Done in Washington, DC, this 9th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-11676 Filed 5-12-94; 8:45 am]

BILLING CODE 3410-34-P

FARM CREDIT ADMINISTRATION

12 CFR Part 612

RIN 3052-AB47

Personnel Administration

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts final amendments to the regulations relating to standards of conduct for directors and employees of Farm Credit System (FCS or System) institutions, excluding the Federal Agricultural Mortgage Corporation. This action results from a reassessment of the regulations in light of the amendments to the Farm Credit Act of 1971 (1971 Act) made by the Agricultural Credit Act of 1987 (1987 Act) and the findings of a review required by section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act). The final rule updates the regulations to reflect statutory changes and the change in focus of the FCA's regulatory oversight of personnel matters. In addition, the final rule enhances and clarifies the regulations to ensure that they fulfill the purposes of section 514 of the 1992 Act relative to the reporting of financial information and potential conflicts of interest.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session or December 31, 1994, whichever is later. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Policy Development and Planning Division, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444,

or

Dorothy J. Acosta, Assistant General Counsel, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On August 19, 1993, the FCA proposed amendments to its regulations relating to standards of conduct for directors and employees of System institutions. See 58 FR 44139. The final regulations retain much of the content of the existing and proposed regulations, but strengthen and clarify them, expanding some of the provisions and relaxing others.

The final regulations also address the concerns and suggestions received on the proposed regulations during the comment period, which expired on September 30, 1993. The FCA received seven comment letters on the proposed regulations during the comment period. Three letters were submitted by System banks, three by System associations, and one by the Farm Credit Council (FCC) on behalf of its member banks and the Federal Farm Credit Banks Funding Corporation. These comments and the FCA responses are summarized below.

In addition to comments received during the comment period, three letters were received concerning the proposed amendments that have also been considered by the FCA Board. Two comment letters pertaining to the proposed standards-of-conduct regulations were received pursuant to the FCA's request for comments on regulatory burden, published in the **Federal Register** on June 23, 1993. See 58 FR 34003. These comments related to reporting requirements and are similar to the comments received during the comment period for the proposed regulations. They are summarized and addressed in the Board's response to comments relating to reporting that were received during the comment period for the proposed regulations. One letter was received from an association as a followup to a meeting held in Dallas, Texas, between FCA's Board and senior management and directors and officers of FCS associations. The association expressed a concern regarding the ability to attract and retain qualified directors if they are prohibited from purchasing acquired property as proposed. The FCA received numerous comments on this prohibition and the Board's response appears later in the preamble.

General Comments

Two comments were received concerning the effective date of the amendments. The FCC urged the FCA to allow sufficient lead time between publication of the final regulations and the effective date to permit boards of directors the opportunity to consider carefully the many policy judgments that are left to their discretion by the regulations. Another comment recommended an effective date no earlier than January 1, 1995, suggesting that existing regulations and policies would continue to provide adequate direction and control in the interim.

The Board agrees that there should be sufficient lead time to revise policies, especially in view of changes made in the final regulations in response to comments. Although the final regulations are substantially changed from the proposed regulations in response to the comments, the Board believes that with the delayed effective date the public will have ample opportunity to further review the regulations and bring any observations to the Board's attention prior to the effective date of the regulations. As always, the Board will consider requests for further clarification of or amendments to the regulations prior to or after their effective date. Consequently, the Board adopts final regulations with a delayed effective date not earlier than December 31, 1994.

One commenter stated that the proposed regulations would result in a regulatory burden and that while some improvement in clarity and flexibility is offered, the benefits do not appear commensurate with the time and cost of implementing the changes. The commenter also stated that conflicts of interest have not been improperly or inadequately handled and that there is no reason to believe the proposed changes will provide any significant improvement in avoiding, handling, or reporting conflict-of-interest situations where an institution has been complying with the present regulations. According to the commenter, the proposed regulations would require substantial effort to revamp policies and procedures.

The FCA Board has not undertaken this revision of the standards-of-conduct regulations because of improper or inadequate handling or reporting of conflicts of interest. Rather, as noted earlier, the revision is intended to update the regulations to reflect statutory changes and a change in the focus of the FCA's regulatory oversight of personnel matters, as well as to respond to section 514 of the 1992 Act. While the FCA recognizes that the revamping of policies and procedures requires substantial effort, the final regulations attempt to minimize any burden by providing a delayed effective date. Also, the FCA has adjusted the proposed regulations in response to comments where it was possible to achieve its objectives by less burdensome means. The final regulations place more responsibility on the institutions and their officers and directors for identifying possible sources of conflict and developing adequate controls, but also offer more flexibility for developing procedures that effectively address significant conflicts without imposing burdensome requirements that are ineffective in preventing conflicts of interest. While this will initially require more work, the FCA believes that it is a more effective approach to conflicts of interest and that it more appropriately reflects the focus of the responsibility for preventing conflicts of interest and the role of the FCA as regulator.

Another commenter supported four of the primary FCA policy objectives, namely: (1) Enhancing each association's accountability for sound standards-of-conduct programs; (2) maintaining high standards of conduct to ensure the proper performance of System business; (3) holding directors and employees to the same standard where the potential for conflict is the same; and (4) establishing that the internal corporate matters of devotion of time to official duties, political activity, nepotism, exchange of gifts, and improper use of official property are best left to each institution's board of directors to oversee through the implementation of a standards-of-conduct policy. However, the commenter disagreed with the proposed strict prohibition of a director purchasing property acquired by the institution through foreclosure. The Board's response to this comment is addressed in detail later in the preamble.

Section-by-Section Analysis of Comments Received

The following narrative summarizes the comments received on the various sections of the regulations during the comment period, in response to the Regulatory Burden Notice, and as a followup to the Dallas meeting, and provides the Board's response to those comments.

Section 612.2130—Definitions

While no comments were received regarding the proposed changes to this section, the FCC provided comments on the definitions in the existing regulations for "controlled entity" and "officer" and requested the FCA to define the terms "financially obligated" and "business proprietor" to clarify how the prohibitions in proposed §§ 612.2140(g) and 612.2150(h) are intended to interface.

The FCC recommended changing the definition of "controlled entity" to one similar to that used in the attribution rules of the lending limit regulations. See 12 CFR 614.4358(a)(3). Specifically, this would increase the 5-percent threshold for control in existing regulations to a 50-percent threshold. The FCC believes that 5-percent ownership is a very stringent and perhaps unrealistic test of control, and that the term "controlling influence," without a higher threshold is perhaps too vague to be meaningful.

The Board does not believe that the definition of control in the lending limit regulations is an appropriate definition for standards-of-conduct regulations. The purpose of the definition of control in the lending limit regulations is to identify when borrowers are so related that they should be regarded as a single credit risk. The purpose of the definition of control in the standards-of-conduct regulations is to identify when an interest is so significant that if an individual were to act on a matter concerning the related party, there would be an appearance of a conflict of interest. Consequently, the FCA believes that the control threshold for standards of conduct should be much lower than the control threshold for the purposes of lending limits. Control thresholds used in regulations directed at conflicts of interest are typically much lower. For example, the Securities and Exchange Commission requires disclosure of certain transactions with the institution of individuals owning 5 percent or more of a class of the institution's stock. The Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision have similar requirements for institutions they regulate that are public companies required to register under the Securities Exchange Act of 1934. The Comptroller imposes similar disclosure requirements on all national banks when they sell their securities, whether or not they are public companies. The phrase "exercises a controlling influence" is intended as a catch-all to capture those situations in which a person does not meet the objective control tests, but for some other reason has the power to control the management of the entity's policies. This term is a common component of control definitions and has long been a component of the part 612 definition of control without causing a particular problem. The definition is used to determine when a director or officer must recuse him or herself and in the reporting provisions, both of which are direct responsibilities of directors and employees. Such persons are likely to know when they are in a position to control management of the entity's policies, and, if in doubt, should err on the side of recusal and reporting. For the reasons stated above, no change has been made to the definition of "controlled entity."

The FCC suggested that the position of chief executive officer be added to the definition of "officer" since a number of System institutions have both a president and a chief executive officer, or a chief executive officer rather than a president. The Board adopts this suggestion and also adds specific references to chief operating officers, chief financial officers, and chief credit officers.

On a related issue, the FCC questioned whether an association's contracting with its supervising bank for a Standards of Conduct Officer would violate the joint employee provisions of § 612.2157. To clarify that it would not, unless the person otherwise satisfies the definition in § 612.2130(m), the term "Standards of Conduct Officer" is changed to the "Standards of Conduct Official" in the final regulations.

The FCC recommended that the term "financially obligated" be defined, and that prohibited "financially obligated" transactions be more clearly distinguished from business relationships that are permissible.

The final regulations define "financially obligated with" to mean having a joint legally enforceable obligation with, being financially obligated on behalf of (contingently or otherwise), having an enforceable legal obligation secured by a property owned by another, or owning property that secures an enforceable legal obligation of another. The Board's revision to §§ 612.2140(g) and 612.2150(h) responds to the request to distinguish permissible business relationships from prohibited "financially obligated with" relationships and is discussed below under those sections.

As a result of this revision, the term "business proprietor" is no longer used in the regulations and its definition has been deleted. In addition, to avoid any possible confusion relative to reporting requirements, the definition for the term "business relationship" or "transacts business" has been deleted in the final rule.

The definition of "ordinary course of business" in the final regulations has been added as described in the discussion of § 612.2140.

The definition of "family" has been clarified to spell out more specifically those persons included under the phrase "and each person having such relationships by marriage."

Section 612.2135—Director and Employee Responsibilities and Conduct—Generally

No comments were received on this section and it is adopted as proposed.

Section 612.2140—Directors—Prohibited Conduct

The Board proposed to adopt some of the specific prohibitions applicable to employees and specifically requested comments on whether these prohibitions would operate too restrictively on directors. A number of comments were received. The majority of commenters opposed the proposed prohibition in paragraph (f) of this section concerning a director's purchasing property owned by the director's institution or an institution it supervises or is supervised by during the preceding 12 months when such property was acquired through foreclosure or similar action. The FCC asserted that a strict prohibition would make it more difficult to attract or retain qualified directors and suggested that such purchases be permitted on an institution-by-institution basis depending on whether the institution has adequate controls in place to ensure that directors do not receive an advantage or favoritism over other prospective purchasers. Other commenters suggested that there are less restrictive alternatives available to avoid real or apparent conflicts of interest and ensure continued public confidence in the System. One alternative offered was a general prohibition on acquired property purchases by directors except by public auction or open competitive bidding. The commenters also disagreed that the potential for conflicts of interest is as great for directors as it is for employees.

After additional consideration of the issues in light of the public comments, the Board has concluded that a total prohibition of director purchases of acquired property may be overly restrictive. Directors of Farm Credit Banks, associations, and certain directors of agricultural credit banks, except outside directors, are required to be farmers, ranchers, or producers or harvesters of aquatic products, and as such may want to acquire additional land that becomes available in their communities. Restrictions on their ability to acquire land that becomes available for sale from the institution while they are serving as director could be a serious disincentive for a successful individual to serve as a director. On the other hand, the potential for conflict is especially serious where there is strong motivation for acquiring property owned by the institution. Therefore, it is important that there be adequate controls in place to ensure that the director's impartiality is not impaired and that the director does not use his or her position to gain some advantage in acquiring property. The final regulations do not prohibit such acquisitions, but require that the property be purchased at public auctions or in open competitive bidding. In addition, to avoid the appearance of conflict, it is important that a director interested in acquiring such property not participate in deliberations or decisions concerning foreclosure or disposition of that property. Therefore, the final regulations prohibit a director from acquiring such property, even through public auction or competitive bidding, if he or she has participated in the decision to foreclose or dispose of the property or in establishing the terms of the sale.

The FCC recommended that there be an additional exception in paragraph (g) of this section under which an otherwise prohibited transaction would be permissible if approved by the Standards of Conduct Official. Paragraph (g) of the proposed regulations prohibited lending transactions between directors and other directors, employees or borrowers, but excepts loans between family members, loans made in an official capacity, and transactions in the ordinary course of business, as defined. The commenter recommended that the suggested approval be based upon a determination that the transaction does not present any significant risk of impairing the director's (or employee's) ability to perform his or her duties with impartiality and in compliance with regulations.

After considering the comment and the likelihood that the institutions themselves are in the best position to know what is in the ordinary course of business in the local business environment, the Board concluded that the suggestion had merit as a substitution for the ordinary course of business exception. However, the Board believes that there should be a regulatory standard against which such determinations can be evaluated that will provide a measure of uniformity among FCS institutions. The Board concluded that some relief from the prohibition is appropriate when the transaction is so insignificant in amount as not to create the appearance of a conflict in the eyes of a reasonable person or is an ordinary course of business transaction that is not on preferential terms.

Therefore, in the final regulations the proposed ordinary course of business exception has been replaced by a provision that essentially allows the Standards of Conduct Officer to grant a waiver where: (1) The amount of the transaction is so immaterial that it would not cause a reasonable person with knowledge of the relevant facts to question the impartiality or objectivity of the director in performing his or her official duties; or (2) where the transaction is in the ordinary course of business; provided the director recuses him or herself from any matter affecting the financial interest of the other party to the transaction. "Ordinary course of business" is defined to mean a transaction with a person who is in the business of offering the goods or services that are the subject of the transaction on terms that are not preferential or a transaction between two persons who are in business together that is incident to the business they conduct together. A "preferential" transaction is one that is not on the same terms as those available for comparable transactions with other persons who are not officers and directors of System institutions. The Standard of Conduct Official's determination that either of the circumstances warranting an exception exists must be documented and is subject to the recordkeeping requirements, unless the transaction falls within any materiality thresholds for various types of transactions or specific ordinary course of business guidelines established by the Board's standards-of-conduct policy. While not applicable, the Uniform Standards of Ethical Conduct for Executive Branch Employees may be useful as a resource in determining such policy guidelines.

The Board believes that this change responds to the FCC's concern that a deferral of payment may be construed as a loan and the concern that the exclusion in the proposed regulation may fail to reach transactions between an elected director (or employee) who is a borrower and an institution's outside director.

The FCC recommended that the FCA explain its rationale for prohibiting employees from being financially obligated with directors, other employees, and borrowers, but having no similar prohibition for directors.

The FCA believes there is a greater potential for conflict for employees in having these types of relationships with borrowers because employees are in a position to have a more direct influence on the institution's dealings with the borrower. Also, since directors (except outside directors) are statutorily required to be borrower/stockholders, such a restriction could constitute an inappropriate restraint on the ability of directors to pursue their primary occupation. However, in light of the greater flexibility granted in the final regulation to define an exception to the prohibition on lending transactions, the Board believes that the institution can make appropriate distinctions in its policies to reflect the greater potential for conflict among employees and the impact of the prohibition on the ability of the director to pursue his or her primary occupation. Therefore, the final regulations make the prohibition for directors congruent with the employee prohibition by including "financially obligated with" transactions within the scope of the prohibition. See § 612.2150 for discussion of the comments on this prohibition for employees. In addition, the final regulation expands the family loan transaction exception to include any person residing in the director's household and relies on recusal to prevent conflicts of interest. Accordingly, the recusal provision in § 612.2140(a) is expanded to include any person residing in the director's household and to include a specific reference to business partners.

Section 612.2145—Director Reporting

The FCC believes the requirement to disclose the name of any relative or entity controlled by a relative that transacts business with the institution or an institution supervised by the institution is overly broad. The FCC suggested that the definition of "relative," for purposes of disclosure under §§ 612.2145(b)(1) and 612.2155(b)(1), be limited to immediate family members as defined in part 620 of this chapter. Section 620.1(e) of this chapter defines "immediate family member" to mean spouse, parents, siblings, children, mothers- and fathers-in-law, brothers- and sisters-in-law, and sons- and daughters-in-law. In addition, the FCC commented that it is extremely difficult for a director to disclose a list of borrowers with whom the director or the director's entity transacts business, since if the director is not involved in the day-to-day operations of the business, he or she will have little or no knowledge of the people who conduct business with the director's entity. Also, a director may not know that the individual or entity is a borrower. The FCC assumed that this was not the intention of § 612.2145 and that the requirement to disclose "to the best of his or her knowledge after reasonable inquiry" was designed to address this problem. However, the FCC recommended that the requirement of "reasonable inquiry" be deleted, noting that it is difficult to know what reasonable inquiry is in any particular case. The FCC also suggested that directors be required to disclose only those business relationships with borrowers that are other than ordinary course of business relationships, unusually large transactions, ongoing contractual relationships, or transactions with nonstandard terms and conditions, or terms other than those arrived at through arm's-length negotiations. The FCC argued that any appearance of conflict would be eliminated by the knowledge that neither the director nor the borrower received special terms. The FCC also recommended that each institution be allowed the opportunity to define transactions other than in the ordinary course of business within the above parameters. The FCC also commented that it is difficult to understand how a director's position can be compromised by the mere fact that a borrower does business with the director or an entity owned by the director.

Some of the FCC's comments appear to reflect a misunderstanding of the requirements of both proposed and existing regulations. Neither the proposed regulations nor existing regulations require the reporting of transactions with borrowers. The proposed regulations merely require the disclosure of the name of any relative or any entity in which the director has a financial interest if the relative or entity transacts business with borrowers. Transacting business with borrowers is the standard that narrows the class of persons or entities a director must report. An institution could, for instance, require instead the reporting of the names of all entities in which a director or employee has a financial interest, irrespective of whether such entities transact business with borrowers. Such a requirement would require more reporting, but might be easier for the individuals required to report. The regulatory requirement is a minimum requirement. The FCA encourages boards to require sufficient reporting to permit adequate monitoring of potential conflicts.

After considering the comments on the reporting requirements, the final regulations have been modified in several ways in response to revisions to the prohibited conduct sections and in an effort to ease any unnecessary burden the proposed regulations might have entailed. The final regulations permit the institution greater flexibility to determine the applicability of the prohibition on lending transactions among directors, employees, and borrowers and relies more heavily on recusal as a means of resolving conflicts of interest than the existing regulations or the proposed regulations. Since the FCA believes that the reporting requirements should provide the institution sufficient information for the institution to determine when recusal rather than prohibition is appropriate, an effort has been made to make the reporting requirements parallel the recusal provisions.

The final regulations do not narrow the definition of "relative" as suggested. To do so would narrow the scope of the exception from the lending and borrowing prohibition and the reach of the recusal provision. The suggested narrowing would have deleted "aunts, uncles, nephews, nieces, and grandchildren," and these relationships are often close enough that it would be unreasonable to restrict borrowing and lending between family members when such family members are borrowers. Similarly, these relationships are often close enough that it is not unreasonable to require recusal from matters affecting their interests. However, the standard for reporting the names of relatives in the final regulations is whether the individual "knows or has reason to know" that a relative or entity transacts business with the institution or a supervised institution or a borrower of such institutions. The "knows or has reason to know" standard is adopted to address concerns that "to the best of his or her knowledge after reasonable inquiry" imposes a duty to inquire, the reasonableness of which could lead to disputes. The "knows or has reason to know" standard is a common legal standard that is used to ensure that a person's assertion about the state of his or her knowledge can be challenged in circumstances in which any reasonable person would be deemed to have knowledge. The "actual knowledge" standard suggested by the FCC is not adopted because it does not allow any basis for the FCA to question a director's assertion regarding his or her subjective state of mind even in the most obvious circumstances.

The reporting requirements supporting the disclosure requirements of part 620 of this chapter have been more narrowly focused in the final regulations on information needed by the institution to make appropriate disclosures under part 620 of this chapter, and more clearly specify the information required to be reported. In addition, the final regulations also permit greater flexibility in determining the frequency of reporting for matters required to be reported, other than matters that are required to be reported for part 620 of this chapter.

The FCC also recommended that the reporting requirement for a director or employee who becomes or plans to become involved in any relationship, transaction, or activity that is required to be reported or could constitute a conflict of interest be expanded to require the Standards of Conduct Official to determine whether such involvement is, in fact, a conflict of interest. The Board has adopted the FCC's suggestion in the final regulations and has also added a requirement that the determination specify what controls, such as recusal, are necessary to ensure that the appearance of conflict is minimized.

A commenter noted that the proposed requirement that all new directors report all matters listed in the director reporting section within 1 month after election or appointment perpetuates the present reporting redundancy involving a director candidate's disclosure. In response to this concern, the final regulations require reporting only if no disclosure was made as a director candidate under part 620 of this chapter within the preceding 180 days, as this would be considered sufficient disclosure.

Section 612.2150—Employees—Prohibited Conduct

Comments were received from the FCC regarding the prohibition against employees borrowing from, lending to, or becoming financially obligated with or on behalf of a director, employee, or agent of the employing, supervising, or a supervised institution or a borrower or loan applicant of the employing institution. The FCA also considered the appropriateness of the FCC's comments on the parallel director prohibition for the employee prohibition. The FCC recommended that there be an additional exception under which an otherwise prohibited transaction would be permissible if approved by the Standards of Conduct Official after a determination that the transaction does not present any significant risk of impairing the director's or employee's ability to perform his or her duties with impartiality and in compliance with the regulations.

The FCA concluded that the same modification that was made to § 612.2140(g) should be made to the employee prohibition. See discussion above.

Both banks that commented objected to the relaxation of the prohibition in § 612.2150(j) against employees acting as real estate agents or brokers because of a strong potential for creating conflicts of interest, especially for staff appraisers. In addition, one commenter observed that such a relaxation would be inconsistent with the functional independence required by FCA appraisal regulations. Another commenter asserted that the phrase "for the employee's own account" is unclear and suggested substituting "intended for the employee's own or immediate family use."

In view of the commenters' concerns and assurance that the prohibition is not a particularly burdensome requirement for staff appraisers, the FCA has decided not to adopt the appraiser exception at this time. In addition, the final regulations substitute "intended for the use of the employee, a member of the employee's family, or a person residing in the employee's household" for "for the employee's own account," to clarify that the latter term was not intended to permit an employee to act as an agent or broker for commercial purposes.

Section 612.2155—Employee Reporting

The FCC commented that the scope and frequency of reports required by § 612.2155 are unwarranted, unduly burdensome, and unduly costly below the senior officer level. The FCC recommended that the FCA distinguish between senior officers and other employees in the reporting requirements. The FCC stated that, in its judgment, reports by non-senior officers when hired and biennially thereafter are fully adequate, especially since employees are required to report covered activities as they occur in the interim. They also recommended that the FCA remove the specific reporting requirements and require institutions to establish reporting procedures to ensure that relationships and activities subject to the regulations are properly disclosed and acted upon.

The FCC commented on proposed paragraph (b)(1) of this section, which requires employees to file an annual statement disclosing the name of any relative or entity controlled by relatives that transact business with the institution or any institution supervised by the institution. The concern raised was that the disclosure is to be based not only on actual knowledge, but also upon reasonable inquiry. This was considered to be unreasonably broad in view of the definition of "relative," because many such relatives may be virtual strangers to the employee in question and it is difficult to know what reasonable inquiry is in any particular case. The FCC also suggested that "relative" for purposes of disclosure be limited to immediate family members, as defined in § 620.1(e) of this chapter.

The same modifications that were made to the director reporting sections have been made to the employee reporting sections in the final regulations. Part 620 reporting requirements are focused on matters not already within the institution's knowledge and specifically restricted to employees who are subject to disclosure requirements, namely senior officers, as defined in part 620 of this chapter. The final regulations allow the institution to determine employee reporting frequency for matters not required for part 620 disclosures, but the institution must establish reporting requirements sufficient to permit the effective enforcement of the regulations and the standards-of-conduct policy. This will allow institutions to exclude certain individuals or classes of individuals from the reporting requirement based on the functions the employee performs. For instance, positions where there is a substantial degree of supervision and a low level of responsibility may make the reporting requirement unnecessary.

The FCC commented that it appears § 612.2150(d) prohibits an employee from serving as a director of an entity that transacts business with the employing or supervised institution, while § 612.2155(b)(2) requires an employee to report the name and nature of any entity in which the employee has a financial interest or on whose board the employee sits, if the entity transacts business with the employing institution. The final regulations delete the reference to entities on whose board the employee serves in the reporting requirement.

In response to an FCC recommendation on director reporting requirements, § 612.2155 is expanded to require the Standards of Conduct Official to determine whether any reported transaction or activity is, in fact, a conflict of interest and what controls are necessary to ensure that there is no appearance of a conflict of interest.

A commenter noted that for new employee reporting requirements it is unclear whether 1 month refers to the time an employment offer is extended and accepted or 1 month after the employee commences work. The final regulations have been revised to make it clear that a newly hired employee must report the required matters within 30 days after accepting an offer for employment. However, under the final regulations, the institution may establish a reasonable period for such new employees to terminate such transactions, activities, or relationships not to exceed the period provided for existing employees to terminate conduct prohibited under the institution's policies.

The FCA believes that these changes, together with the greater flexibility in defining exceptions to prohibited lending and borrowing relationships, will enable institutions to fashion standards-of-conduct programs that are more focused on areas in which the potential for conflict is most significant without imposing ineffective, burdensome, and costly reporting requirements.

Although enhancing the disclosure of financial information and reporting of conflicts of interest was the purpose of section 514 of the 1992 Act, the experience of the FCA in implementing Uniform Standards of Ethical Conduct for Executive Branch Employees is that training employees to recognize situations that present conflicts of interest is also an effective use of resources to prevent conflicts of interest. The FCA strongly encourages each System institution to conduct effective periodic training programs to ensure that employees are informed of the requirements of the regulations and the institution's policies and are sensitive to circumstances that give the appearance of a conflict of interest. Although the FCA believes that the responsibility to avoid actual or apparent conflicts of interest rests primarily with the individual director or employee, the institution has a responsibility to develop policies and procedures that monitor compliance with the regulation and avoid the appearance of conflict. Providing guidance and training concerning appropriate and inappropriate behavior is an effective way of achieving that end.

Section 612.2157—Joint Employees

The FCC questioned the advisability of having the supervising bank's Standards of Conduct Officer contract with an association in the district to comply with these requirements on behalf of the association and be accountable to the association's board. The FCC stated that it is not clear whether this arrangement is possible since the Standards of Conduct Officer is an officer of the bank as defined in § 612.2130(m).

The Standards of Conduct Officer does not come within the definition of "officer" in § 612.2130(m), unless the individual designated to perform the duties of the Standards of Conduct Officer satisfies the definition because of other duties. Therefore, for clarity, the position is referred to in the final regulations as the "Standards of Conduct Official" rather than "Standard of Conduct Officer," but in no way is this action intended to diminish the importance of the position. In addition, the final regulations do not require an association to contract with the bank's Standards of Conduct Official. An association may contract with the bank for these services to be performed by an individual whom the bank has designated as the bank's Standards of Conduct Official. The final regulations also include reference to an agricultural credit bank in addition to a Farm Credit Bank to provide for the situation in which an association is supervised by such a bank.

Section 612.2160—Institution Responsibilities

No comments were received on this new section and it is adopted as proposed.

Section 612.2165—Policies and Procedures

The FCC suggested that the regulations require an institution to provide a reasonable period of time for new directors and new employees to terminate transactions, relationships, and activities that are prohibited by the regulations and the institution's standards-of-conduct policies. The Board agrees with this suggestion and adds a new paragraph (b)(9) requiring a System institution to provide a reasonable period of time for new directors and new employees to terminate transactions, relationships, and activities that are prohibited. The purpose of this revision is to clarify that a new director or employee involved in a prohibited transaction prior to election or hiring is not prohibited from accepting the position. However, such persons are required to terminate any transactions subject to prohibitions within such time period as established by institution policy, beginning with the commencement of official duties, except that such period may not exceed the period established for existing directors and employees to terminate transactions, relationships, or activities prohibited by the institution's policies.

Section 612.2170—Standards of Conduct Official

In addition to changing "Officer" to "Official," as discussed above, the final regulations add a requirement that records be maintained for all determinations made by the Standards of Conduct Official and for resolution of each case reported pursuant to this part. Also, the office within the FCA designated to receive reports under part 612 is changed to the Office of General Counsel, which also receives reports relative to part 617 of this chapter.

Section 612.2180—Enforcement

No comments were received on the proposed amendments and these actions are adopted as proposed.

Sections 612.2190 Through 612.2250

The sections regarding devotion of time to official duties, political activity, nepotism, gifts or favors, and improper use of official property are removed as proposed and the topics are required to be addressed in the institution's policy established pursuant to § 612.2165. No comments were received regarding the removal of these sections.

Section 612.2260—Standards of Conduct for Agents

No comments were received regarding this section and it is adopted as proposed.

Section 612.2270—Prohibited Purchase of System Obligations

One commenter questioned the prohibition in existing regulations on bank presidents' purchasing obligations of the Farm Credit banks and the proposed extension of this prohibition to all employees who may participate in any manner in funding activities of their institution. The Board concurs that the potential for conflict in a director's or employee's purchase of System obligations that are available for purchase by the general public through members of the selling group or in the secondary market is small. Therefore, the final regulations permit such purchases under the conditions listed in § 612.2270.

List of Subjects in 12 CFR Part 612

Agriculture, Banks, banking, Conflicts of interest, Rural areas.

For the reasons stated in the preamble, part 612 of chapter VI, title 12 of the Code of Federal Regulations is revised to read as follows:

PART 612—STANDARDS OF CONDUCT

Sec.

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

§ 612.2130 Definitions.

For purposes of this part, the following terms are defined:

(a) *Agent* means any person, other than a director or employee, who represents a System institution in contacts with third parties or who provides professional services to a System institution, such as legal, accounting, appraisal, and other similar services.

(b) A *conflict of interest* or the appearance thereof exists when a person has a financial interest in a transaction, relationship, or activity that actually affects or has the appearance of affecting the person's ability to perform official duties and responsibilities in a totally impartial manner and in the best interest of the employing institution when viewed from the perspective of a reasonable person with knowledge of the relevant facts.

(c) *Controlled entity* and *entity controlled by* mean an entity in which the individual, directly or indirectly, or acting through or in concert with one or more persons:

(1) Owns 5 percent or more of the equity;

(2) Owns, controls, or has the power to vote 5 percent or more of any class of voting securities; or

(3) Has the power to exercise a controlling influence over the management of policies of such entity.

(d) *Director* means a member of a board of directors.

(e) *Employee* means any salaried officer or part-time, full-time, or temporary salaried employee.

(f) *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, except System institutions.

(g) *Family* means an individual and spouse and anyone having the following relationship to either: parents, spouse, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, grandparent, grandson, granddaughter, and the spouses of the foregoing.

(h) *Financial interest* means an interest in an activity, transaction, property, or relationship with a person or an entity that involves receiving or providing something of monetary value or other present or deferred compensation.

(i) *Financially obligated with* means having a joint legally enforceable obligation with, being financially obligated on behalf of (contingently or otherwise), having an enforceable legal obligation secured by property owned by another, or owning property that secures an enforceable legal obligation of another.

(j) *Material*, when applied to a financial interest or transaction or series of transactions, means that the interest or transaction or series of transactions is of such magnitude that a reasonable person with knowledge of the relevant facts would question the ability of the person who has the interest or is party to such transaction(s) to perform his or her official duties objectively and impartially and in the best interest of the institution and its statutory purpose.

(k) *Mineral interest* means any interest in minerals, oil, or gas, including, but not limited to, any right derived directly or indirectly from a mineral, oil, or gas lease, deed, or royalty conveyance.

(l) *OFI* means other financing institutions that have established an access relationship with a Farm Credit Bank or an agricultural credit bank under section 1.7(b)(1)(B) of the Act.

(m) *Officer* means the chief executive officer, president, chief operating officer, vice president, secretary, treasurer, general counsel, chief financial officer, and chief credit officer of each System institution, and any person not so designated who holds a similar position of authority.

(n) *Ordinary course of business*, when applied to a transaction, means: (1) A transaction that is usual and customary between two persons who are in business together; or

(2) A transaction with a person who is in the business of offering the goods or services that are the subject of the transaction on terms that are not preferential. Preferential means that the transaction is not on the same terms as those prevailing at the same time for comparable transactions for other persons who are not directors or employees of a System institution.

(o) *Person* means individual or entity.

(p) *Relative* means any member of the family as defined in paragraph (g) of this section.

(q) *Service organization* means each service organization authorized by section 4.25 of the Act, and each unincorporated service organization formed by one or more System institutions.

(r) *Standards of Conduct Official* means the official designated under § 612.2170 of these regulations.

(s) *Supervised institution* is a term which only applies within the context of a System bank or an employee of a System bank and refers to each association supervised by that bank.

(t) *Supervising institution* is a term that only applies within the context of an association or an employee of an association and refers to the bank that supervises that association.

(u) *System institution* and *institution* mean any bank, association, or service organization in the Farm Credit System, including the Farm Credit Banks, banks for cooperatives, agricultural credit banks, Federal land bank associations, agricultural credit associations, Federal land credit associations, production credit associations, the Federal Farm Credit Banks Funding Corporation, and service organizations.

§ 612.2135 Director and employee responsibilities and conduct—generally.

(a) Directors and employees of all System institutions shall maintain high standards of industry, honesty, integrity, impartiality, and conduct in order to ensure the proper performance of System business and continued public confidence in the System and each of its institutions. The avoidance of misconduct and conflicts of interest is indispensable to the maintenance of these standards.

(b) To achieve these high standards of conduct, directors and employees shall observe, to the best of their abilities, the letter and intent of all applicable local, state, and Federal laws and regulations and policy statements, instructions, and procedures of the Farm Credit Administration and System institutions and shall exercise diligence and good judgment in carrying out their duties, obligations, and responsibilities.

§ 612.2140 Directors—prohibited conduct.

A director of a System institution shall not:

(a) Participate, directly or indirectly, in deliberations on, or the determination of, any matter affecting, directly or indirectly, the financial interest of the director, any relative of the director, any person residing in the director's household, any business partner of the director, or any entity controlled by the director or such persons (alone or in concert), except those matters of general applicability that affect all shareholders/borrowers in a nondiscriminatory way, e.g., a determination of interest rates.

(b) Divulge or make use of, except in the performance of official duties, any fact, information, or document not generally available to the public that is acquired by virtue of serving on the board of a System institution.

(c) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, any person residing in the director's household, any business partner of the director, any entity controlled by the director or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(d) Use the director's position or information acquired in connection with the director's position to solicit or obtain, directly or indirectly, any gift, fee, or other present or deferred compensation or for any other personal benefit on behalf of the director, any relative of the director, any person residing in the director's household, any business partner of the director, any entity controlled by the director or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(e) Accept, directly or indirectly, any gift, fee, or other present or deferred compensation that is offered or could reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of a System institution.

(f) Knowingly acquire, directly or indirectly, except by inheritance or through public auction or open competitive bidding available to the general public, any interest in any real or personal property, including mineral interests, that was owned by the employing, supervising, or any supervised institution within the preceding 12 months and that had been acquired by any such institution as a result of foreclosure or similar action; provided, however, a director shall not acquire any such interest in real or personal property if he or she participated in the deliberations or decision to foreclose or to dispose of the property or in establishing the terms of the sale.

(g) Directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of the employing, supervising, or a supervised institution or a borrower or loan applicant of the employing institution, unless:

(1) The transaction is with a relative or any person residing in the director's household;

(2) The transaction is undertaken in an official capacity in connection with the institution's discounting, lending, or participation relationships with OFIs and other lenders; or

(3) The Standards of Conduct Official determines, pursuant to policies and procedures adopted by the board, that the potential for conflict is insignificant because the transaction is in the ordinary course of business or is not material in amount and the director does not participate in the determination of any matter affecting the financial interests of the other party to the transaction except those matters affecting all shareholders/borrowers in a nondiscriminatory way.

(h) Violate an institution's policies and procedures governing standards of conduct.

§ 612.2145 Director reporting.

(a) Annually, as of the institution's fiscal year end, and at such other times as may be required to comply with paragraph (c) of this section, each director shall file a written and signed statement with the Standards of Conduct Official that fully discloses:

(1) The names of any immediate family members as defined in § 620.1(e) of this chapter, or affiliated organizations, as defined in § 620.1(a) of this chapter, who had transactions with the institution at any time during the year;

(2) Any matter required to be disclosed by § 620.5(k) of this chapter; and

(3) Any additional information the institution may require to make the disclosures required by part 620 of this chapter.

(b) Each director shall, at such intervals as the institution's board shall determine is necessary to effectively enforce this regulation and the institution's standards-of-conduct policy adopted pursuant to § 612.2165, file a written and signed statement with the Standards of Conduct Official that contains those disclosures required by the regulations and such policy. At a minimum, these requirements shall include:

(1) The name of any relative or any person residing in the director's household, business partner, or any entity controlled by the director or such persons (alone or in concert) if the director knows or has reason to know that such individual or entity transacts business with the institution or any institution supervised by the director's institution; and

(2) The name and the nature of the business of any entity in which the director has a material financial interest or on whose board the director sits if the director knows or has reason to know that such entity transacts business with:

(i) The director's institution or any institution supervised by the director's institution; or

(ii) A borrower of the director's institution or any institution supervised by the director's institution.

(c) Any director who becomes or plans to become involved in any relationship, transaction, or activity that is required to be reported under this section or could constitute a conflict of interest shall promptly report such involvement in writing to the Standards of Conduct Official for a determination of whether the relationship, transaction, or activity is, in fact, a conflict of interest.

(d) Unless a disclosure as a director candidate under part 620 of this chapter has been made within the preceding 180 days, a newly elected or appointed director shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official within 30 days after the election or appointment and thereafter shall comply with the requirements of this section.

§ 612.2150 Employees—prohibited conduct.

An employee of a System institution shall not:

(a) Participate, directly or indirectly, in deliberations on, or the determination of, any matter affecting, directly or indirectly, the financial interest of the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, or any entity controlled by the employee or such persons (alone or in concert), except those matters of general applicability that affect all shareholders/borrowers in a nondiscriminating way, e.g. a determination of interest rates.

(b) Divulge or make use of, except in the performance of official duties, any fact, information, or document not generally available to the public that is acquired by virtue of employment with a System institution.

(c) Use the employee's position to obtain or attempt to obtain special advantage or favoritism for the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, any entity controlled by the employee or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(d) Serve as an officer or director of an entity that transacts business with a System institution in the district or of any commercial bank, savings and loan, or other non-System financial institution, except employee credit unions. For the purposes of this paragraph, "transacts business" does not include loans by a System institution to a family-owned entity, service on the board of directors of the Federal Agricultural Mortgage

Corporation, or transactions with nonprofit entities or entities in which the System institution has an ownership interest. With the prior approval of the board of the employing institution, an employee of a Farm Credit Bank or association may serve as a director of a cooperative that borrows from a bank for cooperatives. Prior to approving an employee request, the board shall determine whether the employee's proposed service as a director is likely to cause the employee to violate any regulations in this part or the institution's policies, e.g., the requirements relating to devotion of time to official duties.

(e) Use the employee's position or information acquired in connection with the employee's position to solicit or obtain any gift, fee, or other present or deferred compensation or for any other personal benefit for the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, any entity controlled by the employee or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(f) Accept, directly or indirectly, any gift, fee, or other present or deferred compensation that is offered or could reasonably be viewed as being offered to influence official action or to obtain information the employee has access to by reason of employment with a System institution.

(g) Knowingly acquire, directly or indirectly, except by inheritance, any interest in any real or personal property, including mineral interests, that was owned by the employing, supervising, or any supervised institution within the preceding 12 months and that had been acquired by any such institution as a result of foreclosure or similar action.

(h) Directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of the employing, supervising, or a supervised institution or a borrower or loan applicant of the employing institution, unless: (1) The transaction is with a relative or any person residing in the employee's household;

(2) The transaction is undertaken in an official capacity in connection with the institution's discounting, lending, or participation relationships with OFIs and other lenders; or

(3) The Standards of Conduct Official determines, pursuant to policies and procedures adopted by the board, that the potential for conflict is insignificant because the transaction is in the ordinary course of business or is not material in amount and the employee does not participate in the determination of any matter affecting the financial interests of the other party to the transaction except those matters affecting all shareholders/borrowers in a nondiscriminatory way.

(i) Violate an institution's policies and procedures governing standards of conduct.

(j) Act as a real estate agent or broker; provided that this paragraph shall not apply to transactions involving the purchase or sale of real estate intended for the use of the employee, a member of the employee's family, or a person residing in the employee's household.

(k) Act as an agent or broker in connection with the sale and placement of insurance; provided that this paragraph shall not apply to the sale or placement of insurance authorized by section 4.29 of the Act.

§ 612.2155 Employee reporting.

(a) Annually, as of the institution's fiscal yearend, and at such other times as may be required to comply with paragraph (c) of this section, each senior officer, as defined in § 620.1(o) of this chapter, shall file a written and signed statement with the Standards of Conduct Official that fully discloses:

(1) The names of any immediate family members, as defined in § 620.1(e) of this chapter, or affiliated organizations, as defined in § 620.1(a) of this chapter, who had transactions with the institution at any time during the year;

(2) Any matter required to be disclosed by § 620.5(k) of this chapter; and

(3) Any additional information the institution may require to make the disclosures required by part 620 of this chapter.

(b) Each employee shall, at such intervals as the Board shall determine necessary to effectively enforce this regulation and the institution's standards-of-conduct policy adopted pursuant to § 612.2165, file a written and signed statement with the Standards of Conduct Official that contains those disclosures required by the regulation and such policy. At a minimum, these requirements shall include: (1) The name of any relative or any person residing in the employee's household, any business partner, or any entity controlled by the employee or such persons (alone or in concert) if the employee knows or has reason to know that such individual or entity transacts business with the employing institution or any institution supervised by the employing institution; and

(2) The name and the nature of the business of any entity in which the employee has a material financial interest or on whose board the employee sits if the employee knows or has reason to know that such entity transacts business with: (i) The employing institution or any institution supervised by the employing institution; or

(ii) A borrower of the employing institution or any institution supervised by the employing institution.

(c) Any employee who becomes or plans to become involved in any relationship, transaction, or activity that is required to be reported under this section or could constitute a conflict of interest shall promptly report such involvement in writing to the Standards of Conduct Official for a determination of whether the relationship, transaction, or activity is, in fact, a conflict of interest.

(d) A newly hired employee shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official within 30 days after accepting an offer for employment and thereafter shall comply with the requirements of this section.

§ 612.2157 Joint employees.

No officer of a Farm Credit Bank or an agricultural credit bank may serve as an employee of an association in its district and no employee of a Farm Credit Bank or an agricultural credit bank may serve as an officer of an association in its district. Farm Credit Bank or agricultural credit bank employees other than officers may serve as employees other than officers of an association in its district provided each institution appropriately reflects the expense of such employees in its financial statements.

§ 612.2160 Institution responsibilities.

Each institution shall: (a) Ensure compliance with this part by its directors and employees and act promptly to preserve the integrity of and public confidence in the institution in any matter involving a conflict of interest, whether or not specifically addressed by this part or the policies and procedures adopted pursuant to § 612.2165;

(b) Take appropriate measures to ensure that all directors and employees are informed of the requirements of this regulation and policies and procedures adopted pursuant to § 612.2165;

(c) Adopt and implement policies and procedures that will preserve the integrity of and public confidence in the institution and the System pursuant to § 612.2165;

(d) Designate a Standards of Conduct Official pursuant to § 612.2170; and

(e) Maintain all standards-of-conduct policies and procedures, reports, investigations, determinations, and evidence of compliance with this part for a minimum of 6 years.

§ 612.2165 Policies and procedures.

(a) Each institution's board of directors shall issue, consistent with this part, policies and procedures governing standards of conduct for directors and employees.

(b) Board policies and procedures issued pursuant to paragraph (a) of this section shall reflect due consideration of the potential adverse impact of any activities permitted under the policies and shall at a minimum: (1) Establish such requirements and prohibitions as are necessary to promote public confidence in the institution and the System, preserve the integrity and independence of the supervisory process, and prevent the improper use of official property, position, or information. In developing such requirements and prohibitions, the institution shall address such issues as the hiring of relatives, political activity, devotion of time to duty, the exchange of gifts and favors among directors and employees of the employing, supervising, and supervised institution, and the circumstances under which gifts may be accepted by directors and employees from outside sources, in light of the foregoing objectives;

(2) Outline authorities and responsibilities of the Standards of Conduct Official;

(3) Establish criteria for business relationships and transactions not specifically prohibited by this part between employees or directors and borrowers, loan applicants, directors, or employees of the employing, supervised, or supervising institutions, or persons transacting business with such institutions, including OFIs or other lenders having an access or participation relationship;

(4) Establish criteria under which employees may accept outside employment or compensation;

(5) Establish conditions under which employees may receive loans from System institutions;

(6) Establish conditions under which employees may acquire an interest in real or personal property that was mortgaged to a System institution at any time within the preceding 12 months;

(7) Establish conditions under which employees may purchase any real or personal property of a System institution acquired by such institution for its operations;

(8) Provide for a reasonable period of time for directors and employees to terminate transactions, relationships, or activities that are subject to prohibitions that arise at the time of adoption or amendment of the policies.

(9) Require new directors and new employees involved at the time of election or hiring in transactions, relationships, and activities prohibited by these regulations or internal policies to terminate such transactions within the same time period established for existing directors or employees pursuant to paragraph (b)(8) of this section, beginning with the commencement of official duties, or such shorter time period as the institution may establish.

(10) Establish procedures providing for a director's or employee's recusal from official action on any matter in which he or she is prohibited from participating under these regulations or the institution's policies.

(11) Establish documentation requirements demonstrating compliance with standards-of-conduct decisions and board policy;

(12) Establish reporting requirements, consistent with this part, to enable the institution to comply with § 620.5 of this chapter, monitor conflicts of interest, and monitor recusal compliance; and

(13) Establish appeal procedures available to any employee to whom any required approval has been denied.

§ 612.2170 Standards of Conduct Official.

(a) Each institution's board shall designate a Standards of Conduct Official who shall: (1) Advise directors, director candidates, and employees concerning the provisions of this part;

(2) Receive reports required by this part;

(3) Make such determinations as are required by this part;

(4) Maintain records of actions taken to resolve and/or make determinations upon each case reported relative to provisions of this part;

(5) Make appropriate investigations, as directed by the institution's board; and

(6) Report promptly, pursuant to part 617 of this chapter, to the institution's board and the Office of General Counsel, Farm Credit Administration, all cases where: (i) A preliminary investigation indicates that a Federal criminal statute may have been violated;

(ii) An investigation results in the removal of a director or discharge of an employee; or

(iii) A violation may have an adverse impact on continued public confidence in the System or any of its institutions.

(b) The Standards of Conduct Official shall investigate or cause to be investigated all cases involving: (1) Possible violations of criminal statutes;

(2) Possible violations of §§ 612.2140 and 612.2150, and applicable policies and procedures approved under § 612.2165;

(3) Complaints received against the directors and employees of such institution; and

(4) Possible violations of other provisions of this part or when the activities or suspected activities are of a sensitive nature and could affect continued public confidence in the Farm Credit System.

(c) An association board may comply with this section by contracting with the Farm Credit Bank or agricultural credit bank in its district to provide a Standards of Conduct Official.

§ 612.2260 Standards of conduct for agents.

(a) Agents of System institutions shall maintain high standards of honesty, integrity, and impartiality in order to ensure the proper performance of System business and continued public confidence in the System and all its institutions. The avoidance of misconduct and conflicts of interest is indispensable to the maintenance of these standards.

(b) System institutions shall utilize safe and sound business practices in the engagement, utilization, and retention of agents. These practices shall provide for the selection of qualified and reputable agents. Employing System institutions shall be responsible for the administration of relationships with their agents, and shall take appropriate investigative and corrective action in the case of a breach of fiduciary duties by the agent or failure of the agent to carry out other agent duties as required by contract, FCA regulations, or law.

(c) System institutions shall be responsible for exercising corresponding special diligence and control, through good business practices, to avoid or control situations that have inherent potential for sensitivity, either real or perceived. These areas include the employment of agents who are related to directors or employees of the institutions; the solicitation and acceptance of gifts, contributions, or special considerations by agents; and the use of System and borrower information obtained in the course of the agent's association with System institutions.

§ 612.2270 Purchase of System obligations.

(a) Employees and directors of System institutions, other than the Federal Farm

Credit Banks Funding Corporation, may only purchase joint, consolidated, or Systemwide obligations that are:

(1) Part of an offering available to the general public; and

(2) Purchased through a dealer or dealer bank affiliated with a member of the selling group designated by the Federal Farm Credit Banks Funding Corporation or purchased in the secondary market.

(b) No director or employee of the Federal Farm Credit Banks Funding Corporation may purchase or otherwise acquire, directly or indirectly, except by inheritance, any joint, consolidated, or Systemwide obligation.

Dated: May 5, 1994.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 94-11496 Filed 5-12-94; 8:45 am]

BILLING CODE 6705-01-P

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1408

Collection of Claims Owed the United States

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation), by the Farm Credit System Insurance Corporation Board, adopts final regulations implementing the Debt Collection Act of 1982. This action provides procedures for the Corporation to administer claims owed to the United States arising from activities under Corporation jurisdiction. The Corporation is required by law to issue these regulations.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Philip J. Shebest, Senior Attorney, Office of General Counsel, Farm Credit System Insurance Corporation, McLean, VA 22102-0826, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: These regulations implement the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749) (31 U.S.C. 3701-3719 and 5 U.S.C. 5114). In addition, these regulations supplement the regulations published jointly by the General Accounting Office and the Department of Justice (4 CFR parts 101-105).

The proposed regulations were published on November 8, 1993, 58 FR 59215. The Corporation received no public comments. In addition, the Office of Personnel Management, on April 1, 1994, approved the proposed regulations for publication as final regulations in accordance with section 8 (1) of Executive Order 11609, as redesignated by Executive Order 12107, and 5 CFR 550.1105. As a result, the proposed regulations are being adopted in final form without any changes in the regulatory text.

List of Subjects in 12 CFR Part 1408

Government, Claims, Collection.

For the reasons stated in the preamble, part 1408 of chapter XIV, title 12 of the Code of Federal Regulations is added to read as follows:

PART 1408—COLLECTION OF CLAIMS OWED THE UNITED STATES

Subpart A—Administrative Collection of Claims

Sec.

Authority: Sec. 5.58 of the Farm Credit Act (12 U.S.C. 2277a-7); 31 U.S.C. 3701-3719; 5 U.S.C. 5514; 4 CFR parts 101-105; 5 CFR part 550.

Subpart A—Administrative Collection of Claims

§ 1408.1 Authority.

The regulations of this part are issued under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, 31 U.S.C. 3701-3719 and 5 U.S.C. 5514, and in conformity with the joint regulations issued under that Act by the General Accounting Office and the Department of Justice (joint regulations) prescribing standards for administrative collection, compromise, suspension, and termination of agency collection actions, and referral to the General Accounting Office and to the Department of Justice for litigation of civil claims for money or property owed to the United States (4 CFR parts 101-105).

§ 1408.2 Applicability.

This part applies to all claims of indebtedness due and owing to the United States and collectible under procedures authorized by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982. The joint regulations and this part do not apply to conduct in violation of antitrust laws, tax claims, claims between Federal agencies, or to any claim which appears to involve fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, unless the Justice Department authorizes the Farm Credit System Insurance Corporation, pursuant to 4 CFR 101.3, to handle the claim in accordance with the provisions of 4 CFR parts 101 through 105. Additionally, this part does not apply to Farm Credit System Insurance Corporation's premiums regulations under part 1410 of this chapter.

§ 1408.3 Definitions.

In this part (except where the term is defined elsewhere in this part), the following definitions shall apply:

(a) *Administrative offset* or *offset*, as defined in 31 U.S.C. 3701(a)(1), means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Agency* means a department, agency, or instrumentality in the executive or legislative branch of the Government.

(c) *Claim* or *debt* means money or property owed by a person or entity to an agency of the Federal Government. A "claim" or "debt" includes amounts due the Government from loans insured by or guaranteed by the United States and all other amounts due from fees, leases, rents, royalties, services, sales of real or personal property, overpayment, penalties, damages, interest, and fines.

(d) *Claim certification* means a creditor agency's written request to a paying agency to effect an administrative offset.

(e) *Corporation* means the Farm Credit System Insurance Corporation.

(f) *Creditor agency* means an agency to which a claim or debt is owed.

(g) *Debtor* means the person or entity owing money to the Federal Government.

(h) *Hearing official* means an individual who is responsible for reviewing a claim under § 1408.10.

(i) *Paying agency* means an agency of the Federal Government owing money to a debtor against which an administrative or salary offset can be effected.

(j) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deductions at one or more officially established pay intervals from the current pay account of a debtor.

§ 1408.4 Delegation of authority.

The Corporation official(s) designated by the Chairman of the Farm Credit System Insurance Corporation are authorized to perform all duties which the Chairman is authorized to perform under these regulations, the Federal Claims Collection Act of 1966, as amended, and the joint regulations issued under that Act.

§ 1408.5 Responsibility for collection.

(a) The collection of claims shall be aggressively pursued in accordance with the provisions of the Federal Claims Collection Act of 1966, as amended, the joint regulations issued under that Act, and these regulations. Debts owed to the United States, together with charges for interest, penalties, and administrative costs, should be collected in one lump sum unless otherwise provided by law. If a debtor requests installment payments, the debtor, as requested by the Corporation, shall provide sufficient information to demonstrate that the debtor is unable to pay the debt in one lump sum. When appropriate, the Corporation shall arrange an installment payment schedule. Claims which cannot be collected directly or by administrative offset shall be either written off as administratively uncollectible or referred to the General Counsel for further consideration.

(b) The Chairman, or designee of the Chairman, may compromise claims for money or property arising out of the activities of the Corporation, where the claim (exclusive of charges for interest, penalties, and administrative costs) does not exceed $100,000. When the claim exceeds $100,000 (exclusive of charges for interest, penalties, and administrative costs), the authority to accept a compromise rests solely with the Department of Justice. The standards governing the compromise of claims are set forth in 4 CFR part 103.

(c) The Chairman, or designee of the Chairman, may suspend or terminate the collection of claims which do not exceed $100,000 (exclusive of charges for interest, penalties, and administrative costs) after deducting the amount of any partial payments or collections. If, after deducting the amount of any partial payments or collections, a claim exceeds $100,000 (exclusive of charges for interest, penalties, and administrative costs), the authority to suspend or terminate rests solely with the Department of Justice. The standards governing the suspension or termination of claim collections are set forth in 4 CFR part 104.

(d) The Corporation shall refer claims to the Department of Justice for litigation or to the General Accounting Office (GAO) for claims arising from audit exceptions taken by the GAO to payments made by the Corporation in accordance with 4 CFR part 105.

§ 1408.6 Demand for payment.

(a) A total of three progressively stronger written demands at not more than 30-day intervals should normally be made upon a debtor, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demands may be preceded by other appropriate actions under Federal law, including immediate referral for litigation and/or administrative offset.

(b) The initial demand for payment shall be in writing and shall inform the debtor of the following:

(1) The amount of the debt, the date it was incurred, and the facts upon which the determination of indebtedness was made;

(2) The payment due date, which shall be 30 calendar days from the date of mailing or hand delivery of the initial demand for payment;

(3) The right of the debtor to inspect and copy the records of the agency related to the claim or to receive copies if personal inspection is impractical. The debtor shall be informed that the debtor may be assessed for the cost of copying the documents in accordance with § 1408.7;

(4) The right of the debtor to obtain a review of the Corporation's determination of indebtedness;

(5) The right of the debtor to offer to enter into a written agreement with the agency to repay the amount of the claim. The debtor shall be informed that the acceptance of such an agreement is discretionary with the agency;

(6) That charges for interest, penalties, and administrative costs will be assessed against the debtor, in accordance with 31 U.S.C. 3717, if payment is not received by the payment due date;

(7) That if the debtor has not entered into an agreement with the Corporation to pay the debt, has not requested the Corporation to review the debt, or has not paid the debt by the payment due date, the Corporation intends to collect the debt by all legally available means, which may include initiating legal action against the debtor, referring the debt to a collection agency for collection, collecting the debt by offset, or asking other Federal agencies for assistance in collecting the debt by offset;

(8) The name and address of the Corporation official to whom the debtor shall send all correspondence relating to the debt; and

(9) Other information, as may be appropriate.

(c) If, prior to, during, or after completion of the demand cycle, the Corporation determines to collect the debt by either administrative or salary offset, the Corporation shall follow, as applicable, the requirements for a Notice of Intent to Collect by Administrative Offset or a Notice of Intent to Collect by Salary Offset set forth in § 1408.22.

(d) If no response to the initial demand for payment is received by the payment due date, the Corporation shall take further action under this part, under the Federal Claims Collection Act of 1966, as amended, under the joint regulations (4 CFR parts 101–105), or under any other applicable State or Federal law. These actions may include reports to credit bureaus, referrals to collection agencies, termination of contracts, debarment, and salary or administrative offset.

§ 1408.7 Right to inspect and copy records.

The debtor may inspect and copy the Corporation records related to the claim. The debtor shall give the Corporation reasonable advanced notice that he/she intends to inspect and copy the records involved. The debtor shall pay copying costs unless they are waived by the Corporation. Copying costs shall be assessed pursuant to § 1402.22 of this chapter.

§ 1408.8 Right to offer to repay claim.

(a) The debtor may offer to enter into a written agreement with the Corporation to repay the amount of the claim. The acceptance of such an offer and the decision to enter into such a written agreement is at the discretion of the Corporation.

(b) If the debtor requests a repayment arrangement because payment of the amount due would create a financial hardship, the Corporation shall analyze the debtor's financial condition. The Corporation may enter into a written agreement with the debtor permitting the debtor to repay the debt in installments if the Corporation determines, in its sole discretion, that payment of the amount due would create an undue financial hardship for the debtor. The written agreement shall set forth the amount and frequency of installment payments and shall, in accordance with § 1408.12, provide for the imposition of charges for interest, penalties, and administrative costs unless waived by the Corporation.

(c) The written agreement may require the debtor to execute a confess-judgment note when the total amount of the deferred installments will exceed $750. The Corporation shall provide the debtor with a written explanation of the consequences of signing a confess-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation. The statement shall recite that the written explanation was read and understood before execution of the note and that the debtor signed the note knowingly and voluntarily. Documentation of these procedures will be maintained in the Corporation's file on the debtor.

§ 1408.9 Right to agency review.

(a) If the debtor disputes the claim, the debtor may request a review of the Corporation's determination of the existence of the debt or of the amount of the debt. If only part of the claim is disputed, the undisputed portion should be paid by the payment due date.

(b) To obtain a review, the debtor shall submit a written request for review to the Corporation official named in the initial demand letter, within 15 calendar days after receipt of the letter. The debtor's request for review shall state the basis on which the claim is disputed.

(c) The Corporation shall promptly notify the debtor, in writing, that the Corporation has received the request for review. The Corporation shall conduct its review of the claim in accordance with § 1408.10.

(d) Upon completion of its review of the claim, the Corporation shall notify the debtor whether the Corporation's determination of the existence or amount of the debt has been sustained, amended, or canceled. The notification shall include a copy of the written decision issued by the hearing official pursuant to § 1408.10(e). If the Corporation's determination is sustained, this notification shall contain a provision which states that the Corporation intends to collect the debt by all legally available means, which may include initiating legal action against the debtor, referring the debt to a collection agency for collection, collecting the debt by offset, or asking other Federal agencies for assistance in collecting the debt by offset.

§ 1408.10 Review procedures.

(a) Unless an oral hearing is required by § 1408.23(d), the Corporation's review shall be a review of the written record of the claim.

(b) If an oral hearing is required under § 1408.23(d) the Corporation shall provide the debtor with a reasonable opportunity for such a hearing. The oral hearing, however, shall not be an adversarial adjudication and need not take the form of a formal evidentiary hearing. All significant matters discussed at the hearing, however, will be carefully documented.

(c) Any review required by this part, whether a review of the written record or an oral hearing, shall be conducted by a hearing official. In the case of a salary offset, the hearing official shall not be under the supervision or control of the Chairman of the Farm Credit System Insurance Corporation.

(d) The Corporation may be represented by legal counsel. The debtor may represent himself or herself or may be represented by an individual of the debtor's choice and at the debtor's expense.

(e) The hearing official shall issue a final written decision based on documentary evidence and, if applicable, information developed at an oral hearing. The written decision shall be issued as soon as practicable after the review but not later than 60 days after the date on which the request for review was received by the Corporation, unless the debtor requests a delay in the proceedings. A delay in the proceedings shall be granted if the hearing official determines, in his or her sole discretion, that there is good cause to grant the delay. If a delay is granted, the 60-day decision period shall be extended by the number of days by which the review was postponed.

(f) Upon issuance of the written opinion, the Corporation shall promptly notify the debtor of the hearing official's decision. Said notification shall include a copy of the written decision issued by the hearing official pursuant to paragraph (e) of this section.

§ 1408.11 Special review.

(a) An employee subject to salary offset, under subpart C of this part, or a voluntary repayment agreement, may, at any time, request a special review by the Corporation of the amount of the salary offset or voluntary repayment, based on materially changed circumstances such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) To determine whether an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing, and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in an extreme financial hardship to the employee.

(d) The Corporation shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an undue financial hardship on the employee. The Corporation shall notify the employee in writing of such determination, including, if appropriate, a revised offset or payment schedule.

§ 1408.12 Charges for interest, administrative costs, and penalties.

(a) Except as provided in paragraph (d) of this section, the Corporation shall:

(1) Assess interest on unpaid claims;

(2) Assess administrative costs incurred in processing and handling overdue claims; and

(3) Assess penalty charges not to exceed 6 percent a year on any part of a debt more than 90 days past due.

The imposition of charges for interest, administrative costs, and penalties shall be made in accordance with 31 U.S.C. 3717.

(b)(1) Interest shall accrue from the date of mailing or hand delivery of the initial demand for payment or the Notice of Intent to Collect by either Administrative or Salary Offset if the amount of the claim is not paid within 30 days from the date of mailing or hand delivery of the initial demand or notice.

(2) The 30-day period may be extended on a case-by-case basis if the Corporation reasonably determines that such action is appropriate. Interest shall only accrue on the principal of the claim and the interest rate shall remain fixed for the duration of the indebtedness, except, as provided in paragraph (c) of this section, in cases where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, or if the Corporation reasonably determines that a higher rate is necessary to protect the interests of the United States.

(c) If a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the Corporation may assess a new interest rate on the unpaid claim. In addition, charges for interest, administrative costs, and penalties which accrued but were not collected under the original repayment agreement shall be added to the principal of the claim to be paid under the new repayment agreement. Interest shall accrue on the entire principal balance of the claim, as adjusted to reflect any increase resulting from the addition of these charges.

(d) The Corporation may waive charges for interest, administrative costs, and/or penalties if it determines that: (1) The debtor is unable to pay any significant sum toward the claim within a reasonable period of time;

(2) Collection of charges for interest, administrative costs, and/or penalties would jeopardize collection of the principal of the claim;

(3) Collection of charges for interest, administrative costs, or penalties would be against equity and good conscience; or

(4) It is otherwise in the best interest of the United States, including the situation where an installment payment agreement or offset is in effect.

§ 1408.13 Contracting for collection services.

The Chairman, or designee of the Chairman, may contract for collection services in accordance with 31 U.S.C. 3718 and 4 CFR 102.6 to recover debts.

§ 1408.14 Reporting of credit information.

The Chairman, or designee of the Chairman, may disclose to a consumer reporting agency information that an individual is responsible for a debt owed to the United States. Information will be disclosed to reporting agencies in accordance with the terms and conditions of agreements entered into between the Corporation and the reporting agencies. The terms and conditions of such agreements shall specify that all of the rights and protection afforded to the debtor under 31 U.S.C. 3711(f) have been fulfilled. The Corporation shall notify each consumer reporting agency, to which a claim was disclosed, when the debt has been satisfied.

§ 1408.15 Credit report.

In order to aid the Corporation in making appropriate determinations regarding the collection and compromise of claims; the collection of charges for interest, administrative costs, and penalties; the use of administrative offset; the use of other collection methods; and the likelihood of collecting the claim, the Corporation may institute, consistent with the provisions of the Fair Credit Reporting Act (15 U.S.C. 1681, et seq.), a credit investigation of the debtor immediately following a determination that the claim exists.

Subpart B—Administrative Offset

§ 1408.20 Applicability.

(a) The provisions of this subpart shall apply to the collection of debts by administrative [or salary] offset under 31 U.S.C. 3716, 5 U.S.C. 5514, or other statutory or common law.

(b) Offset shall not be used to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility of discovering and collecting such debt.

(c) Offset shall not be used with respect to: (1) Debts owed by other agencies of the United States or by any State or local government;

(2) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1986, as amended, or tariff laws of the United States; or

(3) Any case in which collection by offset of the type of debt involved is explicitly provided for or prohibited by another statute.

(d) Unless otherwise provided by contract or law, debts or payments which are not subject to offset under 31 U.S.C. 3716 or 5 U.S.C. 5514 may be collected by offset if such collection is authorized under common law or other applicable statutory authority.

§ 1408.21 Collection by offset.

(a) Collection of a debt by administrative [or salary] offset shall be accomplished in accordance with the provisions of these regulations, 4 CFR 102.3, and 5 CFR part 550, subpart K. It is not necessary for the debt to be reduced to judgment or to be undisputed for offset to be used.

(b) The Chairman, or designee of the Chairman, may determine that it is feasible to collect a debt to the United States by offset against funds payable to the debtor.

(c) The feasibility of collecting a debt by offset will be determined on a case-by-case basis. This determination shall be made by considering all relevant factors, including the following: (1) The degree to which the offset can be accomplished in accordance with law. This determination should take into consideration relevant statutory, regulatory, and contractual requirements;

(2) The degree to which the Corporation is certain that its determination of the existence and amount of the debt is correct;

(3) The practicality of collecting the debt by offset. The cost, in time and money, of collecting the debt by offset and the amount of money which can reasonably be expected to be recovered through offset will be relevant to this determination; and

(4) Whether the use of offset will substantially interfere with or defeat the purpose of a program authorizing payments against which the offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, the imposition of offset against such a payment may be inappropriate.

(d) The collection of a debt by offset may not be feasible when there are circumstances which would indicate that the likelihood of collection by offset is less than probable.

(e) The offset will be effected 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offset (or Notice of Intent to Collect by Salary Offset if the offset is a salary offset), or upon the expiration of a stay of offset, unless the Corporation determines under § 1408.24 that immediate action is necessary.

(f) If the debtor owes more than one debt, amounts recovered through offset may be applied to them in any order. Applicable statutes of limitation would be considered before applying the amounts recovered to any debts owed.

§ 1408.22 Notice requirements before offset.

(a) Except as provided in § 1408.24, the Corporation will provide the debtor with 30 calendar days' written notice that unpaid debt amounts shall be collected by administrative [or salary] offset (Notice of Intent to Collect by Administrative [or Salary] Offset) before the Corporation imposes offset against any money that is to be paid to the debtor.

(b) The Notice of Intent to Collect by Administrative [or Salary] Offset shall be delivered to the debtor by hand or by mail and shall provide the following information:

(1) The amount of the debt, the date it was incurred, and the facts upon which the determination of indebtedness was made;

(2) In the case of an administrative offset, the payment due date, which shall be 30 calendar days from the date of mailing or hand delivery of the Notice;

(3) In the case of a salary offset:

(i) The Corporation's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full; and

(ii) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) The right of the debtor to inspect and copy the records of the Corporation related to the claim or to receive copies if personal inspection is impractical. The debtor shall be informed that he/she shall be assessed for the cost of copying the documents in accordance with § 1408.7 of this part;

(5) The right of the debtor to obtain a review of, and to request a hearing, on the Corporation's determination of indebtedness, the propriety of collecting the debt by offset, and, in the case of salary offset, the propriety of the proposed repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period). The debtor shall be informed that to obtain a review, the debtor shall deliver a written request for a review to the Corporation official named in the Notice, within 15 calendar days after the debtor's receipt of the Notice. In the case of a salary offset, the debtor shall also be informed that the review shall be conducted by an official arranged for by the Corporation who shall be a hearing official not under the control of the Chairman of the Farm Credit System Insurance Corporation, or an administrative law judge;

(6) That the filing of a petition for hearing within 15 calendar days after receipt of the Notice will stay the commencement of collection proceedings;

(7) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the written request for review unless the employee requests, and the hearing official grants, a delay in the proceedings;

(8) The right of the debtor to offer to enter into a written agreement with the Corporation to repay the amount of the claim. The debtor shall be informed that the acceptance of such an agreement is discretionary with the Corporation;

(9) That charges for interest, penalties, and administrative costs shall be assessed against the debtor, in accordance with 31 U.S.C. 3717, if payment is not received by the payment due date. The debtor shall be informed that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards (4 CFR parts 103 and 104);

(10) The amount of accrued interest and the amount of any other penalties or administrative costs which may have been added to the principal debt;

(11) That if the debtor has not entered into an agreement with the Corporation to pay the debt, has not requested the Corporation to review the debt, or has not paid the debt prior to the date on which the offset is to be imposed, the Corporation intends to collect the debt by administrative [or salary] offset or by requesting other Federal agencies for assistance in collecting the debt by offset. The debtor shall be informed that the offset shall be imposed against any funds that might become available to the debtor, until the principal debt and all accumulated interest and other charges are paid in full;

(12) The date on which the offset will be imposed, which shall be 31 calendar days from the date of mailing or hand delivery of the Notice. The debtor shall be informed that the Corporation reserves the right to impose an offset prior to this date if the Corporation determines that immediate action is necessary;

(13) That any knowingly false or frivolous statements, representations, or evidence may subject the debtor to:

(i) Penalties under the False Claims Act, 31 U.S.C. 3729 through 3731, or any other applicable statutory authority;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority; and, with regard to employees,

(iii) Disciplinary procedures appropriate under 5 U.S.C. chapter 75; 5 CFR part 752, or any other applicable statute or regulation;

(14) The name and address of the Corporation official to whom the debtor shall send all correspondence relating to the debt or the offset;

(15) Any other rights and remedies available to the debtor under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) Other information, as may be appropriate.

(c) When the procedural requirements of this section have been provided to the debtor in connection with the same debt or under some other statutory or regulatory authority, the Corporation is not required to duplicate those requirements before effecting offset.

§ 1408.23 Right to review of claim.

(a) If the debtor disputes the claim, the debtor may request a review of the Corporation's determination of the existence of the debt, the amount of the debt, the propriety of collecting the debt by offset, and in the case of salary offset, the propriety of the proposed repayment schedule. If only part of the claim is disputed, the undisputed portion should be paid by the payment due date.

(b) To obtain a review, the debtor shall submit a written request for review to the Corporation official named in the Notice of Intent to Collect by Administrative [or Salary] Offset within 15 calendar days after receipt of the notice. The debtor's written request for review shall state the basis on which the claim is disputed and shall specify whether the debtor requests an oral hearing or a review of the written record of the claim. If an oral hearing is requested, the debtor shall explain in the request why the matter cannot be resolved by a review of the documentary evidence alone.

(c) The Corporation shall promptly notify the debtor, in writing, that the Corporation has received the request for review. The Corporation shall conduct its review of the claim in accordance with § 1408.10.

(d) The Corporation's review of the claim, under this section, shall include providing the debtor with a reasonable opportunity for an oral hearing if:

(1) An applicable statute authorizes or requires the Corporation to consider

waiver of the indebtedness, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) The debtor requests reconsideration of the debt and the Corporation determines that the question of the indebtedness cannot be resolved by reviewing the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity.

(e) A debtor waives the right to a hearing and will have his or her debt offset in accordance with the proposed offset schedule if the debtor:

(1) Fails to file a written request for review within the timeframe set forth in paragraph (b) of this section, unless the Corporation determines that the delay was the result of circumstances beyond his or her control; or

(2) Fails to appear at an oral hearing of which he or she was notified unless the hearing official determines that the failure to appear was due to circumstances beyond the employee's control.

(f) Upon completion of its review of the claim, the Corporation shall notify the debtor whether the Corporation's determination of the existence or amount of the debt has been sustained, amended, or canceled. The notification shall include a copy of the written decision issued by the hearing official, pursuant to § 1408.10(e). If the Corporation's determination is sustained, this notification shall contain a provision which states that the Corporation intends to collect the debt by offset or by requesting other Federal agencies for assistance in collecting the debt.

(g) When the procedural requirements of this section have been provided to the debtor in connection with the same debt or under some other statutory or regulatory authority, the Corporation is not required to duplicate those requirements before effecting offset.

§ 1408.24 Waiver of procedural requirements.

(a) The Corporation may impose offset against a payment to be made to a debtor prior to the completion of the procedures required by this part, if:

(1) Failure to impose the offset would substantially prejudice the Government's ability to collect the debt; and

(2) The timing of the payment against which the offset will be imposed does not reasonably permit the completion of those procedures.

(b) The procedures required by this part shall be complied with promptly after the offset is imposed. Amounts recovered by offset, which are later found not to be owed to the Government, shall be promptly refunded to the debtor.

§ 1408.25 Coordinating offset with other Federal agencies.

(a)(1) Any creditor agency which requests the Corporation to impose an offset against amounts owed to the debtor shall submit to the Corporation a claim certification which meets the requirements of this paragraph. The Corporation shall submit the same certification to any agency that the Corporation requests to effect an offset.

(2) The claim certification shall be in writing. It shall certify the debtor owes the debt and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met. If the intended offset is to be a salary offset, a claim certification shall instead certify that the debtor owes the debt and that the applicable requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met.

(3) A certification that the debtor owes the debt shall state the amount of the debt, the factual basis supporting the determination of indebtedness, and the date on which payment of the debt was due. A certification that the requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met shall include a statement that the debtor has been sent a Notice of Intent to Collect by Administrative Offset at least 31 calendar days prior to the date of the intended offset or a statement that pursuant to 4 CFR 102.3(b)(5) said Notice was not required to be sent. A certification that the requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met shall include a statement that the debtor has been sent a Notice of Intent to Collect by Salary Offset at least 31 calendar days prior to the date of the intended offset or a statement that pursuant to 4 CFR 102.3(b)(5) said Notice was not required to be sent.

(b)(1) The Corporation shall not effect an offset requested by another Federal agency without first obtaining the claim certification required by paragraph (a) of this section. If the Corporation receives an incomplete claim certification, the Corporation shall return the claim certification with notice that a claim certification which complies with the requirements of paragraph (a) of this section must be submitted to the Corporation before the Corporation will consider effecting an offset.

(2) The Corporation may rely on the information contained in the claim certification provided by a requesting creditor agency. The Corporation is not authorized to review a creditor agency's determination of indebtedness.

(c) Only the creditor agency may agree to enter into an agreement with the debtor for the repayment of the claim. Only the creditor agency may agree to compromise, suspend, or terminate collection of the claim.

(d) The Corporation may decline, for good cause, a request by another agency to effect an offset. Good cause includes that the offset might disrupt, directly or indirectly, essential Corporation operations. The refusal and the reasons shall be sent in writing to the creditor agency.

§ 1408.26 Stay of offset.

(a)(1) When a creditor agency receives a debtor's request for inspection of agency records, the offset is stayed for 10 calendar days beyond the date set for the record inspection.

(2) When a creditor agency receives a debtor's offer to enter into a repayment agreement, the offset is stayed until the debtor is notified as to whether the proposed agreement is acceptable.

(3) When a review is conducted, the offset is stayed until the creditor agency issues a final written decision.

(b) When offset is stayed, the amount of the debt and the amount of any accrued interest or other charges will be withheld from payments to the debtor. The withheld amounts shall not be applied against the debt until the stay expires. If withheld funds are later determined not to be subject to offset, they will be promptly refunded to the debtor.

(c) If the Corporation is the creditor agency and the offset is stayed, the Corporation will immediately notify an offsetting agency to withhold the payment pending termination of the stay.

§ 1408.27 Offset against amounts payable from Civil Service Retirement and Disability Fund.

The Corporation may request that monies payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset to collect debts owed to the Corporation by the debtor. The Corporation must certify that the debtor owes the debt, the amount of the debt, and that the Corporation has complied with the requirements set forth in this part, 4 CFR 102.3, and the Office of Personnel Management regulations. The request shall be submitted to the official designated in the Office of Personnel Management regulations to receive the request.

Subpart C—Offset Against Salary

§ 1408.35 Purpose.

The purpose of this subpart is to implement section 5 of the Debt Collection Act of 1982 (Pub. L. 97–365 (5 U.S.C. 5514)), which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offsets. These regulations provide procedures for the collection of a debt owed to the Government by the imposition of a salary offset against amounts payable to a Federal employee as salary. These regulations are consistent with the regulations on salary offset published by the Office of Personnel Management, codified in 5 CFR part 550, subpart K. Since salary offset is a type of administrative offset, the requirements of subpart B also apply to salary offsets.

§ 1408.36 Applicability of regulations.

(a) These regulations apply to the following cases: (1) Where the Corporation is owed a debt by an individual currently employed by another agency;

(2) Where the Corporation is owed a debt by an individual who is currently employed by the Corporation; or

(3) Where the Corporation currently employs an individual who owes a debt to another Federal agency. Upon receipt of proper certification from the creditor agency, the Corporation will offset the debtor-employee's salary in accordance with these regulations.

(b) These regulations do not apply to the following: (1) Debts or claims arising under the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) Any adjustment to pay arising from an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(3) A claim which has been outstanding for more than 10 years after the creditor agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials charged with the responsibility for discovery and collection of such debts.

§ 1408.37 Definitions.

In this subpart, the following definitions shall apply:

(a) *Agency* means:

(1) An executive agency as defined by 5 U.S.C. 105, including the United States Postal Service and the United States Postal Rate Commission;

(2) A military department as defined in 5 U.S.C. 102;

(3) An agency or court of the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multi-district Litigation;

(4) An agency of the legislative branch, including the United States Senate and the United States House of Representatives; or

(5) Other independent establishments that are entities of the Federal Government.

(b) *Disposable pay* means, for an officially established pay interval, that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. The Corporation shall allow the deductions described in 5 CFR 581.105 (b) through (f).

(c) *Employee* means a current employee of the Corporation or other agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

(d) *Waiver* means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to the Corporation or another agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 1408.38 Waiver requests and claims to the General Accounting Office.

(a) The regulations contained in this subpart do not preclude an employee from requesting a waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office.

(b) These regulations also do not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debts being collected.

§ 1408.39 Procedures for salary offset.

(a) The Chairman, or designee of the Chairman, shall determine the amount of an employee's disposable pay and the amount to be deducted from the employee's disposable pay at regular pay intervals.

(b) Deductions shall begin within three official pay periods following the date of mailing or delivery of the Notice of Intent to Collect by Salary Offset.

(c)(1) If the amount of the debt is equal to or is less than 15 percent of the employee's disposable pay, such debt should be collected in one lump-sum deduction.

(2) If the amount of the debt is not collected in one lump-sum deduction, the debt shall be collected in installment deductions over a period of time not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any pay period will not exceed 15 percent of the employee's disposable pay for that period, unless the employee has agreed in writing to the deduction of a greater amount.

(3) A deduction exceeding the 15-percent disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) Whenever an employee subject to salary offset is separated from the Corporation and the balance of the debt cannot be liquidated by offset of the final salary check pursuant to 31 U.S.C. 3716, the Corporation may offset any later payments of any kind against the balance of the debt.

(d) In instances where two or more creditor agencies are seeking salary offsets against current employees of the Corporation or where two or more debts are owed to a single creditor agency, the Corporation, at its discretion, may determine whether one or more debts should be offset simultaneously within the 15-percent limitation. Debts owed to the Corporation should generally take precedence over debts owed to other agencies.

§ 1408.40 Refunds.

(a) In instances where the Corporation is the creditor agency, it shall promptly refund any amounts deducted under the authority of 5 U.S.C. 5514 when:

(1) The debt is waived or otherwise found not to be owed to the United States (unless expressly prohibited by statute or regulations); or

(2) An administrative or judicial order directs the Corporation to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section shall not bear interest.

§ 1408.41 Requesting current paying agency to offset salary.

(a) To request a paying agency to impose a salary offset against amounts owed to the debtor, the Corporation shall provide the paying agency with a claim certification which meets the requirements set forth in § 1408.25(a) of this part. The Corporation shall also provide the paying agency with a repayment schedule determined under the provisions of § 1408.39 or in accordance with a repayment agreement entered into with the debtor.

(b) If the employee separates from the paying agency before the debt is paid in full, the paying agency shall certify the total amount collected on the debt. A copy of this certification shall be sent to the employee and a copy shall be sent to the Corporation. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with. However, the Corporation must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(c) When an employee transfers to another paying agency, the Corporation is not required to repeat the due process procedures set forth in 5 U.S.C. 5514 and this part to resume the collection. The Corporation shall, however, review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(d) If a special review is conducted pursuant to § 1408.11 and results in a revised offset or repayment schedule, the Corporation shall provide a new claim certification to the paying agency.

§ 1408.42 Responsibility of the Corporation as the paying agency.

(a) When the Corporation receives a claim certification from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The Corporation shall send the debtor written notice which provides: (1) That the Corporation has received a valid claim certification from the creditor agency;

(2) The date on which salary offset will begin;

(3) The amount of the debt; and

(4) The amount of such deductions.

(b) If, after the creditor agency has submitted the claim certification to the Corporation, the employee transfers to a different agency before the debt is collected in full, the Corporation must certify the total amount collected on the debt. The Corporation shall send a copy of this certification to the creditor agency and a copy to the employee. If the Corporation is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, or other similar payments, it shall provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount).

§ 1408.43 Nonwaiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this subpart shall not be construed as a waiver of any rights the employee may have under 5 U.S.C. 5514 or any other provisions of a written contract or law unless there are statutory or contractual provisions to the contrary.

Dated May 3, 1994.

Nan P. Mitchem,

Acting Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 94–11442 Filed 5–12–94; 8:45 am]

BILLING CODE 6710–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AGL–16]

Modification of Class D Airspace; and Establishment of Class E Airspace; Rockford, IL, Cincinnati, OH, Jackson, MI, Saginaw, MI, Traverse City, MI, Sioux Falls, SD, and Rochester, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies Class D airspace areas at Greater Rockford Airport, Rockford, IL, Cincinnati Municipal Airport Lunken Field, Cincinnati, OH, Jackson County-Reynolds Field, Jackson, MI, Tri City International Airport, Saginaw, MI, Cherry Capital Airport, Traverse City, MI, Joe Foss Field, Sioux Falls, SD, and Rochester Municipal Airport, Rochester, MN, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace at these areas when the associated control tower is closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when these control towers are closed.

DATES: *Effective date:* 0901 u.t.c., June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to:

Manager, Air Traffic Division, System Management Branch, AGL–530, Docket No. 94–AGL–16, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Angeline D. Perri, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7571.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "DATES" section. However, after the review of the comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace areas at Greater Rockford Airport, Rockford, IL, Cincinnati Municipal

Airport Lunken Field, Cincinnati, OH, Jackson County-Reynolds Field, Jackson, MI, Tri City International Airport, Saginaw, MI, Cherry Capital Airport, Traverse City, MI, Joe Foss Field, Sioux Falls, SD, and Rochester Municipal Airport, Rochester, MN, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace at these areas when the associated control tower is closed. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at these airports. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. This action also establishes Class E airspace during the hours the control tower is closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when these control towers are closed.

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify these Class D and establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

AGL IL D Rockford, IL [Revised]

Rockford, Greater Rockford Airport, IL
(lat. 42°11'46"N., long. 89°05'38"W.)
Greater Rockford ILS Localizer
(lat. 42°12'36"N., long. 89°05'17"W.)
GILMY LOM
(lat. 42°06'52"N., long. 89°05'55"W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.4-mile radius of the Greater Rockford Airport and within 1.8 miles each side of the Greater Rockford Runway 36 ILS localizer course, extending south from the 4.4-mile radius to the GILMY LOM. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL OH D Cincinnati, OH [Revised]

Cincinnati Municipal Airport Lunken Field, OH
(lat. 39°06'12"N., long. 84°25'07"W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.1-mile radius of Cincinnati Municipal Airport Lunken Field, excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI D Jackson, MI [Revised]

Jackson County-Reynolds Field, MI
(lat. 42°15'35"N., long. 84°27'34"W.)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4-mile radius of Jackson County-Reynolds Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI D Saginaw, MI [Revised]

Saginaw, Tri City International Airport, MI
(lat. 43°31'58"N., long. 84°04'47"W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.8-mile radius of Tri-City International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI D Traverse City, MI [Revised]

Traverse City, Cherry Capital Airport, MI
(lat. 44°44'27"N., long. 85°34'57"W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.4-mile radius of Cherry Capital Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL SD D Sioux Falls, SD [Revised]

Sioux Falls, Joe Foss Field, SD
(lat. 43°34'53"N., long. 96°44'30"W.)

That airspace extending upward from the surface to and including 3,900 feet MSL within a 4.4-mile radius of Joe Foss Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MN D Rochester, MN [Revised]

Rochester Municipal Airport, MN
(lat. 43°54'32"N., long. 92°29'53"W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.2-mile radius of Rochester Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

AGL IL E2 Rockford, IL [New]

Rockford, Greater Rockford Airport, IL
(lat. 42°11′46″N., long. 89°05′38″W.)
Greater Rockford ILS Localizer
(lat. 42°12′36″N., long. 89°05′17″W.)
GILMY LOM
(lat. 42°06′52″N., long. 89°05′55″W.)

Within a 4.4-mile radius of the Greater Rockford Airport and within 1.8 miles each side of the Greater Rockford Runway 36 ILS localizer course, extending south from the 4.4-mile radius to the GILMY LOM. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL OH E2 Cincinnati, OH [New]

Cincinnati Municipal Airport Lunken Field, OH
(lat. 39°06′12″N., long. 84°25′07″W.)

Within a 4.1-mile radius of Cincinnati Municipal Airport Lunken Field, excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI E2 Jackson, MI [New]

Jackson County-Reynolds Field, MI
(lat. 42°15′35″N., long. 84°27′34″W.)

Within a 4-mile radius of Jackson County Reynolds Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI E2 Saginaw, MI [New]

Saginaw, Tri City, International Airport, MI
(lat. 43°31′58″N., long. 84°04′47″W.)

Within a 4.8-mile radius of Tri-City International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI E2 Traverse City, MI [New]

Traverse City, Cherry Capital Airport, MI
(lat. 44°44′27″N., long. 85°34′57″W.)

Within a 4.4-mile radius of Cherry Capital Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL SD E2 Sioux Falls, SD [New]

Sioux Falls, Joe Foss Field, SD
(lat. 43°34′53″N., long. 96°44′30″W.)

Within a 4.4-mile radius of Joe Foss Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MN E2 Rochester, MN [New]

Rochester Municipal Airport, MN
(lat. 43°54′32″N., long. 92°29′53″W.)

Within a 4.2-mile radius of Rochester Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on May 5, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–11718 Filed 5–12–94; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 94–ACE–11]

Establishment of Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This action establishes Class E airspace areas at the Dubuque Regional Airport, Iowa; Sioux City, Sioux Gateway Airport, Iowa; Waterloo Municipal Airport, Iowa; Fort Leavenworth, Sherman Army Air Field, Kansas; Fort Riley, Marshall Army Air Field, Kansas; Hutchinson Municipal Airport, Kansas; Manhattan Municipal Airport, Kansas; Olathe, Johnson County Executive Airport, Kansas; Olathe, Johnson County Industrial Airport, Kansas; Salina Municipal Airport, Kansas; Topeka, Forbes Field, Kansas; and Topeka, Philip Billard Airport, Kansas. Presently, these areas are designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control towers located at these areas are closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rule (IFR) operations when these control towers are closed.

DATES: *Effective date:* 0901 UTC, June 23, 1994. *Comment date:* Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, ACE–500, Docket No. 94–ACE–11, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined at the Office of the Assistant Chief Counsel for the Central Regional Office at the address shown above between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not proceeded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "DATES" section. However, after the review of the comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace areas at Dubuque Regional Airport, Iowa; Sioux City, Sioux Gateway Airport, Iowa; Waterloo Municipal Airport, Iowa; Fort Leavenworth, Sherman Army Air Field, Kansas; Fort Riley, Marshall Army Air Field, Kansas; Hutchinson Municipal Airport, Kansas; Manhattan Municipal Airport, Kansas; Olathe, Johnson County Executive Airport, Kansas; Olathe, Johnson County