMS under Accession No. ML15056A516.

- *NRC's PDR*: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### B. Submitting Comments

Please include Docket ID NRC–2015–0003 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Discussion

The guidance for conducting technical analyses for part 61 of Title 10

of the *Code of Federal Regulations* (CFR), NUREG–2175, provides guidance on conducting technical analyses (*i.e.*, performance assessment, inadvertent intruder assessment, assessment of the stability of a LLRW disposal site, defense-in-depth analyses, protective assurance period analyses, and performance period analyses) to demonstrate compliance with the performance objectives in the proposed 10 CFR part 61, "Licensing Requirements for Land Disposal of Radioactive Waste." This guidance should facilitate licensees' implementation of the proposed amendments as well as assist regulatory authorities in reviewing the technical analyses. This guidance applies to all waste streams disposed of at a 10 CFR part 61 LLRW disposal facility, including large quantities of depleted uranium and blended waste.

NUREG–2175 provides detailed guidance in new areas, such as the inadvertent intruder analysis, defense-in-depth analyses, and analyses for the three phases of the analysis timeframe (compliance period, protective assurance period, and performance period). This guidance discusses the use of a graded level of effort needed to risk-inform the analyses for the compliance period (1,000 years), the protective assurance period (from 1,000 years to 10,000 years after disposal site closure), and also covers the performance period analyses that should be performed for analysis of long-lived waste beyond 10,000 years. Additional topics covered in this document include: (1) Demonstration that radiation doses are minimized to the extent reasonably achievable; (2) identification and screening of the features, events, and processes to develop scenarios for technical analyses; (3) use of the waste classification tables or the results of the technical analyses to develop site-specific waste acceptance criteria; and (4) use of performance confirmation to evaluate and verify the accuracy of information used to demonstrate compliance prior to site closure.

### III. Proposed Rulemaking

On May 3, 2011, the NRC published preliminary proposed rule language (76 FR 24831), "Part 61: Site Specific Analyses for Demonstrating Compliance with Subpart C Performance Objectives" (ADAMS Accession No. ML111150205). As a result of additional direction from the Commission in staff requirement memoranda (SRM)–COMWDM–11–0002/COMGEA–11–0002, "Revisions to Part 61," dated January 19, 2012 (ADAMS Accession No. ML120190360), the NRC staff published a second

version of the preliminary proposed rule language (77 FR 72997; December 7, 2012), "November 2012 Preliminary Rule Language for Proposed Revisions to Low-Level Waste Disposal Requirements (10 CFR part 61)"

(ADAMS Accession No. ML12311A444). Based on comments received, the NRC published in the Proposed Rules section of this issue of the **Federal Register** a third version of the proposed rule language. Documents related to the proposed rule, including public comments, are available on the Federal rulemaking Web site at <http://www.regulations.gov> under Docket ID NRC–2011–0012.

Dated at Rockville, Maryland, this 5th day of February 2015.

For the Nuclear Regulatory Commission.

**Andrew Persinko,**

*Deputy Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

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## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 650, 651, 653, and 655

RIN 3052–AC89

**Federal Agricultural Mortgage Corporation General Provisions; Federal Agricultural Mortgage Corporation Governance; Federal Agricultural Mortgage Corporation Risk Management; Federal Agricultural Mortgage Corporation Disclosure and Reporting; Farmer Mac Corporate Governance and Standards of Conduct**

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA, we, or our) is proposing new regulations, and clarifying and enhancing existing regulations, related to the Federal Agricultural Mortgage Corporation (Farmer Mac or Corporation) Board governance and standards of conduct, including director election procedures, conflict-of-interest, and risk governance. We also propose enhancements to existing disclosure and reporting requirements to remove repetitive reporting and allow for electronic filing of reports. In keeping with today's financial and economic environment, we believe it prudent and timely to undertake a review of our regulatory guidance on the identified areas. We also propose rules on the examination and enforcement authorities held by the

FCA Office of Secondary Market Oversight (OSMO) over Farmer Mac.

**DATES:** You may send comments on or before June 24, 2015.

**ADDRESSES:** We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at [reg-comm@fca.gov](mailto:reg-comm@fca.gov).
- *FCA Web site:* <http://www.fca.gov>. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Laurie A. Rea, Director, Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or on our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

**FOR FURTHER INFORMATION CONTACT:** Joe Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4364, TTY (703) 883-4056, or Laura McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4056.

#### SUPPLEMENTARY INFORMATION:

#### I. Objective

The purpose of this proposed rule is to:

- Enhance risk governance at Farmer Mac to further its long-term safety and soundness and mission achievement;
- Clarify the roles of the board and voting stockholders in the Farmer Mac director nomination and election process;
- Enhance the usefulness, transparency, and consistency of conflict-of-interest reporting;
- Clarify conflict-of-interest prohibitions;
- Clarify the appropriate balance between a director's representational requirements and duties as director of Farmer Mac; and
- Remove repetitious disclosure and reporting requirements, given the dual reporting responsibilities of Farmer Mac to the FCA and the Securities and Exchange Commission (SEC).

#### II. Background

Farmer Mac is a stockholder-owned, federally chartered instrumentality that is an institution of the Farm Credit System (System) and a Government-sponsored enterprise (GSE). Farmer Mac was established and chartered by the Agricultural Credit Act of 1987 (1987 Act)<sup>1</sup> to create a secondary market for agricultural real estate mortgage loans, rural housing mortgage loans, rural utility cooperative loans, and the guaranteed portions of USDA-guaranteed farm and rural development loans. Title VIII of the Farm Credit Act of 1971, as amended, (Act) governs Farmer Mac.

As a GSE, Farmer Mac has a public policy purpose embedded in its corporate mission. One aspect of this public policy mission includes financial services to customer-stakeholders (institutions that lend to farmers, ranchers, rural homeowners, and rural utility cooperatives) and the resulting flow-through benefits to rural borrowers. Another key aspect is the protection of taxpayer-stakeholders because the risk that Farmer Mac accepts in the course of business exposes both investors (debt and equity holders) and taxpayers to potential loss. The taxpayer's exposure arises in part from Farmer Mac's authority to issue debt to the Department of the Treasury to cover guarantee losses under certain adverse circumstances.<sup>2</sup> Thus, an appropriately comprehensive approach to Board-level risk governance would

acknowledge and consider all stakeholder groups.

Farmer Mac has two classes of voting common stock: Class A and Class B. Class A voting common stock is owned by banks, insurance companies, and other financial institutions. Class B voting common stock is owned by System institutions. In addition, Farmer Mac has nonvoting common stock (Class C), the ownership of which is not restricted and is a means for Farmer Mac to raise capital. Farmer Mac may also issue nonvoting preferred stock.

The Farmer Mac Board of Directors is, by statute, composed of 15 directors from three defined representative groups: Class A stockholders, Class B stockholders, and the general public.<sup>3</sup> Each of the three groups has five directors on the Board. Congress further specified that the Farmer Mac elected directors "shall be elected by holders of common stock" from Class A and Class B.<sup>4</sup> The directors representing the general public are appointed by the President of the United States (appointed directors). The Act limits the terms of elected directors to 1 year, while appointed directors serve for an unlimited duration "at the pleasure of the President" of the United States of America.<sup>5</sup>

Although the Farmer Mac Board is representative in nature, Congress chose a corporate structure to govern the operations of Farmer Mac. Common law corporate principles affirm the fiduciary duty of directors to act in the best interests of Farmer Mac and all of its stockholders. However, this fiduciary duty to stockholders must be understood in the context of the duty of the directors to further the statutory purpose and public mission of Farmer Mac.<sup>6</sup>

#### A. Board Governance and Risk Management

The essence of corporate governance is to facilitate an entity's proper accountability to all stakeholders and mitigate conflicts-of-interest. As part of this, it is essential that corporations practice sound risk management. Risk management includes the identification, assessment measurement, and controlling of risks that may arise from all aspects of business activities, pursuit of opportunities and the operating environment. In financial institutions, risk can be attributed to three broad

<sup>1</sup> Agricultural Credit Act of 1987 (Pub. L. 100-233, January 6, 1988).

<sup>2</sup> According to the 1987 Act, Farmer Mac, in certain circumstances, may borrow up to \$1.5 billion from the U.S. Treasury to ensure timely payment of any guarantee obligations of the corporation. Pub. L. 100-233.

<sup>3</sup> Section 8.2(b) of the Act (12 U.S.C. 2279aa-2(b)).

<sup>4</sup> Section 8.2(b)(2)(A) and (B) of the Act (12 U.S.C. 2279aa-2(b)(2)(A) and (B)).

<sup>5</sup> Section 8.2(b)(6) of the Act (12 U.S.C. 2279aa-2(b)(6)).

<sup>6</sup> Section 701 of the 1987 Act.

categories: Credit risk, market risk, and operational risk. Usually, it is the board of directors who approve the overall risk-appetite of a company and monitor internal controls. A strong board integrates risk management and corporate governance processes to steer the corporation towards policies supporting long-term sustainable growth and mission achievement, in a manner that promotes controlled risk-taking in achievement of long-term strategic objectives rather than, for example, for short-term increases in stock price performance.

The Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley)<sup>7</sup> established stronger reporting requirements and enhanced oversight for publicly held companies by increasing the responsibility and independence of corporate boards. The SEC issued, and continues to issue, regulations implementing the provisions of Sarbanes-Oxley. Self-regulatory organizations (SROs), the New York Stock Exchange (NYSE) in Farmer Mac's case, have also issued requirements designed to enhance the accountability and transparency of corporate business operations. Also, in response to the financial crisis of 2007–2008, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act).<sup>8</sup> Six of the Dodd-Frank Act provisions imposed new corporate governance requirements on public corporations.<sup>9</sup> Most of these relate to executive compensation and shareholder proxy access.

Farmer Mac, as a publicly traded company, is subject to many of the governance requirements of Sarbanes-Oxley, Dodd-Frank, and SEC disclosure regulations for publicly traded companies. However, with the recent events in the financial industry, increased sophistication in financial markets, and on-going scrutiny of GSE financial activities and related reporting practices, we believe it is prudent to update our current regulatory standards related to Farmer Mac's Board governance and reporting and disclosures in the interest of continuing the safety and soundness and public mission achievement of Farmer Mac. Portions of this proposed rule are related to some of the key governance provisions of Sarbanes-Oxley and Dodd-Frank, such as director independence and conflict-of-interest reporting, but we are not addressing executive

compensation disclosures at this time as we believe those are being adequately addressed by SEC regulations implementing Dodd-Frank, to which Farmer Mac is subject under section 8.12 of the Act.

### B. Rulemaking

Farmer Mac is regulated by FCA through the FCA Office of Secondary Market Oversight (OSMO). Congress charged us to issue regulations to ensure mission compliance and the safety and soundness of Farmer Mac. When issuing regulations for Farmer Mac, the Act requires FCA to consider:

- The purpose for which Farmer Mac was created;
- The practices are appropriate to the conduct of secondary markets in agricultural loans; and
- The reduced levels of risks associated with appropriately structured secondary market transactions.<sup>10</sup>

We issued an Advance Notice of Proposed Rulemaking (ANPRM) on February 25, 2014, to solicit opinions and suggestions from investors, stockholders, and other interested parties on ways to enhance our regulation of Farmer Mac's governance activities.<sup>11</sup> The comment period for the ANPRM ended April 28, 2014. We received seven comment letters in response to the ANPRM, including letters from Farmer Mac, the Farm Credit Council (Council), System banks and associations, Zions National Bank (Zions), the National Rural Utilities Cooperative Financing Corporation (CFC), and the Weinberg Center for Corporate Governance at the University of Delaware (Weinberg Center). Commenters were divided on the need for additional regulatory guidance in the areas of corporate governance and standards of conduct. Farmer Mac, Zions, and CFC were generally opposed to modification to this section of the regulations. The Council and System banks and associations supported the overall initiative of improving regulatory provisions on Farmer Mac's Board governance. The Weinberg Center was generally supportive but voiced a cautionary note and strong opposition to an overly prescriptive approach toward the regulation of conflicts-of-interest and the recusal process, stating that good directors result from a sound elections process and thus are more than capable of managing those processes with an appropriate level of

independent judgment and personal integrity.

Those opposing a rulemaking argued that FCA does not possess general rulemaking authority over Farmer Mac, with Farmer Mac specifically remarking that corporate governance is not a component of FCA's safety and soundness oversight. Zions commented that the current practices at Farmer Mac, combined with current regulations, already result in best practices being in place at Farmer Mac. Those favoring a rulemaking commented that it is appropriate and necessary for FCA to establish regulations making clear that Class A and Class B directors are duty bound to represent the interest of their respective Class and clarify that this duty is not a conflict-of-interest. Commenters affiliated with the System asked that any rulemaking safeguard against reducing the rights of Class A and Class B shareholders. The Weinberg Center comment letter emphasized the importance of crisis management plans to guide a corporation's response to adverse events, but discouraged overly prescriptive regulations. The Weinberg Center also noted that any required risk committee should be viewed as a supplemental oversight body and not a reassignment of risk management duties and authorities from other board committees.

We last issued regulations on Farmer Mac Board governance and standards of conduct on March 1, 1994 (59 FR 9622). In that rulemaking, we implemented the requirements of section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act)<sup>12</sup> by requiring Farmer Mac to adopt a conflict-of-interest policy defining the types of relationships, transactions, or activities that might reasonably be expected to give rise to potential conflicts. Congress explained in the 1992 Act that disclosure of financial information and potential conflict-of-interest reporting by institution directors, officers, and employees—including Farmer Mac—helps ensure the financial viability of the System. This concept is also reflected in many of the provisions of Sarbanes-Oxley.

We believe this proposed rulemaking clarifies existing board responsibilities and authorities while providing the Corporation Board with more tools to carry out its fiduciary and oversight responsibilities. This rule would set forth a minimum level of good governance practices that would assure stakeholders of the continuing safe and sound operation of the Corporation. Regulations necessarily place limits on

<sup>7</sup> Pub. L. 107–204, July 30, 2002.

<sup>8</sup> Pub. L. 111–203, 124 Stat. 1376, (H.R. 4173), July 21, 2010.

<sup>9</sup> See Dodd-Frank Act, sections 951–955 of Subtitle E of Title IX, “Investor Protections and Improvements to the Regulation of Securities,” and sections 971–972.

<sup>10</sup> Section 8.11(a)(1) and (2) of the Act (12 U.S.C. 2279aa–11).

<sup>11</sup> 79 FR 10426.

<sup>12</sup> Pub. L. 102–552, 106 Stat. 4131.

the Corporation's flexibility, but in exchange ensure appropriate business practices are consistently followed in all operating environments. Our intent in this rulemaking is to provide performance criteria in some areas while also setting safe and sound operational directions in others to provide for an effective safety and soundness framework. Finally, the proposed rule gives full consideration to our examination of the Corporation and the role examinations play in ensuring its safe and sound operations. Taken together, we believe the following proposed regulatory changes on Farmer Mac corporate governance would improve the effectiveness and transparency of its governance practices, as well as promote its continued safe and sound operations.

In addition to substantive changes, we propose reorganizing our rules addressing Farmer Mac's operations by adding a new part 653 which is currently reserved, revising existing parts 650, 651, and 655, adding subparts to parts 650 and 651, and revising existing subparts in part 655. We also propose adding definition sections to all these parts. We propose no changes to part 652 or reserved part 654.

### III. Section-by-Section Analysis

#### A. FCA Oversight and Rulemaking [Part 650]

Existing part 650 contains general provisions, without subparts, on the supervision of Farmer Mac. We propose adding a new subpart A, entitled "Regulation, examination and enforcement," to address the authorities of OSMO. We also propose moving existing §§ 650.1 through 650.80 into a new subpart B, entitled "Conservators, receivers, and liquidations." We then propose redesignating existing §§ 650.1 and 650.5 on appointing and removing receivers or conservators as new §§ 650.13 and 650.14 to make room for the provisions of new subpart A. We are proposing no other changes to these existing provisions.

We propose adding a new § 650.1 in subpart A for definitions of certain terms used in part 650. We propose adding definitions for the following terms:

- The Act;
- Business day;
- Corporation or Farmer Mac;
- FCA, OSMO, our, and we;
- NYSE and SEC;
- Securities Act; and
- Signed.

We also propose a new § 650.2 to provide clarity on the situation of Farmer Mac having FCA as its primary

regulator, while also being subject to certain SEC regulatory requirements. The proposed § 650.2 would identify FCA the "primary regulator" of Farmer Mac, possessing examination, enforcement, conservatorship, liquidation, and receivership authority over Farmer Mac. Section 8.11 of the Act specifies that FCA holds oversight, regulation, examination, and enforcement authority over Farmer Mac to ensure it operates in a safe and sound manner. Further, FCA has the authority to regulate how Farmer Mac performs its powers, functions, and duties in furtherance of its public policy purposes. The new § 650.2 would also recognize that Farmer Mac, as a publicly traded company, follows the SEC disclosure regulations for publicly traded companies. We selected the term "primary regulator" to explain FCA's role as the safety and soundness regulator of Farmer Mac based on the recent adoption of the term in the financial industry after passage of the Dodd-Frank Act, where it is used to distinguish the different roles of federal regulators in the financial industry.<sup>13</sup>

We next propose a new § 650.3 to incorporate into our regulations the supervision and enforcement authorities given us under the Act to provide reasonable assurance that, among other things, Farmer Mac is adequately capitalized and operating safely. Financial safety and soundness supervision involves monitoring, inspecting, and examining Farmer Mac to assess its condition and compliance with law and regulation. We believe identifying in our regulations the minimum authorities of OSMO to require corrective or remedial actions by Farmer Mac, as well as to take such enforcement action as deemed to be appropriate, will add clarity and facilitate the general supervision of Farmer Mac.<sup>14</sup>

We are proposing new § 650.4 to address our authority to access Farmer Mac records and personnel in the exercise of our examination and oversight authority. The FCA, acting through OSMO, examines and provides general supervision over the activities of Farmer Mac pursuant to section 8.11 of the Act. Section 5.17(a)(11) of the Act provides that FCA may "Exercise such

<sup>13</sup> Discussions surrounding passage of the Dodd-Frank Act recognized the long-standing situation where, although only one regulator is the primary regulator, financial institutions are required to comply with various federal financial laws and regulations issued and enforced by several banking regulators.

<sup>14</sup> These minimum supervisory authorities are designed to ensure that action is taken to avoid the emergence of problems that might entail serious risks to Farmer Mac.

incidental powers as may be necessary or appropriate to fulfill its duties and carry out the purposes of this Act." Access to Farmer Mac's documents and personnel is incidental to the supervision and examination of Farmer Mac. We believe new § 650.4 will clarify our expectations of the Corporation in providing us this access.

Finally, we are proposing new §§ 650.5 and 650.6, containing cross-citations to existing regulatory provisions regarding access to FCA Reports of Examination and Farmer Mac's obligation to make criminal referrals in certain circumstances. We believe these cross-cites will clarify the applicability of these provisions to Farmer Mac, and thereby facilitate compliance with them.

#### B. Farmer Mac Corporate Governance [Part 651]

Existing part 651 contains the corporate governance provisions for Farmer Mac, without subparts. We propose adding the following subparts:

- Subpart A, entitled "General," to address general corporate governance matters;
- Subpart B, entitled "Standards of Conduct," to contain the existing provisions of part 651; and
- Subpart C, entitled "Board Governance," to address Board-level activities, including director elections, fiduciary duties, and Board committees.

We then propose placing existing § 651.1 into new subpart A and placing existing §§ 651.2 through 651.4 into new subpart B, while also revising them.

#### 1. General Corporate Governance [New Subpart A]

##### a. Definitions [Existing § 651.1]

We propose placing the existing definitions of § 651.1 in new subpart A, modifying certain existing terms and adding new terms to the section. We propose modifying the existing meaning of "material" and "resolved" to cover all conflicts, not just potential ones, and modifying the existing meaning of a "potential conflict-of-interest" to remove the list of imputed interests. We also propose adding to this part the definitions proposed for part 650 (listed in section III.A. of this preamble), except the terms in proposed § 650.1(e), (h), and (i).

We propose the following additional terms for part 651:

- Appointed director;
- Class A stockholders;
- Class B stockholders;
- Director elections;
- Elected director; and
- Reasonable person.

The above terms and their meanings, except “reasonable person”, are based on sections 8.2 and 8.4 of the Act and in the manner in which FCA has consistently applied them over the years. The proposed definition for the term “reasonable person” is based on use of the term in conflict-of-interest proceedings and substantially resembles the legal meaning of term.

#### b. Indemnifications [New § 651.2]

We propose new § 651.2 on indemnifications of directors, officers, and employees to address indemnifications that Farmer Mac may offer. The provision would recognize that the decision of whether to offer indemnification is a business decision of Farmer Mac and not required by law or regulation. However, new § 651.2 would require Farmer Mac, in the interest of safety and soundness, to establish policies and procedures for offering indemnification insurance before any such indemnification occurs. As proposed, the required procedures would have to address: When and how indemnification is offered, safeguards to avoid over-indemnification, and reviews of any indemnification made. The policies and procedures may also address when indemnification payments will be made and how those payments will be calculated. For example, the policy might provide that Farmer Mac will give consideration to any other source of indemnification when calculating indemnification or prohibit indemnification when a director, officer, or employee is already covered by an indemnification policy separate from that offered by Farmer Mac. We proposed these provisions to set adequate controls over indemnification practices in order to prevent unintended consequences such as over-indemnification. Finally, the proposed § 651.2 would require notice to OSMO before an indemnification payment is made. The notice would provide the opportunity for OSMO to evaluate, prior to payment, the impact of an indemnification payment to the safety and soundness of Farmer Mac.

#### 2. Standards of Conduct [New Subpart B]

##### a. Code of Conduct [New § 651.21]

We propose adding a new § 651.21 in new subpart B to require a written code of conduct that establishes ethical benchmarks for the professional behavior of Farmer Mac directors, officers, employees, and agents. The proposed code of conduct would resemble existing § 651.4(a)(1) and the “Code of Business Conduct and Ethics”

currently maintained by Farmer Mac pursuant to section 406 of Sarbanes-Oxley, with the key difference being that the Code would set benchmarks for professional integrity, competence, and respect. The proposed provision would require a review of the Code every 3 years.

##### b. Conflict-of-Interest Policy [Existing §§ 651.2 and 651.3(b); New § 651.22]

We propose moving existing § 651.2, which requires Farmer Mac to have a conflict-of-interest policy, to new subpart B and redesignating it as new § 651.22. In addition, we propose changes and additions to the existing provision. Some of the proposed changes are organizational and grammatical changes, as well as intended to incorporate the proposed new terms from revised § 651.1. Organizational changes mainly consist of consolidating like provisions with each other, such as moving existing § 651.3(b), requiring release of the conflict-of-interest policy, to new § 651.22(d).

We propose the following substantive changes and additions for new § 651.22:

- Requiring that the conflict-of-interest policy consider the required representational affiliations of elected directors.<sup>15</sup>
- Moving to new paragraph (b)(1) the list of imputed interests that are currently part of the existing definition of a “potential conflict-of-interest” (proposed to be removed from the definition).
- Revising the list of imputed interest in new paragraph (b)(1) by removing highly specific relationships such as “spouse” and “child” and replacing them with language to address all persons residing in the household or who are otherwise legal dependents. This change is premised on the ever-evolving understanding of what is considered a family as well as intended to address non-residential dependents whose activities and interests may create a conflict-of-interest for a director, officer, or employee.
- Adding as new paragraph (b)(1)(iv) an exception to the imputed interest list for relationships maintained solely

<sup>15</sup> Under the Act, two-thirds of the Farmer Mac’s directors are elected by entities who own the only two classes of voting stock. These entities also have a business relationship with Farmer Mac. In addition, elected directors must possess a representational relationship to the class of stockholders electing them and this relationship must be “close” at the time of election. Because the elected directors are from entities that have financial relationships of varying degrees with Farmer Mac, it presents difficulties in adopting the common corporate governance practices and policies (*i.e.*, “best practices”).

because of the representational nature of elected directorships. Since this relationship is required by the Act, it should not be treated as a conflict-of-interest.<sup>16</sup> Instead, we are proposing other provisions in new §§ 651.21, 651.24 and 651.40 to address how directors are to handle this affiliation while also maintaining their duty of loyalty to the Corporation.

- Adding as new paragraph (b)(4) a requirement that conflict-of-interest procedures address recusals when conflicts are identified. We believe this requirement is necessary to ensure a standard approach to recusals is used by the Corporation and to ensure directors, officers, and employees have notice of the expectation to recuse themselves when a conflict-of-interest exists.

- Adding as new paragraph (b)(5) a requirement that conflict-of-interest procedures define documentation and reporting requirements to ensure compliance with conflict-of-interest decisions.

- Removing the requirement for negative conflict-of-interest reports from directors, officers, and employees. This negative reporting is unnecessary as other proposed changes would require an annual filing from all directors, officers and employees, in which it may be reported that no conflicts exist.

As a GSE, the Corporation has strategic objectives that are both commercially and public policy oriented. Conflicts-of-interest must be understood and interpreted not only in the context of the fiduciary responsibilities to the Corporation and its shareholders, but also in the context of the statutory duty to further the Congressional purposes the Corporation was chartered to achieve. We believe conflict-of-interest to be among the most potentially complex and nuanced areas of corporate governance. We intend the minimum specifications set forth in the proposed rule to facilitate the uniform disclosure, identification, and treatment of directors, officers, employees and agent holding employment, contractual business relationships, or other relationships and interests that may interfere with that person’s ability to serve the interests of the Corporation before serving personal interests.

##### c. Conflict-of-Interest Disclosure and Reporting [Existing §§ 651.2(b) and (f) and 651.3; New § 651.23]

We propose moving existing § 651.2, regarding conflict-of-interest reports, to new subpart B and redesignating it as new § 651.23. In addition, we propose

<sup>16</sup> Section 8.2(b)(2)(A) and (B) and (b)(5)(A) and (B) of the Act (12 U.S.C. 2279aa–2(b)).

changes to the existing provision. Some of the proposed changes are organizational and grammatical changes, as well as intended to incorporate the proposed new terms from revised § 651.1. Organizational changes mainly consist of consolidating reporting and disclosure provisions currently located in both existing §§ 651.2 and 651.3. Included in the organization proposal is to move existing § 651.2(b), requiring annual conflict-of-interest reports, to new § 651.23(a) and moving existing § 651.2(f), requiring internal controls for conflict-of-interest disclosures, to new § 651.23(e).

We propose the following substantive changes and additions for new § 651.23:

- Specifying that the sufficiency of a conflict-of-interest report is based on a “reasonable person” standard.

- Requiring in new paragraph (a) that conflict-of-interest reports be signed. While the signature element may have been implied in the past, we believe it is best to specify it as a requirement.

- Specifying in new paragraph (a)(1) that the transactions, relationships, and activities identified as creating real or potential conflicts are based on (1) the opinion of the person filing the report, (2) conflicts specifically identified in Farmer Mac’s policies, and (3) conflicts identified in FCA regulation. We are proposing this specificity to ensure a common understanding of the basis used by persons completing conflict-of-interest reports. By specifying the sources used when determining if a transaction, relationship, or activity creates a conflict, it should be easier to identify omissions and remove doubts as to what needs to be reported. However, if doubt remains, we encourage every person completing a conflict-of-interest report to err on the side of inclusion, rather than omission.

- Requiring in new paragraph (b) that Farmer Mac review conflict-of-interest reports within 10 business days of receipt, and if a conflict is identified as material, to document its findings. We believe time is of the essence in identifying material conflicts in order to take necessary actions to minimize the impact of the conflict on the operations of Farmer Mac. We believe it is important that conflicts identified as “material” be clearly documented, as well as the rationale used to make the determination. It is essential that the basis for any “materiality” determination be supported by appropriate documentation to avoid misunderstandings and to minimize the potential for abuse of the process.

- Requiring in new paragraph (b)(2) that Farmer Mac notify a filer within 3

business days when a reported conflict has been identified as material and provide filers with an opportunity to respond to the materiality determination. We believe that material conflict determinations should be explained to those impacted by such determinations. We also believe it is necessary for the Corporation and the person with the conflict to hold discussions about the conflict. These discussions could add clarity to the process, help avoid mistaken “materiality” determination, and provide the opportunity for the person with the conflict to resolve it quickly.

- Requiring in new paragraph (c) that Farmer Mac document material conflicts-of-interest and the efforts made to address the conflicts. The requirement for documentation of conflicts is a good business practice, which we recognize Farmer Mac has already been employing. However, we believe a regulatory requirement is necessary to ensure the practice continues.

- Clarifying that the existing disclosure to shareholders and investors of unresolved material conflicts applies to those conflicts that remain unresolved as of the date of the annual report or proxy statement. The requirement does not include conflicts resolved during the reporting period beyond updating those previously reported as “unresolved.”

- Requiring in new paragraph (d)(3) that Farmer Mac notify OSMO of unresolved material conflicts-of-interest. As the safety and soundness regulatory, we need to remain informed of any conflicts that could potentially affect the on-going operations of Farmer Mac. For example, if a conflict remains unresolved for months and that person has been recused from performing their full duties, we would want to know what Farmer Mac has done to address the impact of that recusal. This is especially true if a director or senior officer holds the unresolved conflict.

- Limiting the existing requirement that reports of conflicts must be maintained for 6 years to only material conflicts. We believe this change will balance the recordkeeping burden with the value obtained from the longevity of the records. Material conflicts are the ones that will result in recusal actions and most likely to last or reappear. As such, they are more valuable to retain for historical reference. However, this provision would not prevent Farmer Mac from retaining all records for the 6-year period, if it so desires.

- Requiring in new paragraph (g) that Farmer Mac establish procedures for obtaining conflict-of-interest disclosures

from agents of the Corporation. Agents of any corporation have a standing that differs from directors, officers, and employees. As such, we believe Farmer Mac should have procedures in place to provide reasonable assurance that their agents hold no material conflicts that could adversely affect the work those agents perform on behalf of Farmer Mac. As Farmer Mac’s operations grow and its products and lines of business diversify, identification and prevention of potential conflicts become more challenging and make our enhanced regulatory focus on this topic timely and appropriate.

d. Director, Officer, Employee, and Agent Responsibilities [Existing § 651.4; New § 651.24]

We propose moving existing § 651.4 to new subpart B and redesignating the section as new § 651.24. This section addresses director, officer, employee, and agent responsibilities. We also propose replacing the contents of existing § 651.4(a)(1) requiring directors, officers, employees, and agents to maintain a high standard of behavior with the earlier discussed code of conduct at new § 651.21. We next propose removing existing § 651.4(a)(2) and (b), which requires directors, officers, employees, and agents to comply with the Corporation’s conflict-of-interest policy and provide the Corporation with any information the Corporation deems necessary or face penalties. We propose removing these provisions as they are unnecessary in light of other proposed changes contained in this rulemaking. For example, we have already proposed addressing our enforcement authorities in new § 650.3 and conflicts-of-interest in new § 651.22.

Instead, we propose this section address the actions of directors, officers, employees, and agents in regards to the Corporation, its property, and its reputation. We propose under new § 651.24 listing prohibitions on the conduct of directors, officers, employees, and agents. The proposed prohibitions are on making misleading or untrue statements of material facts regarding Farmer Mac, improper use of the official property and information of Farmer Mac, and disclosing confidential information related to Farmer Mac when not in the performance of official duties. We believe these prohibitions are necessary because, as a GSE and a publicly traded corporation, misinformation deliberately provided to outside parties could have a materially adverse impact on the safety and soundness of the Corporation.

3. Board Governance [New Subpart C]  
a. Director Elections [New § 651.30]

It is common corporate practice to use a board committee, often the corporate governance committee, to name director-nominees and Farmer Mac follows this practice.<sup>17</sup> In consideration of this, we are proposing regulations to ensure the director election process at Farmer Mac complies with the provisions of the Act and Congressional intent. In new § 651.30, we propose a requirement that Farmer Mac have election policies and procedures in place and that Farmer Mac implement those policies and procedures in a fair and impartial manner. New § 651.30 would set forth the minimum requirements for the director election policies and procedures, including allowing all equity holders to submit director-candidates for nomination consideration. The proposed provision would facilitate the establishment of nomination procedures that provide reasonable assurance of an inclusive and fair process as potential directors are considered for nomination. The provision should not be read as requiring the nomination of every candidate submitted by an equity holder.<sup>18</sup> Any such candidate would go through the Corporation's nomination process the same as all other director-candidates. For example, if a director-candidate submitted by an equity holder is not eligible for election as a director of the Corporation, there would be no requirement for Farmer Mac to include the candidate as a nominee.

New § 651.30 would also allow the board committee responsible for nominations to engage the services of third parties to evaluate the professional qualifications of candidates prior to nomination. We believe allowing the board committee used for nominations to engage third parties to vet candidates can aid in achieving timely and objective evaluation of director-candidates.

Next, new § 651.30(b)(3) would require the nomination of a director-candidate to include affirmative votes

<sup>17</sup> Under this corporate practice, Farmer Mac uses its Governance Committee as its nominating committee, which identifies candidates for elected director positions. This six member committee is composed of two Class A elected directors, two Class B elected directors, and two appointed directors.

<sup>18</sup> The Dodd-Frank Act, at § 971 of subtitle G, amended the Securities and Exchange Act of 1934 to allow shareholders of publicly traded companies to submit director-nominees for election to corporate boards. The provision was viewed as a step in strengthening corporate governance by providing an alternative to shareholder proxy fights while also avoiding director entrenchment through self-nomination.

for nomination from a majority of those involved in the Corporation's nomination process who also represent the same class of stockholders as the candidate. Since the voting stockholders are only presented with one director-candidate per board vacancy—and Farmer Mac no longer allows floor nominations<sup>19</sup>—the nomination of director-candidates takes on higher importance, particularly given the statutory requirement that 10 of the 15 members of the Farmer Mac Board be elected by Class A and B stockholders.

We are not proposing to require the use of nominating committees or floor nominations in this rulemaking. However, we believe requiring director-candidates to have majority support from those involved in the nomination process who share the candidate's affiliation with either Class A or Class B stockholders facilitates fulfillment of the statutory provision that both Class A and Class B stockholders determine who will represent them on the Corporation's Board. In situations where a "majority" would mathematically result in a fraction, we would expect the next whole number to be used (e.g., three representatives would mean a majority of two, four representatives would mean a majority of three). If there are only two representatives from a Class involved in the nomination process, then we would consider a majority to be one person.

The proposed rule at new § 651.30(c) would require Farmer Mac to document the representational affiliation of all elected directors at the time of nomination and election to the board and maintain this documentation until 3 years after the director's service on the board ends. Such recordkeeping would help ensure only those eligible to serve as directors representing Class A or Class B are nominated. We also believe a 3-year record of director affiliations could be of assistance when reviewing director-candidates up for re-election. We believe the statutory term "representative" means that elected directors must have an official affiliation with a Class A or Class B entity at the time of nomination and election in order to serve as director. We view this affiliation as one that is a substantial and visible connection to the class of stockholders.

b. Director Removal [New § 651.35]

The proposed new § 651.35 would require Farmer Mac to identify its director removal procedures in the Corporation's bylaws, which are

<sup>19</sup> Farmer Mac is not required by law or existing regulation to have a nominating committee nor is it required to allow floor nominations.

available to shareholders. We believe shareholders are entitled to know how Farmer Mac determines when to require a director to resign (director removal) and how that removal action is achieved. It is important that shareholders understand Farmer Mac's actions in this area since nothing in the proposed provision would affect the ability of voting shareholders to exercise their rights in the election and governance of Farmer Mac's Board of Directors. To further emphasize this, the rule would prohibit Farmer Mac from initiating a director's removal in a manner that would adversely affect the rights of voting shareholders. The rule would also recognize that appointed directors serve at the pleasure of the President of the United States.

We are also proposing language to explain what is considered a "director removal" action initiated by the Corporation. Publicly traded companies use contractual agreements with their directors to ensure certain behavior (e.g., confidentiality of company data, standards of conduct). Often, these contracts include a provision requiring a director to "voluntarily" resign if the company determines (and a court later affirms) that the director failed to act in accordance with the agreement. Corporate directors are required to sign these agreements in order to take office and objecting to the "voluntarily" resignation provision(s) may result in being denied a seat on the board. These types of contractual provisions are commonly referred to as mandatory resignations and are intended to avoid the cost and time required to pursue a forced removal action.

We propose that all director resignations required or otherwise initiated by Farmer Mac be called "director removals." We believe when a director must resign (or is deemed to have resigned) in response to a Farmer Mac bylaw, policy, or other governing document, that the resignation was initiated by the Corporation since Farmer Mac drafted the document at issue. Further, we believe that when Farmer Mac requires directors, director-nominees, and/or director-candidates to accede to a resignation provision in order to serve on the board of directors that, even if characterized as "voluntary," it is more appropriately called a removal provision.

The proposed rule would further require Farmer Mac to notify OSMO at least 14 days before seeking the removal of one of its directors. This advance notice is considered necessary to protect the safety and soundness of Farmer Mac. We view this level of advance reporting to be appropriate given the



potential for sudden changes in the board's membership to result in instability within the management and oversight of the Corporation or to raise concerns about the Corporation in the capital markets, or both.

c. Director Fiduciary Duties and Independence [New § 651.40]

We are proposing a new § 651.40 that requires Farmer Mac to have policies in place to provide reasonable assurance that its Board of directors maintains responsibility for and provides appropriate oversight of the risk management activities of Farmer Mac, the reports and disclosures issued by Farmer Mac, and shareholder communications. Also, new § 651.40 would clarify the duty of directors to conduct the business of the Corporation in a manner that promotes the best interest of the Corporation and furthers its statutory mission. As a GSE, Farmer Mac should strive to ensure that its Board activities fulfill its public missions. Unlike corporations incorporated under State statutes of incorporation, statutorily chartered GSEs are not free to alter their purposes or powers, even when such alteration may be in the best interest of the investing stockholders. For GSEs, such changes can only be made by law. Thus, it is the responsibility of Farmer Mac directors to lead the Corporation in the manner that best effectuates the public policy it was designed to serve.

Paragraphs (b) and (c) of the proposed provision would set forth key duties of the Farmer Mac Board, among which are the duty to act in good faith and for the best interest of Farmer Mac, as well as acting fairly and impartially without discriminating in favor of or against any investor, stockholder, or group of stockholders. The proposed provisions are intended to ensure that all directors, regardless of how they acquired their seats on the board of directors, understand that they are bound by their fiduciary duty to Farmer Mac and, as a result, act for the betterment of Farmer Mac overall and not any particular group of shareholders or investors. We believe these provisions are necessary to clarify that the required elected director affiliations should not be interpreted to mean an elected director serves solely to further the viewpoints of the electing class without regard to the impact on Farmer Mac and all its shareholders. Such an interpretation would be inconsistent with the established corporate common law principles of a director's fiduciary duties, as well as with Congressional intent. The fiduciary duties of directors are essential to good governance and necessary to the safe

and sound operation of the Corporation. Thus, directors failing to fulfill this fiduciary duty could have a negative impact on the safety and soundness of Farmer Mac.

The proposed provisions are another step in ensuring directors maintain their duty of loyalty to the Corporation, notwithstanding any required affiliation with a group of stockholders. However, they are not to be read as requiring elected directors to disregard the perspectives of those electing them to office. Instead, we believe elected directors should share these perspectives with the entire Board so that every director is informed of stockholder concerns and views, thus facilitating Board decisions and ensuring those decisions are being made in the best interests of the Corporation and all of its shareholders.

In balance with the other requirements of new § 651.40, and to help ensure the rule is not misapplied, proposed paragraph (d) would protect the ability of directors to be accountable to the shareholders that elected them. We recognize that fiduciary duties to shareholders must be understood in the context of the duty of the elected directors to possess a representational relationship with certain groups of shareholders. As such, the provision, as proposed, would specifically allow directors to comment on non-private and non-privileged corporate business, provided doing so will not violate any laws or regulations, particularly securities laws. The intent is to allow directors to converse with stockholders as a means of gathering information, gaining insights into stockholder wishes, and demonstrating accountability. The provision clarifies that this authority does not prevent Farmer Mac from protecting proprietary information. It is an established corporate governance principle that once elected to the board a director owes his or her fiduciary duties, including a duty of confidentiality, to the company and shareholders as a whole. As such, the proposed rule would clarify that Farmer Mac may take measures to ensure each director abides by policies defining and specifying the treatment of the Corporation's confidential information, including restricting directors from disclosing the Corporation's confidential information to the shareholders electing them to serve on the Corporation's board. We believe the proposed § 651.40 strikes the appropriate balance between a director's representational duties required by the Act and his or her corporate fiduciary duties.

d. Committees of the Board [New § 651.50]

We propose a new § 651.50 on board committees in subpart C. The new § 651.50 would address the relationship between the entire board and its committees, require certain committees, place membership requirements on the committees, and establish minimum operational requirements for board committees (e.g., charters, meeting minutes). The proposed committees would resemble those currently maintained by Farmer Mac, but with the key differences in committee composition.

In paragraph (a) of new § 651.50, we propose limiting the authority of the board to delegate its collective authority to develop and amend Farmer Mac bylaws to a committee of the board. This provision would not prevent board committees from making recommendations on the bylaws to the entire board. We also propose regulatory language holding the entire board accountable for committee actions. In directing the Corporation, the board of directors may rely on reports from board committees, but doing so does not relieve the board of final responsibility.

In paragraph (b) of new § 651.50, we propose that Farmer Mac have, at the minimum, committees to address risk management, audit, compensation, and corporate governance matters. We propose that there be separate committees dedicated to audit and risk management and that these committees not be tasked with other matters. Our reasoning in support of this proposal is that the oversight responsibilities of each of these two committees represent an aggregation of a very broad array of issues and detailed operational policies and procedures that cover essentially the entire breadth of the Corporation's operations—in addition to the associated ongoing monitoring of all of these. We believe a portfolio of responsibility any larger for either committee would be excessive and risk a severe dilution in a committee's effectiveness.

In paragraph (c) of new § 651.50, we propose that each board committee be established through a written charter. We further propose that committee charters specify the powers, responsibilities, and structure of each committee. We further propose that each committee have both elected and appointed directors and that among the elected directors there be ones with affiliations to both Class A and Class B stockholders. Similarly, we propose that no director may serve as a committee chair of more than one committee. Our



intent is to ensure that the Farmer Mac Board reasonably distributes responsibilities among individual members of the board. We believe that too great a concentration of responsibilities would detract from the board's overall effectiveness.

In paragraph (d) of new § 651.50, we propose requiring each board committee to have meeting minutes and to keep the minutes for 3 years. We propose that the minutes include the agenda for the meeting, attendance, a summary of pertinent discussions held during the meeting, and any resulting committee recommendations. In proposing this requirement, we are not seeking transcripts of meetings, but a record of matters addressed by the committee and who participated in the meeting in sufficient detail to allow the reader a reasonable understanding of the substance of the discussion. We propose no set meeting schedule for committees, but do propose a requirement that each committee meet with sufficient frequency to fulfill its duties. We believe these provisions would facilitate both the historical context of policies and procedures for future management teams and directors as well as facilitate the regulatory oversight of board activity.

In proposing new § 651.50, we intend no conflict with SEC regulations on the structure of board committees and welcome comments identifying any potential conflict that might exist between the proposed provision and SEC requirements. Where our proposal contains provisions on board committees that would be requirements, but which are optional under existing SEC rules, it was intentional as we believe the requirements facilitate the safe and sound operations of Farmer Mac.

### *C. Risk Management [Part 653, No Subparts]*

We propose opening existing reserved part 653 to add risk management provisions for Farmer Mac, renaming the part, "Federal Agricultural Mortgage Corporation Risk Management." We propose no subparts to part 653, but propose adding the following provisions:

- A new § 653.1 to contain the definitions of certain terms used in part 653;
- A new § 653.2 to address general board-level risk management matters;
- A new § 653.3 to contain required risk management programs and activities; and
- A new § 653.4 to contain requirements for internal controls.

We discuss the proposed §§ 653.1 through 653.4 below.

#### 1. Definitions [New § 653.1]

We propose as new § 653.1 definitions for the terms "Corporation", "FCA", and "OSMO." We are proposing the same meaning as are proposed elsewhere in this rulemaking. We propose these definitions to ensure a common understanding of the terms as used in part 653.

#### 2. General [New § 653.2]

We propose in new § 653.2 to require the Farmer Mac Board approve the overall risk-appetite and tolerance of the Corporation. We believe that while management may design and implement the Corporation's internal controls, the Board remains ultimately responsible for how those controls affect the risk management of the Corporation. The Board's oversight of internal controls is a critical component of its responsibility for monitoring corporate activities and providing reasonable assurance that the controls will prevent excessive risk-taking or unsafe and unsound activities.

#### 3. Risk Management [New § 653.3]

A comprehensive and integrated risk management program significantly enhances the coordination of risk decision-making as well as capital allocation among individual business units and allows the units to act within the context of the broader risk-taking activities and risk tolerance limits of the Corporation. Although the Corporation has recently expanded its risk management program to include a risk committee, we propose in new § 653.3(a) to require Farmer Mac to have a risk management program addressing the Corporation's exposure to credit, market, liquidity, operations, and reputation risks. As proposed, the rule would require the risk management program to include:

- Periodic assessments of the Corporation's risk profile, with related adjustments to the Corporation's operations;
- Coordination with board-approved risk tolerance levels;
- Delineation of management's authority and independence in implementing the program; and
- Integration with Corporation goals, business objectives, and compensation.

As referenced in the discussion of proposed § 651.50 (preamble section III.C.3.d.), we are proposing in new § 653.3(b) to require Farmer Mac to have a risk management committee. As proposed, the membership of the risk committee would include a risk management expert. Also, we are

proposing that the risk committee be responsible for reviewing the design of the risk management program and receiving management reports on risk management issues, as well as monitoring the Corporation's risk management policies and procedures. We believe it is essential that the tone of Corporation's risk culture and its procedures for risk decision-making be set by the Board even when they are based on management's recommendations. Further, the Board plays a critical role in the ongoing oversight of, and cohesive implementation of, operational strategies and plans that conform to its established risk appetite and tolerance.

We also propose in new § 653.3(c) to require Farmer Mac to have a "Risk Officer" to implement the risk management program. We are proposing that the risk officer report directly to the chief executive officer and risk committee. We also propose that the risk officer be separated from other management functions to ensure s/he devotes full attention to Farmer Mac's risk management activities. Under new § 653.3(c), the risk officer would have to have experience in risk management commensurate with Farmer Mac's operations. The risk officer also would be responsible for monitoring compliance with risk management policies; developing systems to identify and report risks; and making recommendations to adjust risk management behaviors. We believe a staff position that serves as coordinator of the consistent and collaborative implementation of corporate risk policies and objectives across business units is necessary. A risk officer could help coordinate, organize, prioritize and monitor risks on behalf of the CEO and Board risk committee.

As financial institutions become larger and more complex, which Farmer Mac has since it was chartered by Congress in 1987, the need arises for a continuous, coordinated, and comprehensive oversight of the broad spectrum of current and prospective risks the entity faces. A key role of a risk officer is to prevent the emergence of isolated risk "silos" among the entity's business units and ensure a consistent and integrated monitoring of key sources of risks, such as strategic risks (including reputation and political risk), compliance risks, and reporting risks. We believe requiring a risk officer position at Farmer Mac plays a key role in ensuring that the Board and CEO are adequately informed regarding the Corporation's aggregate risk position—thus providing reasonable assurance of the achievement of corporate and

mission objectives. In addition, having a risk officer position is considered a best practice for financial institutions over \$10 billion and is consistent with Basel's Pillar 2 on Risk Management and Risk Supervision.

#### 4. Internal Controls [New § 653.4]

A sound system of comprehensive and integrated internal controls is vital to the operations of any organization and especially those whose business is taking financial risk. In the 26 years since Farmer Mac was chartered, business and operational environments have become significantly more complex and technology-driven. Systems of internal controls should dynamically respond to such changes in complexity—not just in business unit operations but also in compliance with increasingly complex laws, regulations, and industry standards. Thus, while FCA regulations on various aspects of Farmer Mac's operations (*e.g.*, investments, liquidity, capital planning) include specific minimum control requirements related to those operations, we believe a Corporation-wide integrated system of internal controls is also appropriate. Accordingly, we propose in new § 653.4 to require Farmer Mac to adopt internal controls for the proper treatment of and accountability for the programs, operations, and resources of Farmer Mac.

The proposed provision would require an internal controls system that addresses: The effectiveness of corporate activities; security of corporate assets; accuracy and completeness of financial reports; separation of duties to avoid conflicts in responsibilities; transparent reports to the Farmer Mac board; and compliance with applicable laws, regulations, and corporate policies. The new § 653.4 would also require Farmer Mac to have a system to correct weaknesses identified by the internal controls program. Finally, we are proposing an annual reporting requirement, where Farmer Mac would report to OSMO on the effectiveness of the internal controls program.

#### D. Disclosure and Reporting [Part 655]

Existing part 655 contains financial disclosure and reporting provisions for Farmer Mac in two subparts: Subpart A on annual reports and subpart B on securities reports. We propose organizational changes to this part as follows:

- Adding a new subpart A, entitled "General" to address the matters common to disclosures and reports;

- Renaming and redesignating the existing subpart A as new subpart B, to be called "Reports of Condition of the Federal Agricultural Mortgage Corporation;"

- Redesignating existing subpart B as new subpart C;
- Adding a new § 655.1 to identify the definitions of certain terms used in part 655;
- Adding a new § 655.2 to prohibit misleading, inaccurate, or incomplete disclosures;
- Moving existing § 655.1 on annual reports, currently under existing subpart A, to new subpart B and redesignating it as § 655.10;
- Adding a new § 655.15 on the distribution of interim notices and proxies to new subpart B;
- Moving, renaming, and redesignating existing § 655.50 on securities not registered under the Securities Act, currently under existing subpart B, as new § 655.20 in new subpart C; and
- Adding a new § 655.21 on communications with the U.S. Treasury, SEC, and NYSE.

We also propose enhancements to existing disclosure and reporting requirements of part 655 to remove repetitious reporting and incorporate technology by allowing for electronic filing of reports with OSMO. These proposed enhancements are designed to reduce Farmer Mac's reporting responsibilities, while also improving the quality and timeliness of information provided to FCA. We are also proposing changes to remove repetitious disclosure and reporting requirements resulting from the dual reporting responsibilities of Farmer Mac to the FCA and the SEC.

#### 1. Definitions [New Subpart A: New § 655.1]

We propose adding a new § 655.1 for definitions of certain terms used in part 655. We are proposing the same definitions to this part as are proposed for part 650 (listed in section III.A. of this preamble). We are also proposing to add the same definition for "person" as is proposed for part 651. In addition, we propose definitions for the term "material" and "report." While there is a definition for "material" in part 651, the one proposed for this part is different in that it focuses on the meaning of the term when considering financial reports, not conflicts-of-interest. We propose these definitions to ensure a common understanding of the terms as used in part 655. In addition, we propose changes to the existing provisions of part 655 to incorporate the proposed new terms.

#### 2. Prohibitions [New Subpart A: New § 655.2]

We propose adding a new § 655.2 to prohibit misleading, inaccurate, or incomplete disclosures. This prohibition is substantially similar to the one that currently exists in our regulations for the reports of System banks and associations. The provision would establish that no director, officer, employee or agent of Farmer Mac may mislead the FCA, Farmer Mac stockholders, or the general public by making misleading, inaccurate, or incomplete disclosures within the reports required under part 655. The provision would also clarify the authority of FCA to require a corrected report if we determine it contained any misleading, inaccurate, or incomplete disclosures.

#### 3. Reports of Condition [New Subpart B: Existing § 655.1; New §§ 655.10 and 655.15]

The Act requires Farmer Mac to register its equities with the SEC and be subject to SEC disclosure regulations issued under section 14 of the Securities and Exchange Act of 1934.<sup>20</sup> Also, Farmer Mac's Class A and Class C stocks are publicly traded on the NYSE. Thus, Farmer Mac must comply with both FCA and SEC disclosure and reporting requirements. We are proposing changes to our reporting requirements for Farmer Mac to enable the reports filed by Farmer Mac with the SEC to also satisfy our requirements in that area, absent instructions from us to the contrary. We believe the proposed changes will facilitate the coordination of Farmer Mac's financial reporting responsibilities to both OSMO and the SEC as well as reduce or eliminate repetitious reporting.

We propose revising existing § 655.1 (proposed to be redesignated as § 655.10) to cover all reports of conditions, not just annual reports. We are also proposing to require reports be signed and certified. The proposed certification components would be attesting that the signatory reviewed the report, the report was prepared in accordance with applicable laws and regulations, and the reported information is true, accurate, and complete to the best of the signatory's knowledge. Further, we are proposing that quarterly and annual reports be filed by Farmer Mac with OSMO and that those reports either be equivalent to those required by the SEC or according to our instructions. We are proposing the provision that reports be filed

<sup>20</sup> Section 8.12 of the Act (12 U.S.C. 2279aa–12).

according to our instructions to address the contingency of the SEC changing its reporting requirements in such a manner as to reduce the usefulness of the reports in safety and soundness matters.

For the reasons already discussed, we are proposing changes to the existing report distribution requirements to reduce timeframes, require Web site posting of reports, and ensure reports distributed to shareholders and investors are the same as those filed with both the FCA and SEC. We are proposing to reduce the existing 120-day timeframe to distribute reports to a 90-day timeframe for distribution of reports to shareholder and a 5-day filing timeframe with OSMO. We believe the reduced timeframes are more reasonable given available technology and other advances in reporting systems. We further propose that if the report is the same as that filed with the SEC, it be filed with OSMO simultaneous with the SEC filing. We next propose changing the existing requirement to send us three paper copies of each report by reducing it to only one paper copy. We also propose allowing the use of electronic filing of reports with OSMO.

We propose requiring Farmer Mac to post reports on its Web site within 3 business days of filing the report with OSMO. We propose that a report remain available on the Web site until the next report is posted. We further propose that if the report is the same as that filed with the SEC, an electronic link to the SEC reports database (EDGAR) would satisfy our regulatory requirement in this area. In making this proposal, we relied on technological advances, the existing availability of the information, and Farmer Mac's existing practice of posting reports on its Web site.

Further, we are proposing a new § 655.15 to require that Farmer Mac send OSMO one paper and one electronic copy of every notice, interim report, and proxy statement it files with the SEC. We believe it is essential that communications between Farmer Mac and OSMO, its primary regulator, include the communications Farmer Mac has with the SEC. The proposed provision would require Farmer Mac to make these disclosures within 1 business day of filing the notice, interim report, or proxy statement with the SEC. We believe this requirement is necessary to ensure we have timely notice of events outside our scheduled examination of these documents.

Similar to the proposal to post reports on its Web site, we are proposing in § 655.15(b) that Farmer Mac post on its Web site notices, interim reports, and proxy statements within 5 business days

of filing them with the SEC. As proposed, this requirement could be satisfied with a link to EDGAR. We also propose that these documents remain on the Web site for 6 months, or until the next annual report, whichever is later.

#### 4. Reports Related to Securities Activities [New Subpart C: Existing § 655.50; New §§ 655.20 and 655.21]

We propose revising existing § 655.50 by first breaking it into two sections: § 655.20 on unregistered securities (currently § 655.50(a)) and § 655.21 on all other filings and communications with the U.S. Treasury, SEC, and NYSE (currently § 655.50(b) and (c)). In new § 655.20, we propose changing the manner of making special filings with OSMO by replacing the existing requirement to send us three paper copies to require one paper and one electronic copy. In new § 655.21, we propose expanding the existing requirement to send us copies of "substantive" correspondence between Farmer Mac and the SEC or U.S. Treasury to include the NYSE. The proposal would also remove the limitation on the type of communication. Currently, the requirement covers correspondence relating to securities activities or regulatory compliance. We believe the Corporation should provide us all substantive communications it has with the U.S. Treasury, the SEC, and the NYSE as that communication may have a bearing on the safety and soundness of Farmer Mac. We also propose setting a 3-day timeframe for providing the information to us. Finally, new § 655.21(c) would require Farmer Mac to notify us of exemptions from SEC filing requirements within 1 business day. The current rule requires this information to be sent to us "promptly." In light of the proposed changes to reporting requirements, we believe it is necessary to have definitive and fast notice of any changes Farmer Mac seeks in SEC filing requirements.

#### IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies the proposed rule will not have a significant economic impact on a substantial number of small entities. Farmer Mac has assets and annual income over the amounts that would qualify it as a small entity. Therefore, Farmer Mac is not considered a "small entity" as defined in the Regulatory Flexibility Act.

#### List of Subjects

##### 12 CFR Part 650

Agriculture, Banks, banking, Credit, Reporting and recordkeeping requirements, Rural areas.

##### 12 CFR Part 651

Agriculture, Banks, banking, Conduct standards, Conflict of interests, Elections, Ethical conduct, Rural areas.

##### 12 CFR Part 653

Agriculture, Banks, banking, Capital, Conduct standards, Credit, Finance, Rural areas.

##### 12 CFR Part 655

Accounting, Agriculture, Banks, banking, Accounting and reporting requirements, Disclosure and reporting requirements, Financial disclosure, Rural areas.

For the reasons stated in the preamble, parts 650, 651, 653, and 655 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

#### PART 650—FEDERAL AGRICULTURAL MORTGAGE CORPORATION GENERAL PROVISIONS

- 1. The authority citation for part 650 is revised to read as follows:

**Authority:** Secs. 4.12, 5.9, 5.17, 5.25, 8.11, 8.12, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2261, 2279aa-11, 2279aa-12, 2279bb, 2279bb-1, 2279bb-2, 2279bb-3, 2279bb-4, 2279bb-5, 2279bb-6, 2279cc); sec. 514 of Pub. L. 102-552, 106 Stat. 4102; sec. 118 of Pub. L. 104-105, 110 Stat. 168.

- 2. Add subpart B, under the heading "Conservators, Receivers, and Liquidations" consisting of existing §§ 650.1 through 650.80 as redesignated in the following table:

Old section	New section
650.1, no subpart .....	650.13, subpart B.
650.5, no subpart .....	650.14, subpart B.
650.10, no subpart ....	650.10, subpart B.
650.15, no subpart ....	650.15, subpart B.
650.20, no subpart ....	650.20, subpart B.
650.25, no subpart ....	650.25, subpart B.
650.30, no subpart ....	650.30, subpart B.
650.35, no subpart ....	650.35, subpart B.
650.40, no subpart ....	650.40, subpart B.
650.45, no subpart ....	650.45, subpart B.
650.50, no subpart ....	650.50, subpart B.
650.55, no subpart ....	650.55, subpart B.
650.60, no subpart ....	650.60, subpart B.
650.65, no subpart ....	650.65, subpart B.
650.70, no subpart ....	650.70, subpart B.
650.75, no subpart ....	650.75, subpart B.
650.80, no subpart ....	650.80, subpart B.

- 3. Add subpart A to read as follows:

**Subpart A—Regulation, Examination and Enforcement**

Sec.

- 650.1 Definitions.
- 650.2 Regulatory authority.
- 650.3 Supervision and enforcement.
- 650.4 Access to Corporation records and personnel.
- 650.5 Reports of examination.
- 650.6 Criminal referrals.

**Subpart A—Regulation, Examination and Enforcement****§ 650.1 Definitions.**

The following definitions apply for the purpose of this part:

*Act or Authorizing statute* means the Farm Credit Act of 1971, as amended.

*Business day* means a day the Corporation is open for business, excluding the legal public holidays identified in 5 U.S.C. 6103(a).

*Corporation or Farmer Mac* means the Federal Agricultural Mortgage Corporation and its affiliates.

*FCA* means the Farm Credit Administration, an independent federal agency of the executive branch.

*NYSE* means the New York Stock Exchange, a listing exchange.

*OSMO* means the FCA Office of Secondary Market Oversight, which is responsible for the general supervision of the safe and sound exercise of the Corporation's powers, functions, and duties and compliance with laws and regulations.

*Our or we* means the FCA or OSMO, as appropriate to the context of the provision employing the term.

*SEC* means the Securities and Exchange Commission.

*Securities Act* means the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) or the Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), or both, as appropriate to the context of the provision employing the term.

*Signed*, when referring to paper form, means a manual signature, and, when referring to electronic form, means marked in a manner that authenticates each signer's identity.

**§ 650.2 Regulatory authority.**

(a) *General.* The Corporation is a for-profit Government-sponsored enterprise developed to provide a secondary market for agricultural and rural utility loans with public policy objectives included in its statutory charter. The Corporation is regulated by the FCA, operating through OSMO. The Corporation also lists securities on the NYSE, making it subject to certain SEC listing and disclosure requirements.

(b) *Primary regulator.* The FCA, operating through OSMO, holds primary regulatory, examination, and

enforcement authority over the Corporation. The FCA, operating through OSMO, is responsible for the general supervision of the safe and sound exercise of the Corporation's powers, functions, and duties and compliance with laws and regulations.

(c) *Other regulatory authorities.* The Corporation is required by its authorizing statute to comply with certain SEC reporting requirements and must register offerings of Farmer Mac Guaranteed Securities under the Securities Act of 1933 and related regulations. The Corporation is also subject to most of the industry self-regulatory requirements of the NYSE.

**§ 650.3 Supervision and enforcement.**

The Act provides FCA, acting through OSMO, with enforcement authority to protect the financial safety and soundness of the Corporation and to ensure that the Corporation's powers, functions, and duties are exercised in a safe and sound manner.

(a) *General supervision.* When we determine the Corporation has violated a law, rule, or regulation or is engaging in an unsafe or unsound condition or practice, we have enforcement authority that includes, but is not limited to, the following:

- (1) Issue an order to cease and desist;
- (2) Issue a temporary order to cease and desist;
- (3) Assess civil monetary penalties against the Corporation and its directors, officers, employees, and agents; and
- (4) Issue an order to suspend, remove, or prohibit directors and officers.

(b) *Financial safety and soundness of the Corporation.*

When we determine the Corporation is taking excessive risks that adversely impact capital, we have authority to address that risk. This includes, but is not limited to, requiring capital restoration plans, restricting dividend distributions, requiring changes in the Corporation's obligations and assets, requiring the acquisition of new capital and restricting those Corporation activities determined to create excessive risk to the Corporation.

**§ 650.4 Access to Corporation records and personnel.**

(a) The Corporation must make its records available promptly upon request by OSMO, at a location and in a form and manner acceptable to OSMO.

(b) The Corporation must make directors, officers, employees and agents available to OSMO during the course of an examination or supervisory action when OSMO determines it necessary to facilitate an examination or supervisory action.

**§ 650.5 Reports of examination.**

The Corporation is subject to the provisions in 12 CFR part 602 regarding FCA Reports of Examination.

**§ 650.6 Criminal referrals.**

The rules at 12 CFR part 612, subpart B, regarding "Referral of Known or Suspected Criminal Violations" are applicable to the Corporation.

■ 4. Revise part 651 to read as follows:

**PART 651—FEDERAL AGRICULTURAL MORTGAGE CORPORATION GOVERNANCE****Subpart A—General**

Sec.

- 651.1 Definitions.
- 651.2 Indemnification.

**Subpart B—Standards of Conduct**

- 651.21 Code of conduct.
- 651.22 Conflict-of-interest policy.
- 651.23 Conflict-of-interest disclosure and reporting.
- 651.24 Director, officer, employee, and agent responsibilities.

**Subpart C—Board Governance**

- 651.30 Director elections.
- 651.35 Director removal.
- 651.40 Director fiduciary duties and independence.
- 651.50 Committees of the Corporation's board of directors.

**Authority:** Secs. 4.12, 5.9, 5.17, 8.3, 8.11, 8.14, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2279aa–3, 2279aa–11, 2279aa–14, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

**Subpart A—General****§ 651.1 Definitions.**

The following definitions apply to this part:

*Act or Authorizing statute* means the Farm Credit Act of 1971, as amended.

*Agent* means any person (other than a director, officer, or employee of the Corporation) who represents the Corporation in contacts with third parties or who provides professional services such as legal, accounting, or appraisal services to the Corporation.

*Affiliate* means any entity established under authority granted to the Corporation under section 8.3(c)(14) of the Act.

*Appointed director* means a member of the Corporation board of directors who was appointed to the Corporation board by the President of the United States of America.

*Business day* means a day the Corporation is open for business, excluding the legal public holidays identified in 5 U.S.C. 6103(a).

*Class A stockholders* means holders of common stock in the Corporation that are insurance companies, banks, or other financial institutions or entities.

*Class B stockholders* means holders of common stock in the Corporation that are Farm Credit System institutions.

*Corporation* means the Federal Agricultural Mortgage Corporation and its affiliates.

*Director elections* mean the process of searching for director candidates, conducting director nominations, and voting for directors.

*Elected director* means a member of the Corporation board of directors who was elected by either Class A or Class B stockholders.

*Employee* means any salaried individual working part-time, full-time, or temporarily for the Corporation.

*Entity* means a corporation, company, association, firm, joint venture, partnership (general or limited), society, joint stock company, trust (business or otherwise), fund, or other organization or institution.

*FCA* means the Farm Credit Administration, an independent federal agency of the executive branch.

*Material* means conflicting interests of sufficient magnitude or significance that a reasonable person with knowledge of the relevant facts would question the ability of the person having such interest to discharge official duties in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation.

*Officer* means the salaried president, vice presidents, secretary, treasurer, and general counsel, or other person, however designated, who holds a position of similar authority in the Corporation.

*OSMO* means the FCA Office of Secondary Market Oversight, which is responsible for the general supervision of the safe and sound exercise of the Corporation's powers, functions, and duties and compliance with laws and regulations.

*Our or we* means the FCA or OSMO, as appropriate to the context of the provision employing the term.

*Person* means individual or entity.

*Potential conflict-of-interest* means a director, officer, or employee of the Corporation has an interest in a transaction, relationship, or activity that might adversely affect, or appear to adversely affect, the ability of the person having such interest to perform his or her official duties on behalf of the Corporation in an objective and impartial manner in furtherance of the interest of the Corporation and its statutory purposes.

*Reasonable person* means a person under similar circumstances exercising the average level of care, skill, and judgment in his or her conduct based on societal requirements for the protection of the general interest.

*Resolved* means an actual or potential material conflict-of-interest that has been altered so that a reasonable person with knowledge of the relevant facts would conclude that the conflicting interest would not adversely affect the person's performance of official duties in an objective and impartial manner and in furtherance of the interests and statutory purposes of the Corporation.

*Signed*, when referring to paper form, means a manual signature, and, when referring to electronic form, means marked in a manner that authenticates each signer's identity.

#### **§ 651.2 Indemnification.**

(a) *General.* The Corporation is not required to offer indemnification insurance. The Corporation must have policies and procedures in place before it may offer indemnification insurance to its directors, officers, or employees.

(1) Indemnification policies and procedures must address how the board of directors approves or denies requests for indemnification from current and former directors, officers, and employees. The policies and procedures must include standards relating to indemnification, investigations by the board of directors, and reviews by independent counsel.

(2) Indemnification policies and procedures must consider all sources of potential indemnification to protect the Corporation against over-indemnification of an individual director or officer.

(b) *Oversight.* The Corporation must notify OSMO 10 business days before issuing any indemnification payment.

#### **Subpart B—Standards of Conduct**

##### **§ 651.21 Code of conduct.**

(a) *General.* The Corporation must develop and administer a written code of conduct establishing the ethical benchmarks for professional integrity, competence, and respect. The code must be reasonably designed to assure the ability of board members, officers, employees, and agents of the Corporation to discharge their duties and responsibilities, on behalf of the Corporation, in an ethical and business-like manner. The code of conduct must be consistent with applicable laws and regulations.

(b) *Review.* Not less often than once every 3 years, the Corporation must review the adequacy of its code of

conduct for consistency with practices appropriate to the entity and compliance with laws and regulations and must make any appropriate revisions to such code.

##### **§ 651.22 Conflict-of-interest policy.**

(a) The Corporation must establish and administer a conflict-of-interest policy that will provide reasonable assurance that the directors, officers, employees, and agents of the Corporation discharge their official responsibilities in an objective, impartial, and business-like manner that furthers the lawful interests and statutory purpose of the Corporation. The conflict-of-interest policy must acknowledge and respect the representational affiliations required by the Act for elected directors.

(b) The conflict-of-interest policy must:

- (1) Define the types of transactions, relationships, or activities that could reasonably be expected to give rise to potential conflicts of interest. For the purpose of determining whether a potential conflict-of-interest exists, the following interests shall be imputed to a person subject to this regulation as if they were that person's own interests:
  - (i) Interests of any individual residing in that person's household;
  - (ii) Interests of any individual identified as a legal dependent of that person;
  - (iii) Interests of that person's general partner;
  - (iv) Interests of an organization or entity that the person serves as officer, director, trustee, general partner or employee, unless the organization or entity is directly connected to the representational affiliations required by the Act for elected directors; and
  - (v) Interests of a person, organization, or entity with which that person is negotiating for or has an arrangement concerning prospective employment.
- (2) Include guidelines for determining when a potential conflict is material (as that term is defined in this part);
- (3) Contain procedures for resolving or disclosing material conflicts of interest.
- (4) Address recusal from official actions on any matter in which a director, officer, employee, or agent is prohibited from participating based on a conflict-of-interest identified under this part; and
- (5) Define documentation and reporting requirements, consistent with this part, for demonstrating compliance with conflict-of-interest decisions.

(c) The Corporation must notify directors, officers, employees, and agents of the conflict-of-interest policy

and any subsequent changes thereto and allow them a reasonable period of time to conform to the policy.

(d) When requested, the Corporation must provide to any shareholder, investor, or potential investor, with a copy of its conflict-of-interest policy. The Corporation may charge a nominal fee to cover the costs of reproduction and handling.

**§ 651.23 Conflict-of-interest disclosure and reporting.**

(a) Annually, each director, officer, and employee must provide to the Corporation a written and signed conflict-of-interest report. The report must disclose information about financial interests, transactions, relationships, and activities sufficient enough for a reasonable person to make a conflict-of-interest determination.

(1) The annual conflict-of-interest report must identify any transaction, relationship, or activity that, in the director, officer or employee's opinion, creates a real or potential material conflict-of-interest or that is:

(i) Specifically named in the Corporation's policies on conflict-of-interest; or

(ii) Addressed in regulation.

(2) If potential or real conflicts arise between annual reporting periods, each director, officer, and employee must update his or her annual disclosure at the time(s) such conflict arises.

(b) The Corporation must review the annual conflict-of-interest reports, and any subsequent reports, within 10 business days of receipt.

(1) The Corporation must determine for each director, officer, and employee whether any real or potential material conflict-of-interest exists and document its findings.

(2) If a real or potential conflict-of-interest is identified as material by the Corporation, the Corporation must, within 3 business days of identification, notify the director, officer, or employee of the material conflict-of-interest determination and must provide the director, officer, or employee a reasonable opportunity to respond.

(c) The Corporation must document all resolved and unresolved material conflicts-of-interest. Until resolved, the Corporation must maintain on-going documentation that explains how unresolved conflicts are being handled.

(d) The Corporation must disclose any unresolved material conflict-of-interest involving its directors, officers, and employees existing at the time to:

(1) Shareholders through annual reports and proxy statements;

(2) Investors and potential investors through disclosure documents supplied to them; and

(3) The FCA, through procedures established by OSMO.

(e) The Corporation must establish and maintain internal controls to ensure that conflict-of-interest reports are filed and reviewed as required and that conflicts are resolved or disclosed in accordance with this subpart.

(f) The Corporation must maintain all reports of real or potential material conflicts-of-interest, including documentation of materiality determinations and resolutions, for a period of 6 years.

(g) The Corporation must establish procedures for obtaining conflict-of-interest disclosures from agents of the Corporation. These disclosures must provide enough information for the Corporation to identify if the agent has material conflicts-of-interest with the Corporation. The procedures on agent conflicts-of-interest must satisfy the documentation and record retention requirements in paragraphs (c) and (f) of this section.

**§ 651.24 Director, officer, employee, and agent responsibilities.**

(a) No director, officer, employee, or agent of the Corporation may make any untrue or misleading statement of a material fact intended or having the effect of reducing public confidence in the Corporation.

(b) No director, officer, employee, or agent of the Corporation may make improper use of official Corporation property or information. Improper use includes, but is not limited to, the purchase or retirement of any stock in advance of the public release of material non-public information concerning the Corporation.

(c) Except in the performance of official duties, no director of the Corporation shall divulge or use any fact, information, or document that is acquired by virtue of serving on the board of the Corporation and not generally available to the public.

**Subpart C—Board Governance**

**§ 651.30 Director elections.**

(a) The Corporation must have in effect at all times director election procedures and must administer those procedures in a fair and impartial manner.

(b) The director election procedures must:

(1) Provide that any holder of an equity interest in the Corporation may submit candidates for consideration as director-nominees to the Corporation's board of directors.

(2) Allow the board committee used for director nominations to engage the

services of third parties to evaluate the professional qualifications of potential nominees.

(3) Require that during the director nomination process, a director-candidate must receive affirmative votes for nomination from a majority of those representing the same class of stockholders as the candidate.

(c) The Corporation must ensure director elections acknowledge and respect the voting rights of Class A and Class B stockholders, as well as the elected director representational affiliations required by the Act. Elected director candidates must have a recognized affiliation or relationship with their respective class of voting stockholders at the time of nomination and election to the Corporation board of directors. The Corporation must maintain documentation supporting the affiliation or relationship of each elected director until 3 years after the director's service on the board ends.

**§ 651.35 Director removal.**

(a) The procedures that the Corporation relies upon to initiate director removals must be contained in the Corporation's bylaws. Director removals initiated by the Corporation include, but are not limited to, resignations requested by the Corporation, mandatory resignations based on contractual agreements with the Corporation, and resignations required in response to predetermined events or actions identified in the Corporation's governing documents.

(b) Director removals initiated by the Corporation may not adversely affect the rights of voting shareholders. Appointed directors may only be removed as authorized by the President of the United States.

(c) The Corporation must notify OSMO at least 14 days before any director removal is initiated by the Corporation.

**§ 651.40 Director fiduciary duties and independence.**

(a) *General.* The responsibilities of the Corporation's board of directors include having in place adequate policies and procedures to assure its oversight of:

(1) The risk management and compensation programs of the Corporation,

(2) The processes for providing accurate financial reporting and other disclosures, and

(3) Communications with stockholders.

(b) *Responsibility.* The board of directors of the Corporation is responsible for directing the conduct and affairs of the Corporation in

furtherance of the safe and sound operation of the Corporation and in compliance with all applicable laws and regulations. The board must remain reasonably informed of the condition, activities, and operations of the Corporation in order to fulfill its duties.

(c) *Duties.* Each director of the Corporation must:

(1) Carry out his or her duties as director in good faith, in a manner such director believes to be in the best interests of the Corporation, and with such care, including reasonable inquiry, as a reasonable person in a similar position would use under similar circumstances;

(2) Administer the affairs of the Corporation fairly and impartially and without discrimination in favor of or against any investor, stockholder, or class of stockholders; and

(3) Direct the operations of the Corporation in conformity with safety and soundness standards and the requirements set forth in the authorizing statute and in compliance with all applicable laws and regulations.

(d) *Independence.* No director of the Corporation may be prohibited by confidentiality agreements or Corporation policies and procedures from publicly or privately commenting orally or in writing on non-private or non-privileged corporate business and related matters. This provision does not exempt directors from relevant laws and regulations, including securities laws, regarding such statements. This provision does not prohibit the Corporation from protecting proprietary, privileged, and non-public information.

#### **§ 651.50 Committees of the Corporation's board of directors.**

(a) *General.* No committee of the board of directors may be delegated the authority of the board of directors to amend Corporation bylaws. No committee of the board of directors shall relieve the board of directors or any board member of a responsibility imposed by law or regulation.

(b) *Required committees.* The board of directors of the Corporation must have committees, however styled, that address risk management, audit, compensation, and corporate governance. Neither the risk management committee nor the audit committee may be combined with any other committees. This provision does not prevent the board of directors from establishing any other committees that it deems necessary or useful to carrying out its responsibilities.

(c) *Charter.* Each committee must adopt, and the full board of directors of the Corporation must approve, a formal

written charter that specifies the scope of a committee's powers and responsibilities, as well as the committee's structure, processes, and membership requirements.

(1) Each board committee must have at least one elected director from each class of voting stock and one appointed director as members of the committee.

(2) No director may serve as chairman of more than one board committee.

(d) *Frequency of meetings and records.* Each committee of the board of directors must meet with sufficient frequency to carry out its obligations and duties under applicable laws, regulations, and its operating charter. Each committee of the board of directors must maintain minutes of its meetings. The minutes must record attendance, the agenda, a summary of the relevant discussions held by the committee during the meeting, and any resulting recommendations to the board. Such minutes must be retained for a minimum of 3 years and must be available to the entire board of directors and to OSMO.

■ 5. Add part 653 to read as follows:

### **PART 653—FEDERAL AGRICULTURAL MORTGAGE CORPORATION RISK MANAGEMENT**

Sec.

653.1 Definitions.

653.2 General.

653.3 Risk management.

653.4 Internal controls.

**Authority:** Secs. 8.3, 8.4, 8.6, 8.8, and 8.10 of the Farm Credit Act (12 U.S.C. 2279aa-3, 2279aa-4, 2279aa-6, 2279aa-8, and 2279aa-10).

#### **§ 653.1 Definitions.**

The following definitions apply for the purpose of this part:

*Corporation* means the Federal Agricultural Mortgage Corporation and its affiliates.

*FCA* means the Farm Credit Administration, an independent federal agency of the executive branch.

*OSMO* means the FCA Office of Secondary Market Oversight, which is responsible for the general supervision of the safe and sound exercise of the Corporation's powers, functions, and duties and compliance with law and regulations.

#### **§ 653.2 General.**

The Corporation's board of directors must approve the overall risk-appetite and risk tolerance of the Corporation and monitor internal controls to ensure risk-taking activities are conducted in a safe and sound manner.

#### **§ 653.3 Risk management.**

(a) *Risk management program.* The Corporation's board of directors must have in effect at all times an enterprise-wide risk management program that, at a minimum, addresses the Corporation's exposure to credit, market, liquidity, business and operational risks and ensures that the Corporation's activities are exercised in a safe and sound manner. The risk management program must:

(1) Periodically assess and document the Corporation's risk profile.

(2) Align the Corporation's risk profile with the board-approved risk appetite and risk tolerance and the Corporation's operational planning strategies and objectives.

(3) Address the Corporation's exposure to credit, market, liquidity, business and operational risks.

(4) Specify management's authority and independence to carry out risk management responsibilities.

(5) Integrate risk management and control objectives into management goals and compensation structures.

(6) Comply with all applicable FCA regulations and policies.

(b) *Risk committee.* The Corporation's board of directors must establish and maintain a board-level risk committee that is responsible for the oversight of the enterprise-wide risk management practices of the Corporation.

(1) The risk committee must have at least one member with risk management expertise commensurate with the Corporation's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors.

(2) The responsibilities of the risk committee include, but are not limited to:

(i) Overseeing and documenting the enterprise-wide risk management policies and practices of the Corporation;

(ii) Reviewing and recommending an appropriate risk management program commensurate with the Corporation's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors; and

(iii) Receiving and reviewing regular reports from the Corporation's Risk Officer.

(c) *Risk officer (RO).* The Corporation must have a RO to implement and maintain the enterprise-wide risk management practices of the Corporation. The RO must be independent from other management functions or units and must report directly to the chief executive officer and the risk committee. The RO must have risk management experience commensurate with the Corporation's



capital structure, risk profile, complexity, activities, and size. The responsibilities of the RO include, but are not limited to:

- (1) Identifying and monitoring compliance with risk limits, exposures, and controls;
- (2) Implementing risk management policies, procedures, and risk controls;
- (3) Developing appropriate processes and systems for identifying and reporting risks, including emerging risks;
- (4) Reporting risk management issues, emerging risks, and compliance concerns to the chief executive officer and the risk committee; and
- (5) Making recommendations to the chief executive officer and board risk committee on adjustments to risk management policies, procedures, and risk controls of the Corporation.

#### § 653.4 Internal controls.

(a) The Corporation's board of directors must adopt an internal controls policy that provides adequate directions for, and identifies expectations in, establishing effective control over, and accountability for, operations, programs, and resources to ensure that the Corporation's powers, functions, and duties are exercised in a safe and sound manner and in compliance with all applicable laws and regulations.

(b) The internal control system must address:

- (1) The efficiency and effectiveness of the Corporation activities;
- (2) Safeguarding the assets of the Corporation;
- (3) Evaluating the reliability, completeness, and timely reporting of financial and management information;
- (4) Compliance with applicable laws, regulations, regulatory directives, and the policies of the Corporation's board of directors and senior management;
- (5) The appropriate segregation of duties among the Corporation personnel so that personnel are not assigned conflicting responsibilities; and
- (6) The transparency of information provided to the Corporation's board of directors.

(c) The Corporation is responsible for establishing and implementing an effective system to track internal control weaknesses and take action to correct detected weaknesses. As part of that program, the Corporation must establish and maintain a compliance program that is reasonably designed to assure that the Corporation complies with applicable laws, regulations, and internal controls.

(d) The Corporation must annually report to OSMO on the effectiveness of the internal control system.

- 6. Revise part 655 to read as follows:

### PART 655—FEDERAL AGRICULTURAL MORTGAGE CORPORATION DISCLOSURE AND REPORTING REQUIREMENTS

#### Subpart A—General

Sec.

- 655.1 Definitions.  
655.2 Prohibition against misleading, inaccurate, and incomplete reports and disclosures.

#### Subpart B—Report of Condition of the Federal Agricultural Mortgage Corporation

- 655.10 Reports of condition.  
655.15 Interim reports, notices, and proxy statements.

#### Subpart C—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation

- 655.20 Securities not registered under the Securities Act.  
655.21 Filings and communications with U.S. Treasury, the SEC and the NYSE.

**Authority:** Secs. 5.9, 8.3, 8.11, and 8.12 of the Farm Credit Act (12 U.S.C. 2243, 2279aa-3, 2279aa-11, 2279aa-12).

#### Subpart A—General

##### § 655.1 Definitions.

The following definitions apply for the purpose of this part:

*Act* or *authorizing statute* means the Farm Credit Act of 1971, as amended.

*Business day* means a day the Corporation is open for business, excluding the legal public holidays identified in 5 U.S.C. 6103(a).

*Corporation* means the Federal Agricultural Mortgage Corporation and its affiliates.

*FCA* means the Farm Credit Administration, an independent federal agency of the executive branch.

*Material*, when used to qualify a requirement to furnish information as to any subject, means the information required to those matters to which there is a substantial likelihood that a reasonable person would attach importance in making investor decisions or determining the financial condition of the Corporation.

*NYSE* means the New York Stock Exchange, a listing exchange.

*OSMO* means the FCA Office of Secondary Market Oversight, which regulates and examines the Federal Agricultural Mortgage Corporation for safety and soundness and compliance with law and regulations.

*Our* or *us* means the FCA or OSMO, as appropriate to the context of the provision employing the term.

*Person* means individual or entity.

*Report* refers to the annual report, quarterly report, or notices, regardless of

form, required by this part unless otherwise specified.

*SEC* means the Securities and Exchange Commission.

*Securities Act* means the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) or the Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), or both, as appropriate to the context of the provision employing the term.

*Signed*, when referring to paper form, means a manual signature, and, when referring to electronic form, means marked in a manner that authenticates each signer's identity.

#### § 655.2 Prohibition against misleading, inaccurate, and incomplete reports and disclosures.

The Corporation and any agent, employee, officer, or director of the Corporation may not make any report or disclosure to FCA, stockholders or the general public concerning any matter required to be disclosed by this part that is incomplete, inaccurate, or misleading. When any such person makes a report or disclosure that, in the judgment of FCA, is incomplete, inaccurate, or misleading, whether or not such report or disclosure is made in reports or disclosure statements required by this part, the FCA may require the Corporation to make such additional or corrective disclosure as is necessary to provide a full and fair disclosure.

#### Subpart B—Reports of Condition of the Federal Agricultural Mortgage Corporation

##### § 655.10 Reports of condition.

(a) *General*. The Corporation must prepare and publish quarterly and annual reports of its condition, including financial statements and related schedules, exhibits, and other documents that are part of the reports. The contents of each quarterly or annual report must be either equivalent in content to the quarterly and annual reports to shareholders required by the Securities Act or according to our instructions.

(b) *Signatures and certification*. Each report issued under this part must be signed. The Corporation must designate the representatives who will sign each report. The name and position title of each person signing the report must be printed beneath his or her signature. Those components of the report containing financial information must be separately certified as financially accurate. The entire report must be certified by the signatories and the certification must, at a minimum, state that:

- (1) The signatories have reviewed the report,

(2) The report has been prepared in accordance with all applicable statutory or regulatory requirements, and

(3) The information is true, accurate, and complete to the best of signatories' knowledge and belief.

(c) *Distribution.* The Corporation must distribute the signed report of condition to all its shareholders within 90 days of its fiscal year-end. The Corporation must provide us one paper and one electronic copy of every signed report within 5 days of signing. If the report is the same as that filed with the SEC, the Corporation may instead provide the signed reports to us only in electronic form and simultaneous with filing the report with the SEC.

(1) The Corporation must publish a copy of each report of condition on its Web site within 3 business days of filing the report with us. The report must remain on the Web site until the next report is posted. When the reports are the same as those filed with the SEC, electronic links to the SEC filings Web site, EDGAR, may be used in satisfaction of this requirement.

(2) Upon receiving a request for an annual report of condition from a stockholder, investor, or the public, the Corporation must promptly provide the requester the most recent signed annual report issued in compliance with this section.

**§ 655.15 Interim reports, notices, and proxy statements.**

(a) The Corporation must provide to us one paper and one electronic copy of every interim report, notice, and proxy statement filed with the SEC within 1 business day of filing the item with the SEC, including all papers and documents that are a part of the report, notice, or statement.

(b) The Corporation must publish a copy of each interim report, notice, and proxy statement on its Web site within 5 business days of filing the document(s) with the SEC. The interim report, notice, or proxy statement must remain on the Web site for 6 months or until the next annual report of condition is posted, whichever is later. Electronic links to the SEC filings Web site, EDGAR, may be used in satisfaction of this requirement.

**Subpart C—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation**

**§ 655.20 Securities not registered under the Securities Act.**

The Corporation must make special filings with OSMO for securities either issued or guaranteed by the Corporation that are not registered under the

Securities Act. These filings include, but are not limited to:

(a) One paper and one electronic copy of any offering circular, private placement memorandum, or information statement prepared in connection with the securities offering at or before the time of the securities offering.

(b) For securities backed by qualified loans as defined in section 8.0(9)(A) of the Act, one paper and one electronic copy of the following within 1 business day of the finalization of the transaction:

(1) The private placement memoranda for securities sold to investors; and

(2) The pooling and servicing agreement when the security is purchased by the Corporation as authorized by section 8.6(g) of the Act.

(c) For securities backed by qualified loans as defined in section 8.0(9)(B) of the Act, the Corporation must provide summary information on such securities issued during each calendar quarter in the form prescribed by us. Such summary information must be provided with each report of condition and performance filed pursuant to § 621.12, and at such other times as OSMO may require.

**§ 655.21 Filings and communications with the U.S. Treasury, the SEC, and NYSE.**

(a) The Corporation must send us one paper and one electronic copy of every filing made with U.S. Treasury, the SEC, or NYSE, including financial statements and related schedules, exhibits, and other documents that are a part of the filing. Such copies must be filed with us no later than 1 business day after any U.S. Treasury, SEC, or NYSE filing. If the filing is one addressed in subpart B of this part, no action under this paragraph is required.

(b) The Corporation must send us, within 3 business days and according to instructions provided by us, copies of all substantive correspondence between the Corporation and the U.S. Treasury, the SEC, or NYSE.

(c) The Corporation must notify us within 1 business day if it becomes exempt or claims exemption from any filing requirements of the Securities Act.

Dated: March 19, 2015.

**Dale L. Aultman,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 2015-06755 Filed 3-25-15; 8:45 am]

**BILLING CODE 6705-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2015-0249; Directorate Identifier 2014-NM-174-AD]

**RIN 2120-AA64**

**Airworthiness Directives; The Boeing Company Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2012-18-05, which applies to The Boeing Company Model DC-9-10, DC-9-20, DC-9-30, DC-9-40, and DC-9-50 series airplanes; and Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), MD-88, and MD-90-30 airplanes; equipped with a center wing fuel tank and Boeing original equipment manufacturer-installed auxiliary fuel tanks. AD 2012-18-05 currently requires adding design features to detect electrical faults and to detect a pump running in an empty fuel tank. Since we issued AD 2012-18-05, we have determined that it is necessary to clarify the actions for airplanes on which the auxiliary fuel tanks are removed. This proposed AD would allow certain actions as optional methods of compliance. We are proposing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** We must receive comments on this proposed AD by May 11, 2015.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855