Rules and Regulations

Federal Register

Vol. 81, No. 144

Wednesday, July 27, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

12 CFR Parts 650, 651, 653, and 655

RIN 3052–AC89

Federal Agricultural Mortgage Corporation Governance; Standards of Conduct; Risk Management; and Disclosure and Reporting

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) is finalizing new regulations related to the Federal Agricultural Mortgage Corporation's (Farmer Mac or Corporation) risk governance and making enhancements to existing disclosure and reporting requirements. The risk governance regulations require the Corporation to establish and maintain a board-level risk management committee and a risk officer, as well as risk management policies and internal controls. The changes to disclosure and reporting requirements remove repetitive reporting and allow for electronic filing of reports. We also finalize rules on the examination and enforcement authorities held by the FCA Office of Secondary Market Oversight (OSMO) over the Corporation.

DATES: This regulation shall become effective no earlier than 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. The FCA will publish a notice of the effective date in the **Federal Register**.

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

SUPPLEMENTARY INFORMATION:

I. Objective

The purpose of this final rule is to:

- Enhance risk governance at the Corporation to further its long-term safety and soundness and mission achievement;
- Remove repetitious disclosure and reporting requirements, given the dual reporting responsibilities of the Corporation to the FCA and the Securities and Exchange Commission (SEC); and
- Clarify the examination and enforcement authority of FCA.

II. Background

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

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

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

- The purpose for which Farmer Mac was created;
- The practices appropriate to the conduct of secondary markets in agricultural loans; and
- The reduced levels of risks associated with appropriately structured secondary market transactions.[2]

Farmer Mac, as a publicly traded company, is also subject to many of the governance requirements of Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley),[3] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act),[4] and Securities and Exchange Commission (SEC) disclosure regulations for publicly traded companies, all of which address reporting requirements and oversight for publicly held companies and financial institutions. Self-regulatory organizations (SROs), the New York Stock Exchange (NYSE) in the Corporation's case, have also issued requirements designed to enhance the accountability and transparency of corporate business operations.

As a GSE, the Corporation has a public policy purpose embedded in its corporate mission. One aspect of this public policy mission includes financial services to customer-stakeholders (institutions that lend to farmers, ranchers, rural homeowners, and rural utility cooperatives) and the resulting flow-through benefits to rural borrowers. Another key aspect is the protection of taxpayer-stakeholders because the risk that the Corporation accepts in the course of business exposes both investors (debt and equity holders) and taxpayers to potential loss. The taxpayer's exposure arises in part from the Corporation's authority to issue debt to the Department of the Treasury to cover guarantee losses under certain adverse circumstances.[5] Thus, an appropriately comprehensive approach to Board-level risk governance is essential to promote well-reasoned, risk-related decisions and promote public trust in the risk management of the Corporation.

[1] Agricultural Credit Act of 1987 (Pub. L. 100–233, January 6, 1988).

[2] Section 8.11(a)(2) of the Act (12 U.S.C. 2279aa–11(a)(2)).

[3] Public Law 107–204, July 30, 2002.

[4] Public Law 111–203, 124 Stat. 1376, (H.R. 4173), July 21, 2010.

[5] According to the 1987 Act, Farmer Mac may, in certain circumstances, borrow up to $1.5 billion from the U.S. Treasury to ensure timely payment of any guarantee obligations of the corporation.

III. Comments and Our Responses: Section-by-Section Analysis

We issued a proposed rule to amend our standards of conduct, board governance, and reporting regulations for the Corporation on March 26, 2015 (80 FR 15931). The comment period for the proposed rule closed on June 24, 2015, and 77 comment letters were received. The comments submitted were from Farmer Mac, stockholders in Farmer Mac, a consultant to Farmer Mac,[6] an agent of Farmer Mac,[7] the Farm Credit Council (FCC) on behalf of its membership, and a member of the general public. Prior to the proposed rulemaking, we issued an Advanced Notice of Proposed Rulemaking (ANPRM) to solicit opinions and suggestions from investors, stockholders, and other interested parties on ways to enhance our regulation of the Corporation's governance activities.[8]

The 77 comments submitted in response to the proposed rule made various suggestions for changing what we had proposed. Of these commenters, 69 limited their remarks and suggestions to part 651, ''Standards of Conduct.'' Comments to the Standards of Conduct provisions involved both existing and proposed provisions.[9] These comments were significantly different from what was proposed and lacked uniformity in the type of changes sought.

As a GSE, the Corporation has certain strategic objectives that are public policy or ''mission'' oriented. Standards of conduct must be understood and interpreted not only in the context of the fiduciary responsibilities to the Corporation and its shareholders, but also in the context of the statutory duty to further the Congressional purposes the Corporation was chartered to achieve. We believe standards of conduct to be among the most potentially complex and nuanced areas of corporate governance. For this reason, and because of the variety of comments received to this area of the proposed rule, we believe it prudent to address proposed changes and related comments on the more complex components of standards of conduct and board governance regulations in a separate rulemaking. Thus, we are not finalizing in this rulemaking many of the proposed changes to part 651, but instead intend to revisit changes to part 651 in a separate rulemaking.

Proposed changes to parts 650, 653, and 655 are finalized as proposed unless we say otherwise in this preamble. Included in finalized changes is the reorganization of our rules addressing the Corporation's operations through the addition of a new part 653 and organizational revisions to existing parts 650, 651, and 655. We make no changes to part 652 or reserved part 654.

A. FCA Oversight and Rulemaking [Part 650]

Existing part 650 contains general provisions, without subparts, on the supervision of the Corporation. We finalize adding a new subpart A, entitled ''Regulation, examination and enforcement,'' as well as moving existing provisions into a new subpart B, entitled ''Conservators, receivers, and liquidations.'' We finalize the redesignation of existing §§ 650.1 and 650.5 on appointing and removing receivers or conservators as new §§ 650.13 and 650.14, respectively. We make no other changes to these existing provisions.

We discuss comments received to this part and any changes to the appropriate sections below.

1. Part 650 Definitions [New § 650.1]

We finalize as proposed all definitions in new § 650.1. We received no comments objecting to the terms as proposed, but a stockholder-commenter requested we consolidate all proposed definitions for parts 650, 651, 653 and 655 into one section and asked for the term ''agent'' to be defined for part 650. We cannot accommodate either of these requests. We already maintain a global definition section for all our rules in part 619. Maintaining separate definition sections for use only in certain regulations eliminates confusion that may arise from placing terms having specific application for a secondary market along with terms applicable to Farm Credit banks and associations. We recognize that many of the terms for the definition sections we proposed in parts 650, 651, 652, and 655 are duplicative, but their location in the applicable sections avoids confusion with usage of the terms in other regulations. We also cannot accommodate the request to define in part 650 the term ''agent.'' The term ''agent'' as used in part 650 has two different applications: (1) Agents of the Corporation; and (2) agents of FCA. A single definition would not capture the two separate applications of the term, particularly in regards to the existing rules on liquidation and receivership.

2. Regulatory Authority [New § 650.2]

We finalize the addition of new § 650.2, which provides clarity on the situation of the Corporation having FCA as its primary regulator, while also being subject to certain SEC regulatory disclosure requirements. The new § 650.2 identifies FCA as the ''primary regulator'' of the Corporation, possessing examination, enforcement, conservatorship, liquidation, and receivership authority over the Corporation. We finalize this section with one clarifying change made based on comments received. In § 650.2(b), we clarify that our supervisory authority to ensure the Corporation follows laws and regulations relates to compliance with applicable laws and regulations.

There were four commenters to this section: Farmer Mac, the FCC, and two stockholders in Farmer Mac. The FCC expressed strong support for the section clarifying that the Corporation is a GSE with a public mission. The stockholder-commenters also supported the section addressing the public policy purpose of the Corporation. Farmer Mac objected to the provisions on FCA's authority over it, contending that FCA has no authority over compliance with all laws and regulations. Farmer Mac explained that instead FCA is to ensure a dependable source of credit through its examination of the Corporation and regulation of its safe and sound conduct. Farmer Mac also asked us to either remove § 650.2(c) or specify the SEC regulations to which it is subject and exactly mirror language from the Act when describing our role. However, Farmer Mac added objections to our using the language of the Act to describe its relationship with the SEC. In that instance, Farmer Mac asked us to capture the ''nuances of Farmer Mac's regulation by the SEC.'' [10]

We have clarified that the laws and regulations referenced are those applicable to the Corporation. We do not name those laws and regulations as they are subject to change. We also decline the request to include in the rule an analysis of the Corporation's relationship with both FCA and SEC, which is not the intent of the rule. The rule at § 650.2 is identifying us as the primary regulator of the Corporation. As explained in the proposed rule, the

[6] The consultant to Farmer Mac explained it had been hired by Farmer Mac to comment on the proposed rule.

[7] The agent of Farmer Mac explained it had been working as a consultant for Farmer Mac for over a year on specific projects.

[8] 79 FR 10426, February 25, 2014. The comment period for the ANPRM ended April 28, 2014, and seven comment letters were received.

[9] We last issued regulations on Farmer Mac Board governance and standards of conduct on March 1, 1994 (59 FR 9622).

[10] Farmer Mac explained it is not subject to complete regulation by SEC and, except for certain mortgage-backed securities, it is not subject to the 1933 Securities Act and must only file reports under the 1934 Securities Exchange Act. Farmer Mac comment letter, Appendix B, pages B–2 and B–27.

discussions Congress had surrounding passage of the Dodd-Frank Act recognized the long-standing situation where financial institutions are required to comply with various Federal financial laws and regulations issued and enforced by several banking regulators, although only one regulator is the primary regulator. We did modify the language of § 650.2(c) to add clarity and removed reference to the NYSE based on the comments received.

Farmer Mac asked that we add language in § 650.2(a) for USDA-guaranteed loans sold into the secondary market. The Corporation has established a secondary market for the guaranteed portions of USDA-Farm Service Agency guaranteed Farm Ownership and Operating Loans and USDA-Rural Development Guaranteed Business and Industry, Community Facility and Water and Environmental Program loans.[11] As noted by Farmer Mac, we are identifying the statutory purposes of the Corporation, we are not enumerating all of Farmer Mac's business programs. However, we have added language referencing USDA-guaranteed loans.[12]

3. Supervision and Enforcement [New § 650.3]

We finalize adding a new § 650.3 to incorporate into our regulations the supervision and enforcement authorities over the Corporation that are given us under the Act. Our enforcement authorities provide reasonable assurance that, among other things, the Corporation is adequately capitalized and operating safely. We finalize this section with clarifying changes made based on comments received.

There were six commenters to this section: Farmer Mac, the FCC, three stockholders in Farmer Mac, and an agent of Farmer Mac. Three commenters objected to agents being subject to FCA's enforcement authorities. Sections 5.25 and 5.26 of the Act specify that agents of a System institution are subject to our enforcement authorities and Farmer Mac is identified as a System institution in section 8.1(a)(2) of the Act. It is these provisions we relied upon when proposing the provision so we decline to make changes based on the comments. Two of the stockholder-commenters remarked that financial safety and soundness oversight should include making the Corporation subject to the Basel III capital standards. We decline to make changes to our rules in response to these comments. The existing rules addressing the Corporation's capital requirements already incorporate appropriate Basel capital standards, as well as analogous standards of other U.S. regulators.

Farmer Mac asked for the entire section identifying our enforcement authorities to be removed or that we directly quote the Act when identifying those authorities, using no further interpretation of the statutory language. We are directed by section 5.17(a)(9) of the Act to issue regulations necessary or appropriate for the implementation of the Act's provisions, which involves more than a recitation of the Act. Farmer Mac also asked that we provide a specific ''exhaustive list'' of our enforcement authorities. We likewise decline this request as our enumerated enforcement authorities may be amended by Congress or court interpretations. Further, we do not agree with Farmer Mac's interpretation of our authorities and decline to make changes to the rule based on its analysis. Farmer Mac also stated that our safety and soundness authority should not be viewed to include addressing board committees, director elections, or recordkeeping activities of the Corporation. Again, our oversight of the safe and sound operations of the Corporation necessitates that we consider the Corporation's board operations and the records of its decision-making analysis and financial condition.[13]

Farmer Mac objected to § 650.3(b) referencing when the Corporation engages in activities having ''excessive risk,'' arguing the term is undefined. Farmer Mac stated that all of its activities involve risk and the provision would allow FCA to restrict these activities and substitute our judgment on how to run the Corporation. However, Farmer Mac acknowledged section 8.37 of the Act uses the term ''excessive risk''. Farmer Mac also objected to separating risk from its impact on capital and suggested objective, measureable standards be set for risk levels. In § 650.3(b), we clarify that risks having adverse impact to capital, which may lead to certain enforcement actions, generally refers to the adequacy of the Regulatory Capital level maintained by the Corporation.

4. Access to Records and Personnel [New § 650.4]

There were three comments objecting to the inclusion of agents in this section: Farmer Mac, a stockholder in Farmer Mac, and an agent of Farmer Mac. The agent who commented objected to classifying certain types of professional assistance received by the Corporation as an agency relationship, contending that FCA has no authority over certain types of agents (*e.g.* consultants, vendors), while the stockholder commented that the penalties were burdensome. Farmer Mac objected to being required to make its agents available to our examination staff. Farmer Mac contended that FCA does not have jurisdiction over all agents of the Corporation, as would be covered by the existing part 651 definition of ''agent.''

We finalize this section with one change based on comments received. In § 650.4(b), we replace the word ''agents'' with a more detailed explanation of the personnel required to be available to us when requested, which includes those engaged by the Corporation to participate in the business conducted by the Corporation. For example, during an examination it may be necessary for our exam staff to speak with the External Auditor. The Act specifies that directors, officers, employees, agents, and ''other persons participating in the conduct of the affairs'' [14] of a System institution are subject to our examination and enforcement authorities.[15] We relied on this language when developing the clarification for this final rule. We believe the clarifying language addresses the comments regarding certain ''vendor-type'' service providers. We also point out that the part 651 definition of ''agent'' is restricted to the provisions in part 651 and does not carryover to part 650. Also, the stockholder-commenter objecting to the ''penalties'' listed in this section spoke in error, as there are no ''penalties'' identified in § 651.4. Notwithstanding this, we believe this comment is adequately addressed in our earlier discussion of our enforcement authorities, which explains the ''penalties'' identified in § 650.3 are derived from the Act.

Farmer Mac also asked us to limit our access to Corporation documents to non-confidential items. In addition, Farmer Mac asked that there be a materiality and document age threshold controlling which documents and personnel we could access during our

[11] Under the Farmer Mac 2 program, Farmer Mac's subsidiary, Farmer Mac II LLC, buys guaranteed portions directly from lenders. The original lenders retain the unguaranteed portions of these loans and continue to service the entire loan.

[12] *Refer to* section 8.0(9) of the Act, defining ''qualified loans''.

[13] *See* section 8.11(a)(1)(B) of the Act authorizing OSMO ''general supervision of the safe and sound performance of the powers, functions, and duties vested in the Corporation''.

[14] *See, for example,* section 5.32(a) of the Act.

[15] *Refer to* section 8.11(b)(3) of Act (12 U.S.C. 2279aa–11).

examination and enforcement activities. We decline Farmer Mac's suggestions regarding the scope of our access to corporate documents. As the safety and soundness regulator, we require full access to the Corporation's records.[16] In accessing these records, our activities are already covered by confidentiality provisions in Federal law.[17] Further, we view the act of our requesting the records or access to personnel as establishing the ''materiality'' to our oversight. We could not permit the Corporation to pre-screen records before release to us in order for Farmer Mac to, on its own, determine if a record is material or not for our purposes. Likewise, we cannot provide full oversight if we restrict our access to a finite period of time. It may be that the matter under review exceeds that period of time, or records within that time period make key reference to other, older records.

5. Reports of Examination and Criminal Referrals [New §§ 650.5 and 650.6]

We finalize as proposed the addition of new §§ 650.5 and 650.6, containing cross-citations to existing regulatory provisions regarding access to FCA Reports of Examination and the Corporation's obligation to make criminal referrals in certain circumstances. We received no comments to these two sections. We believe these cross-cites clarify the applicability of these provisions to the Corporation, and thereby facilitate compliance with them.

B. Farmer Mac Corporate Governance [Part 651]

Part 651 contains the existing corporate governance provisions for Farmer Mac, without subparts. As explained earlier in this preamble, this final rule does not include many of the proposed changes to part 651 since we intend to revisit part 651 in the future. Although we received many comments on the contents of part 651, no comments opposing the proposed organizational changes were made and, therefore, we finalize them as proposed. Specifically, we finalize the addition of a new subpart A, entitled ''General,'' a new subpart B, entitled ''Standards of Conduct,'' and a new subpart C, entitled ''Board Governance.'' We also finalize as proposed the movement of the existing provisions of part 651 into the relevant subparts and adding new sections in reserve for future rulemaking. We discuss other final changes to part 651, and the comments received related to the changed provisions, in the appropriate sections below.

1. Part 651 Definitions [New Subpart A; Existing § 651.1]

We finalize the proposed revisions to our definitions in existing § 651.1, with two changes based on comments received. We are changing the term ''potential conflict of interest'' to ''conflict of interest'', while finalizing the definition as proposed. Two stockholder-commenters pointed out the definition covered both material and potential conflicts of interest and that we had no general definition for the term ''conflict of interest.'' We agree with the commenters that the definition defined conflicts of interest in general so should be identified as such.

We are also modifying the definition for ''reasonable person'' by removing the phrase ''based on societal requirements for the protection of the general interest.'' The proposed definition for the term ''reasonable person'' was based on general use of the term in conflict-of-interest proceedings and substantially resembled the legal meaning of the term. However, comments from Farmer Mac and a consultant of Farmer Mac objected to the phrase ''societal requirements'', arguing it was not part of the Model Business Code. One of these commenters also stated the term should be defined in a manner that directed attention to the Corporation's activities, not the public at large.

We do not agree with the commenters in this regard. As one commenter acknowledged, corporate governance allows consideration of the public impact of corporate behavior. In addition, the Corporation is a GSE with a public policy purpose and has directors appointed by the President of the United States to represent the public's interests in the operations of the Corporation. While we disagree with the reasons given by the commenters, we are removing the phrase ''based on societal requirements for the protection of the general interest'' from the definition for ''reasonable person'' as we believe the remaining language allows for addressing public concerns; specifically, the use of ''average level of care.'' We recognize that these same two commenters also objected to using an average level of care measurement when defining ''reasonable person'', arguing it expanded the Corporation's activities to include consideration of the general public and not just stockholders. We agree that using an average level of care standard could involve consideration of the public, but unlike the commenters, we do not view that as a difficulty. We also do not agree with comments that the phrase ''average level of care'' in the definition for ''reasonable person'' under our conflict of interest rules expands the mission of the Corporation. Instead, we believe it emphasizes the scope of the Corporation's impact. As explained earlier, the Corporation has a statutory public policy purpose and public representatives on its board of directors. We believe retaining the ''average level of care'' language in the definition for ''reasonable person'' is appropriate.

Farmer Mac and stockholders in Farmer Mac commented on the term ''material'', asking that we delete the definition. Farmer Mac commented that the definition was appropriate for most of part 651, but stated concerns with how the term would work with securities regulations, which have a different definition for the term. Farmer Mac specified its concern was focused on proposed § 651.24. Stockholder-commenters remarked that the term ''material'' does not carry the same meaning or standard applied to other System institutions. These commenters made particular note of a separate proposed rulemaking affecting Farm Credit banks and associations, but not Farmer Mac.[18] These commenters argued there is no reason for a different standard among System institutions. As we are not finalizing in this rulemaking the proposed contents of § 651.24, we are not deleting the term ''material'' and note that the term is an existing term in our rules. We also do not consider it appropriate at this time to substitute the existing definition with one that has only been proposed in a separate rulemaking intended for Farm Credit banks and associations.

Farmer Mac asked that we remove the existing definition of ''agent'' from § 651.1, while three stockholder-commenters and an agent of Farmer Mac objected to agents being included in the rule at all, arguing that the existing definition was too broad in its application. Farmer Mac also stated the existing definition was too broad and exceeds the scope of FCA authority. We also received a call from a member of the general public asking about the definition and suggesting it may be problematic for dual compliance with both FCA and SEC requirements. The definition is an existing term that has been in our rules for over 20 years and we proposed no changes to it. Commenters offered no examples of difficulties that had been encountered in that time and did not express past

[16] *See* section 8.11(b)(3) of Act (12 U.S.C. 2279aa–11(b)(3)).

[17] *Refer to* 5 U.S.C. 552(b)(8). *See also* 12 CFR 602.2.

[18] 79 FR 9649 (April 3, 2014).

compliance difficulties with the existing rule. As we proposed no changes to the existing term ''agent,'' we decline to make any in this final rulemaking. However, we may reconsider the issue when revisiting part 651 in the future.

A stockholder-commenter remarked that the term ''officer'' seemed to exclude risk officers and asked if that was intentional on our part. We reviewed the existing term ''officer'', to which we had proposed no changes, and agree that it could result in the risk officer not being included in the definition. However, that would depend on whether the Corporation makes the risk officer a vice president. If not, then the risk officer would be covered by the definition of ''employee'' instead of ''officer.''

2. Standards of Conduct [New Subpart B]

We finalize moving existing § 651.4 to new subpart B and redesignating it as new § 651.24. This section addresses director, officer, employee, and agent responsibilities. We finalize adding new §§ 651.21 and 651.25 under subpart B, but with no content, in reserve for future rulemaking.

a. Conflicts-of-Interest Policy [New § 651.22, Existing §§ 651.1(i) and 651.2]

We finalize the proposed movement of the existing § 651.2 contents, regarding conflict-of-interest policies, to new subpart B and redesignating it as new § 651.22. We are reserving § 651.2, with no content, for future rulemaking. Also, we finalize some amendments to the existing contents of redesignated § 651.22 and make two clarifying changes. Other proposed changes to the contents of this section are not being finalized in this rulemaking.

We finalize moving the list of imputed interests currently contained in the existing § 651.1(i) definition of a ''potential conflict-of-interest'' to this section (thereby removing it from the definition) as we received no comments on this proposed action. We also finalize the proposed revisions to the list of imputed interest, as they also received no comments: removing highly specific relationships such as ''spouse'' and ''child'' and replacing them with language to address all persons residing in the household or who are otherwise legal dependents. These changes are premised on the ever-evolving understanding of what is considered a family, as well as intended to address non-residential dependents whose activities and interests may create a conflict-of-interest for a director, officer, or employee. We make two clarifying changes to the list of imputed interest: A person's general partner refers to a business partner and employment arrangements include both current and prospective employment.

b. Conflicts-of-Interest Reporting and Disclosure [New § 651.23, Existing § 651.3]

We finalize moving existing § 651.3 to new subpart B and redesignating it as new § 651.23. This section addresses implementation of the conflict-of-interest policy. Farmer Mac offered comments on the existing language of this section, asking that the separate disclosure categories be removed. The rule currently requires Farmer Mac to provide its conflict of interest policy to its shareholders, investors, and potential investors when requested. Farmer Mac posed that these parties can obtain the policy from the Corporation's Web site or SEC filings so the provision should be removed. Farmer Mac did not state that this service could not continue to be provided, nor assert that the volume of requests was so high as to create a burden. We decline to remove this existing requirement as we continue to believe the Corporation should strive to accommodate requests from its shareholders, investors and, most especially, potential investors for copies of the policy.

c. Agents and Conflicts-of-Interest [Existing § 651.1 Through 651.4]

Farmer Mac, a stockholder in Farmer Mac, and an agent of Farmer Mac asked that we remove references to ''agents'' from the existing rule. Some of these commenters remarked that agents should not be treated the same as directors, officers, and employees. Others argued that monitoring agent conduct is burdensome, may deter agents from working for the Corporation, and was contrary to standard contractual agreements with agents. The agent stated that consultants and advisors were not intended by Congress to be subject to our regulatory or examination authority. The stockholder-commenter added that we should instead rely on the Corporation's existing practices regarding monitoring agent behavior.

Congress gave us certain enforcement authorities for agents of Farm Credit institutions.[19] We also note that agents have been a part of the existing conflict-of-interest rule for over 20 years. No commenter provided support to demonstrate that the Corporation has had difficulty in all those years obtaining the services of agents because of the existing standards of conduct regulations. We decline to remove agents from part 651 as part of this final rulemaking. However, we may reconsider the issue in the future when revisiting part 651.

3. Board Governance—Committees [New Subpart C]

We finalize adding new §§ 651.30, 651.35, and 651.40 under subpart C, but with no content, in reserve for future rulemaking. We also finalize adding a new § 651.50 on board committees. The new § 651.50 addresses the relationship between the entire board and its committees, requires certain committees, and establish minimum operational requirements for board committees (*e.g.,* charters, meeting minutes). We received comments from Farmer Mac and its consultant on this section and make four changes based on those comments: (1) We specify charter requirements apply to required committees; (2) we clarify that charters are approved by the full board; (3) we are not finalizing the requirement that each type of director serve on each committee; and (4) we clarify that an agenda may be informal, such as a list of issues under discussion.

a. Committee Charters [New § 651.50]

In general, Farmer Mac objected to any regulation of board committees. Farmer Mac asked that we change the requirement for all committees to be chartered, explaining often ad hoc committees are used in the Corporation's business and allowing committees to develop their own charters may be a transfer of board authority. The proposed provision stated that the Corporation's board is the body approving the charter, not the committee. However, we clarify in § 651.50(c) that the committees develop the charters, but those charters are not effective unless approved by action of the full board. In addition, we intended the provision to apply to standing committees of the Corporation, so have modified the rule to clearly limit the charter requirements to those committees required to exist by regulation (*i.e.* audit, risk, compensation and corporate governance committees). We also made conforming changes elsewhere in this section to clarify that the committee provisions apply to these same ''required'' committees.

Both commenters objected to the provision in § 651.50(a) that use of a board committee does not relieve board members of their legal responsibilities. The commenters stated that delegations to committees are permitted and the

[19] *See* sections 5.25, 5.26, and 5.32 of the Act. *See also* sections 5.17(a)(9) and (10), 5.19 and 8.11 of the Act.

provision was unnecessary. In paragraph (a) of new § 651.50, we proposed regulatory language clarifying that the entire board remains accountable for committee actions. In directing the Corporation, the board of directors may rely on reports from board committees, but doing so does not relieve the board of final responsibility. While activities and tasks may be delegated to a committee, the fact that a committee handles some board responsibilities does not relieve the board of its legal liabilities for such, nor does it relieve the board of the ultimate responsibility for those activities or tasks. Therefore, we decline to make changes to § 651.50(a).

b. Committee Composition

We received comments from Farmer Mac and its consultant on § 651.50, both objecting to the proposed requirement that each committee have representation from the three types of directors serving on the Corporation board (Class A elected, Class B elected, and appointed). The commenters stated the provision may result in conflicts of interest, unqualified directors serving on committees, and create division on the board. Commenters offered no support for the named concerns, but we consider this issue to be among those we plan to review when we revisit part 651 in the future. As a result, we are not finalizing in § 651.50(c) the requirement that each committee have representation from the three types of directors serving on the Corporation board. In conformance with this, we also remove the proposed paragraph designations in paragraph (c).

Farmer Mac and its consultant also objected to limiting the number of committees a director may chair. We proposed in § 651.50(c) that no director may serve as chair of more than one committee. The commenters stated that this was an unnecessary restriction. We decline to change this limitation based on comments received. We believe this limitation is necessary, as it reasonably distributes responsibilities among individual members of the board. We also believe that too great a concentration of responsibilities among too few directors would detract from the board's overall effectiveness and may create potential, and unnecessary, safety and soundness concerns.

c. Committee Agendas

Farmer Mac objected to the § 651.50(d) requirement that board committees have agendas for their meetings. Farmer Mac explained that some ad hoc meetings occur with no prior planning, making development of an agenda impossible. We appreciate that a situation like the one described may occur and have modified the rule to allow for an equivalent list of issues under discussion to be part of the meeting minutes in lieu of an agenda.

C. Risk Management [Part 653, No Subparts]

We finalize adding a part 653, with no subparts, to address risk management within the Corporation. In doing so, we remove proposed references to ''risk tolerance'' throughout part 653, while retaining references to risk-appetite, as we determined the term ''risk-appetite'' encompassed risk tolerance consideration. We received comments from Farmer Mac, stockholders of Farmer Mac, and the FCC to this part and discuss them, and any changes, in the appropriate sections below.

1. General [New § 653.2]

We received comments from Farmer Mac, the FCC, and stockholders in Farmer Mac on new § 650.2, which addresses general board-level risk management matters. Farmer Mac expressed agreement with requiring its board to be actively involved in the Corporation's risk framework, but considered it unreasonable to expect it to ''ensure'' all risk-taking is safe and sound. Farmer Mac asked that it be allowed to address its ''risk appetite'' by areas, such as liquidity risk or operational risk, instead of one unified assessment, explaining that the risk committee's role represents the intersection of oversight of all risk areas. We generally expect functional area specialists (*e.g.*, finance committee, credit committee, marketing committee) to evaluate risk in terms of the specialized responsibilities of those operational areas. While we view that as generally appropriate for day-to-day risk management, it is nevertheless important that the entire board consider risks from all areas when conducting its enterprise-wide monitoring and oversight. For that reason, the risk committee is expected to evaluate risks from the level of the Corporation, rather than the functional area. To borrow a description from the Treadway Commission,[20] we believe the risk committee aims to strike an optimal balance between growth and return goals while attempting to optimize deployment of resources toward the entity's objectives.

In the same way, we view the risk officer as playing a role that represents the intersection of risks across functional area managers. We view the risk officer's role to involve monitoring the balance of risk across all functional areas and, as needed, recommending adjustments to re-balance the enterprise-wide risk profile in a manner consistent with the board-approved risk appetite. This role does not eliminate risk management responsibility from other members of the Corporation's management team. If a functional area manager knows that his or her performance will be evaluated on the basis of the productivity of that area, the manager's focus on that area's performance could become out of proportion to the impact of that effort on the Corporation's enterprise-wide risk position. The risk officer would then serve as a means of alerting senior management and the board of the potential impact that functional area managers' activities and positions may have on the Corporation at the enterprise-wide level. This should enable appropriate actions and strategies to be evaluated and taken when functional area risk taking exceeds the overall risk appetite of the board.

The FCC and two stockholder-commenters agreed with requiring the Corporation's board to be actively involved in the Corporation's risk framework, but wanted it expanded to include capital considerations. These stockholder-commenters added that the requirement was not preventative enough as the Corporation's board should be required to approve risk-bearing capacity and consider the Corporation's public policy mission as well as capital adequacy. A third stockholder-commenter remarked that the part 653 requirements were not unreasonable, but better suited to non-regulatory guidance. This stockholder-commenter explained that the science of risk management is an emerging area, subject to rapid changes, so placing risk management requirements within a rule may hinder the Corporation's ability to keep pace with best practices in risk management.

We are replacing the term ''ensure'' with the phrase ''provide reasonable assurance'' when discussing risk-taking activities in response to comments. We also add as a clarifying change that the requirement to monitor risk activities is expected to be on a regular basis. We make no other changes to new § 653.2. While we appreciate the comment regarding the evolving nature of risk management, we believe it appropriate to establish an essential risk management structure within regulation and then supplement the rules with the suggested informal guidance if

[20] ''Enterprise Risk Management—Integrated Framework'', Executive Summary, Committee of Sponsoring Organizations of the Treadway Commission, September 2004.

necessary. We also make no changes in response to comments asking that part 653 address risks associated with capital. We already address risks to capital in § 652.61, where we require the Corporation's board to approve the annual capital plan, which must comply with the board's risk appetite.

2. Risk Management [New § 653.3]

We finalize, with changes, new § 650.3, which contains the minimum required risk management program activities of the Corporation. We received comments to this section from Farmer Mac, the FCC, and three Farmer Mac stockholders. We discuss the comments, and any changes, in the appropriate sections below.

a. Risk Management Program [New § 653.3(a)]

We are making the following changes to new § 653.3(a), which requires the Corporation's board of directors to have a risk management program:

- Replacing the phrase ''in effect at all times'' in the introductory language of paragraph (a) with the more measurable standard ''establish, maintain, and periodically update'' the risk management program;
- Removing the language ''addresses the Corporation's exposure to credit, market, liquidity, business, and operational risks'' in paragraph (a)(3) as it is redundant of language contained § 653.3(b)(2);
- Adding language in paragraph (a) to recognize that implementation of the risk management program may be handled by senior management; and
- Adding language to clarify that the list of requirements in new § 653.3(a) are the minimum.

In furtherance of these clarifications, we remove the proposed paragraph (a)(4) requirement that the risk management policy specify the independence of those carrying-out the program.

We received comments to new § 650.3(a) from the FCC agreeing with the provision, but expressing concern that there was insufficient distinction between risks in the System and risks faced by the Corporation. The FCC asked that ''casual'' references linking the Corporation to the System be eliminated and that we specify the Corporation is a separate GSE from the System. In response, we clarify in this preamble that the Corporation is an institution of the Farm Credit System, but is not liable for any debt or obligation of any other System institution, and the other System institutions have no liability for Farmer Mac's debt. Also, Farmer Mac is organized as an investor-owned corporation, not a member-owned cooperative as are other System institutions, and the Farm Credit System Insurance Corporation does not insure Farmer Mac's securities.

Farmer Mac remarked that the board does not often involve itself in day-to-day risk decisions: That is more properly handled by senior management. As mentioned above, we have made clarifying changes to recognize that daily implementation of the risk management program may reside with senior management. Two stockholder-commenters stated agreement with the risk management provisions, but asked that we expand them to include risk-bearing capacity and require management of the Corporation's capital to be consistent with Basel III. We have previously responded to their comment. These commenters also asked that OSMO provide further guidance to the Corporation on specific risk tolerance measures and for OSMO to closely monitor the program to ensure it is implemented in an effective manner. As noted, FCA may provide for the guidance on risk management as part of its oversight of this area. These stockholder-commenters objected to the § 653.3(a) provision requiring risk management to include consideration of compensation practices and asked for the provision to be removed. We believe the incentive structures related to functional area managers' performance and risk-taking activities, referred to in our earlier response to comments on § 653.2, includes incentive compensation policies and practices and that the Corporation's enterprise-wide risk management oversight would be incomplete without such consideration.

b. Risk Committee [New § 653.3(b)]

We received comments from Farmer Mac and two Farmer Mac stockholders on new § 653.3(b), which addresses the responsibilities of the risk committee. The stockholder-commenters agreed in general with the provisions, but asked that they more closely resemble the requirements for other GSEs, including System institutions. We note that we do not currently require other System institutions to have risk committees and so cannot accommodate the request of those commenters asking for consistency among System institutions. Also, we note that the Corporation is of a different structure than other System institutions, necessitating some different risk management aspects. However, we did consider the provisions of the recent risk management rulemaking by the Federal Housing Finance Agency (FHFA).[21]

Farmer Mac asked that we use the same experience requirement for the risk committee as is used for the risk officer since it could be difficult to ensure a risk expert is always elected to the board. For the same reason, Farmer Mac asked that we change the committee responsibilities to a level of understanding of risk rather than possession of expertise. We agree and substitute in new § 653.3(b)(1) the phrase ''an understanding of'' and remove the proposed ''expertise'' requirement when talking about the requirement that the risk committee have at least one member who is familiar with risk management. We also make changes in new § 653.3(b) to replace the requirement that the risk committee be responsible for the oversight of the risk management program, as that responsibility rightfully belongs to the entire Corporation board. In its place, we require the risk committee to assist the Corporation board in overseeing the risk management program. We believe it is essential that the tone of the Corporation's risk culture and its procedures for risk decision-making be set by the Board, even when based on management's recommendations. Further, the board of directors play a critical role in the ongoing oversight of, and cohesive implementation of, operational strategies and plans that conform to established risk appetites.

We also replaced the proposed requirement in paragraph (b)(2)(i) that the risk committee oversee and document risk management activities with a requirement to periodically assess management's implementation of the risk management program. Similarly, we remove the proposed review requirement of paragraph (b)(2)(ii) and clarify that risk committee recommendations relate to changes to the risk management program. We also clarify in paragraph (b)(2)(iii) that the risk committee's receipt of reports from Corporation staff is not limited to the risk officer. We recognize that any personnel responsible for implementing the risk management program may be tasked by Farmer Mac with offering reports to the risk committee.

We are making technical changes in new § 653.3(b) to align language with that contained in other sections (*e.g.*, replacing ''risk management practices'' with ''risk management program'', replacing ''risk profile'' with ''risk appetite''). We also remove language redundant of that contained in new

[21] 80 FR 72327, December 21, 2015.

§ 651.50 regarding formation of the risk committee. As referenced in the discussion of § 651.50 (preamble section III.B.3.), we are finalizing the requirement that the Corporation have a risk management committee so do not need to state in § 653.3(b) that the risk committee must be formed.

c. Management of Risk [New § 653.3(c)]

We received comments from Farmer Mac and two Farmer Mac stockholders on new § 653.3(c), which requires the Corporation to have a risk officer. The stockholder-commenters agreed in general with the need for a risk officer, but stated that FCA should not require it as FCA should not make staffing decisions within a System institution. These commenters also contended that requiring a risk officer offers no assurance, from a safety and soundness perspective, of compliance with risk management policies. The stockholder-commenters asked that the entire paragraph be removed. Farmer Mac commented on the use of the term ''experience'' versus ''expertise'', asking for similar use for both the risk committee and the risk officer. Farmer Mac explained that using different terms implied different expectations regarding the background of the risk officer versus the risk committee expert. Farmer Mac also asked that the standard be an understanding of risk issues and not direct experience in risk issues to facilitate recruitment. Finally, Farmer Mac asked for a 1-year phase in to fill the position.

We earlier addressed most of Farmer Mac's comment regarding the level of expertise required in § 653.3(b). In response to remaining comments, we are changing the name of paragraph (c) from ''Risk Officer'' to ''Management of risk'' and making conforming changes to reference a ''risk officer, however styled'' so as to encompass other personnel responsible for implementing the risk management program. We also remove specific reporting requirements to ''the chief executive officer and board risk committee'' in new § 653.3(c)(4) and (5) to recognize that Farmer Mac will exercise its own discretion in designing a risk management position(s). We decline to reduce the level of experience for risk officers to a mere understanding of risk and have retained the requirement for experience in risk management. We are not delaying the effective date of this rule as requested by Farmer Mac to facilitate the Corporation having a risk officer in place before the rule is effective. Should the Corporation encounter difficulties in having a risk officer in place after this rule is effective, Farmer Mac should contact the Director of OSMO.

3. Internal Controls [New § 653.4]

We received comments on new § 653.4 from Farmer Mac and two Farmer Mac stockholders. Farmer Mac asked that we remove the entire section on internal controls, stating the Corporation's internal control activities under SEC regulations are sufficient. Farmer Mac then asked us to mirror SEC regulation if we retained the provision or make the following changes to it: remove the term ''ensure'', incorporate more flexibility, and avoid expanding the role of the directors. Farmer Mac also asked for clarification on paragraph (b)(6) regarding information reported to the board of directors, as it considered the provision to be vague.

We decline the request to remove the entire section requiring internal controls. We continue to believe that the Corporation's board oversight of internal controls is a critical component of its responsibility for monitoring corporate activities and providing reasonable assurances that the controls will prevent excessive risk taking, mitigate operational risks, and minimize the potential for unsafe and unsound activities. The corporate environment is influenced by management's philosophy, operating style, integrity, ethical values, and commitment to competence. If this foundation is strong, if the corporate environment is positive, the overall system of internal controls will be more effective. Further, a sound system of comprehensive and integrated internal controls is vital to the operations of any organization and especially those whose business is taking financial risk. In the more than two decades since the Corporation was chartered, business and operational environments have become significantly more complex and technology-driven. A system of internal controls should dynamically respond to such changes in complexity—not just in business unit operations but also in compliance with increasingly complex laws, regulations, and industry standards. We also decline to rely solely on the internal control assessment the Corporation prepares for the SEC since that assessment is targeted at financial reporting issues, pursuant to provisions in the Sarbanes-Oxley Act.[22] As a safety and soundness regulator, our interest in internal controls extends beyond preparation of financial report. While we believe effective financial controls reduce the risk of asset loss and help ensure that financial information is complete and accurate, and agree that financial statements need to be reliable and comply with laws and regulations, we also believe safety and soundness internal controls extend to the operations, programs, and resources of the Corporation. We are, however, making some changes based on the comments. We change paragraph (a) to clarify the expected internal controls are safety and soundness controls over the Corporation's operations, programs, and resources. We also remove the ''ensure'' language from paragraph (a), to which a commenter objected. Also, we are substituting the requirement in paragraph (b)(6) for ''transparency'' with the Corporation's board in response to a comment. We instead require that internal controls address ''the completeness and quality'' of information shared with the Corporation's board.

Farmer Mac also asserted that requiring it to have internal controls would deviate from what FHFA requires of the only other secondary market GSEs (Fannie Mae and Freddie Mac).[23] We believe that the current differences between the operating structures of the housing GSEs and Farmer Mac, in particular the conservatorships of the housing GSEs, makes comparison of their regulatory structures less useful. We believe internal controls are important for Farmer Mac regardless of whether another regulator adopted them for the housing GSEs. The overall purpose of an internal controls system is to help an entity achieve its mission and accomplish certain goals and objectives. An effective internal control system should promote orderly, economical, efficient and effective operations; safeguard resources against loss due to waste, abuse, mismanagement, errors and fraud; promote adherence to statutes, regulations, and operating procedures; as well as develop and maintain reliable financial and management data (and accurately report that data in a timely manner), all of which can help protect the Corporation's safe and sound operation and its reputation.

[22] The Sarbanes-Oxley Act stressed the importance of public companies maintaining internal controls when it comes to their financial reporting by requiring public companies to include details on the company's financial internal controls inside of their annual reports. Also, the SEC requires filers to include an attestation of ''internal controls over financial reporting'' in annual reports.

[23] *See* footnote 15, Appendix B, of the Farmer Mac comment letter to the proposed rulemaking. *See also,* 12 CFR 1236, Appendix A, ''Prudential Management and Operations Standard,'' containing some FHFA internal controls requirements for the secondary market housing GSEs (*e.g.,* ''Standard 1—Internal Controls and Information Systems'').

We had proposed in paragraphs (c) and (d) that the Corporation establish a monitoring system for its internal controls and to report to us on the effectiveness of those controls. Stockholder-commenters objected to the requirement for annual reports on internal controls, explaining such reports would be burdensome and could reduce the attention given the issue during FCA examinations. The commenters instead stated that FCA should rely primarily on its examination authority for review of internal controls. We make changes to paragraphs (c) and (d) to address the comments objecting to annual reports on internal controls, but do so in a manner that also satisfies the underlying purpose of proposing an annual report on the effectiveness of internal controls. We are removing paragraph (d), which required the annual report to OSMO, in its entirety. In connection with this, we enhance the provision in paragraph (c) to require the monitoring of internal controls to include an identification and documentation of weaknesses in internal controls. We continue to believe the Corporation's internal control system needs to be monitored to assess whether controls are effective and operating as intended. On-going monitoring occurs through routine managerial activities such as supervision, reconciliations, checklists, comparisons, performance evaluations, and status reports. Monitoring may also occur through separate internal evaluations (*e.g.,* internal audits/reviews) or from use of external sources (*e.g.,* comparison to peer groups or industry standards, surveys, etc.). Deficiencies found during monitoring should then be documented and reported to those responsible for the function, with serious deficiencies being reported to top management or the board. To ensure this monitoring occurs, the rule requires the Corporation to document the process used to identify and resolve weaknesses in its internal controls, as well as document what weaknesses were found. This change, along with the internal controls over financial reporting made to SEC, should provide the necessary source documents for our examination of the Corporation's internal controls, similar to what would have resulted from the proposed annual report to OSMO.

D. Disclosure and Reporting [Part 655]

Part 655 contains the existing financial disclosure and reporting provisions for the Corporation. We received comments to part 655 from Farmer Mac, an agent of Farmer Mac, and a Farmer Mac stockholder. There were no comments opposing the proposed organizational changes and, therefore, we finalize them as proposed. We also finalize as proposed the movement of existing provisions into the relevant subparts.

We discuss final changes to part 655, and the related comments received, in the appropriate sections below.

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

We received a comment from Farmer Mac on the definition for ''material'' in part 655, asking us to remove the definition or restate that used by the SEC. We proposed defining ''material'' as information required when ''there is a substantial likelihood that a reasonable person would attach importance in making investor decisions or determining the financial condition of the Corporation.'' We decline Farmer Mac's request as it did not argue that the term ''material,'' as used in part 655, presented any conflict with SEC reporting rules.[24] Rather, we note that, like the SEC, our rule interprets the term in a manner similar to the Financial Accounting Standards Board (FASB) Concepts Statement No. 2 explanation of ''materiality.'' [25] FASB, in turn, relied on the U.S. Supreme Court explanation that a fact is material under Federal securities laws if there is a ''substantial likelihood'' the fact would be ''viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.'' [26] We also note that our rule substantially resembles the SEC Rule 405 definition,[27] with adjustments made for financial safety and soundness considerations. We finalize the term ''material'' and its definition as proposed. However, we are not finalizing adding the term ''report'' and its accompanying definition to new § 651.1 as the term is sufficiently explained in the relevant provisions of the rule.

2. Prohibitions [Proposed New § 655.2]

We received comments on new § 655.2 from Farmer Mac and an agent of Farmer Mac. Farmer Mac asked that all references to ''agents'' be removed and that the provision include a materiality standard so as to limit FCA actions. Farmer Mac asserted that FCA has no authority to regulate non-System persons or entities, suggesting FCA limit itself to imposing an obligation on the Corporation to monitor its agents. Farmer Mac again stated that FCA should not intrude into areas under SEC jurisdiction. Farmer Mac also asked that we defer to the SEC for determining compliance, specifically mentioning the SEC rules on omissions and misstatements in reports filed with the SEC. The agent to Farmer Mac stated the regulation of agents was intrusive and burdensome, adding that Congress did not intend consultants and advisors to be subject to FCA authority.

We proposed new § 655.2 to prohibit directors, officers, employees, or agents of the Corporation from making misleading, inaccurate, or incomplete part 655 disclosures. The provision would have covered reports and disclosures made to FCA, stockholders of Farmer Mac, and the general public. Contrary to the remarks of some commenters, the provision did not assert direct regulatory authority over the general actions of an agent of Farmer Mac. Instead, the provision would have required Farmer Mac to control its agents, or issue corrections to disclosures made by the same if those disclosures were determined to be misleading, inaccurate, or incomplete. As explained in section 8.3(c)(4) of the Act, Farmer Mac has a statutory duty to take necessary precautions, including obtaining surety bonds, against any losses caused by the acts of its agents. Further, FCA has statutory authority to issue cease-and-desist orders to agents of the Corporation in appropriate circumstances. In addition, we reject the argument of Farmer Mac that misleading, inaccurate, or incomplete disclosures are the exclusive jurisdiction of the SEC. Not every report or disclosure made by Farmer Mac is in response to a requirement of the SEC, particularly those we require under our rules in part 655. Rather, activities of the Corporation extend beyond registered securities issued or guaranteed by Farmer Mac, and we have long had regulations addressing Farmer Mac disclosures related to securities not

[24] *See* SEC Staff Accounting Bulletin: No. 99—Materiality, 17 CFR part 211 (August 12, 1999), explaining the meaning of ''material'' as ''A matter is 'material' if there is a substantial likelihood that a reasonable person would consider it important.''

[25] FASB, Statement of Financial Accounting Concepts No. 2, Qualitative Characteristics of Accounting Information, 132 (1980). In this bulletin, FASB explained the concept of ''materiality'' as ''The omission or misstatement of an item in a financial report is material if, in the light of surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item.''

[26] *See TSC Industries* v. *Northway, Inc.,* 426 U.S. 438, 449–450 (1976), where the court noted that determining materiality required ''delicate assessments of the inferences a 'reasonable shareholder' would draw from a given set of facts and the significance of those inferences to him . . .''. *See also Basic, Inc.* v. *Levinson,* 485 U.S. 224 (1988).

[27] 17 CFR 230.405.

registered under the Securities Act of 1933. All this notwithstanding, in response to the concerns expressed by commenters regarding dual compliance with SEC regulations, we are not finalizing the contents of § 655.2 at this time.

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

Our existing rule requires the Corporation to make annual reports to its shareholders, and we had proposed enhancements to this existing requirement. The enhancement included adding quarterly reports, increasing the information in the reports, reducing distribution timeframes, and requiring the reports to be signed and certified as accurate. We received comments on these proposed changes from Farmer Mac and a Farmer Mac stockholder. The stockholder-commenter only remarked that we should remove references to ''EDGAR'', the SEC Web site portal, as the name of the portal may change. We agree and have removed all references to ''EDGAR'' in part 655.

Farmer Mac objected to our rules containing any different reporting or disclosure requirements than those required by the SEC. Farmer Mac stated reporting and disclosures are the jurisdiction of the SEC and FCA should reconsider any regulation of the matter. We reject the argument of Farmer Mac that financial reports and disclosures are the exclusive jurisdiction of the SEC and remind the Corporation that we have long had regulations addressing financial reports and disclosures made by the Corporation. Further, FCA may require disclosure necessary to the safety and soundness of the Corporation.[28] In particular, we may require disclosures suitable to the purpose for which Farmer Mac was created, to follow disclosure practices appropriate to secondary market activities, and to aid in reducing risks in secondary market transactions.[29] We also point out that SEC rules do not prohibit its filers from making financial reports to other Federal agencies.[30]

While we understand Farmer Mac's desire to only concern itself with one unified set of reporting and disclosure requirements, we cannot uniformly adopt SEC reporting and disclosure requirements. As explained in the proposed rulemaking, SEC requires certain reporting and disclosures to satisfy its role in ensuring listed companies provide sufficient information to the investing public. We, on the other hand, concern ourselves with ensuring disclosures and report made by the Corporation address safety and soundness concerns, which include all the activities of the Corporation. Where we can in this rule, we have allowed Farmer Mac to use SEC filings in satisfaction of our requirements. However, the SEC is a separate agency and can change its reporting and disclosure requirements without consulting FCA. For this reason, we limit the extent that SEC filing requirements may also satisfy our requirements and do so in a manner to avoid conflict with SEC requirements and unnecessary duplication of effort by Farmer Mac.

a. Annual Reports

Our existing rule requires the Corporation to make annual reports to its shareholders consistent with shareholder reports required by the SEC, and to submit copies of such to us. We note that the Corporation must also file annual and quarterly reports with the SEC (10Q and 10K, respectively), which may include additional information not part of the annual report to shareholders.[31] Farmer Mac asked us to mirror SEC annual reporting requirements. Doing so would include removing the proposed quarterly reporting to shareholders.[32] We finalize the proposed language that the annual reports to shareholders must be either equivalent in content to that required under the Securities Act or as we so instruct. However, we are not finalizing the proposed requirement in § 655.10(a) that the Corporation make quarterly shareholder reports. Farmer Mac also asked that we remove the requirement to file any paper copies of reports with OSMO. We decline this request for reasons discussed in the proposed rulemaking preamble.

b. Certification of Reports

Farmer Mac said that there was no need for requiring signatures and certifications on reports as the SEC already addresses how reports are to be signed and certified. Farmer Mac also asked that we define ''financially accurate'' as used in new § 655.10(b), explaining it is not a term used in the SEC-required certification of reports. We finalize with changes the signature and certification requirements of new § 655.10(b). Our proposed certification did not conflict with SEC laws or regulations, but may have caused compliance issues with SEC instructions. SEC rules §§ 240.13a–14 and 240.15d–14 require certification of quarterly and annual reports filed with them, but SEC instructions for completing these certifications prohibit filers from making changes to the certification language provided in the SEC rules. Our proposed certification requirements captured most of the same information as the SEC certifications, without giving specific language that had to be used. To address the commenter's concern regarding compliance with both the SEC and FCA, we are changing our certification requirements to require the use of SEC certifications.[33] We also clarify that the requirements of § 655.10(b) apply to reports issued under new subpart B of part 655.

c. Distribution Deadlines

Farmer Mac objected to reducing distribution deadlines to 90 days, asking that we keep the current 120-day deadline so as to provide it greater flexibility. Farmer Mac added that the proposed 90-day timeframe ''deviates from SEC rules,'' but does not name the SEC rules being referenced. Farmer Mac also asserted the shorter timeframe could increase compliance burden.

Absent a citation to the SEC rules, we do not see where the number of days FCA proposed created any compliance problems with SEC requirements. The SEC has a three-tiered deadline for annual reports filed with them that is based on the size of the filer: 60 days after fiscal year end for large accelerated filers, 75 days after fiscal year end for regular accelerated filers, and 90 days after fiscal year end for nonaccelerated

[28] Sections 5.17(a)(8) and 8.11 of the Act (12 U.S.C. 2252(a)(8) and 2279aa–11).

[29] Section 8.11(a)(1) and (2) of the Act (12 U.S.C. 2279aa–11).

[30] *Refer to* 17 CFR 240.12b–33.

[31] The SEC requires registered entities to file an annual report on Form 10–K, which may contain more detailed information about the company's financial condition than the annual report to shareholders. The annual report on Form 10–K provides a comprehensive overview of the company's business and financial condition and includes audited financial statements. Although similarly named, the annual report on Form 10–K is distinct from the ''annual report to shareholders,'' which a company must send to its shareholders when it holds an annual meeting to elect directors. *www.sec.gov/answers/form10k.htm.*

[32] Currently, the SEC does not require registrants to issue a quarterly report to shareholders. However, the issuance of such a report might be required by the listing standards of a national securities exchange or association. In addition, communications about quarterly results are subject to Regulation FD, *Fair Disclosure,* as well as Form 8–K disclosure requirements.

[33] SEC certifications are designed to be consistent with the certification requirements of section 302 of the Sarbanes-Oxley Act, which is intended to improve the quality of public financial disclosures that a company provides in its periodic reports to investors.

filers.[34] Our proposed 90-day deadline did not conflict with any of these timeframes. The separate ''annual report to shareholders'' [35] required by the SEC provides that a registered company must distribute the company's annual report to shareholders at least 40 days before the company holds its annual meeting or elections.[36] Again, our proposed 90-day deadline did not conflict with this timeframe as the Corporation is not legally required to hold its annual meeting on any specific date.

Our existing rule requires distribution of annual reports to shareholders within 120 days of the fiscal year end (*i.e.* April of each year). The SEC ties distribution of shareholder reports to the annual meeting date (or election date) and reports to the SEC are tied to fiscal year end. We use fiscal year end for both actions. This means to comply with both the SEC and FCA deadlines the Corporation currently must distribute its report to shareholders within 120 days of fiscal year end and may not hold its annual meeting (or elections) until 40 days after the report is distributed (approximately 160 days or June 9th of each year). We proposed reducing our deadline to 90 days, which would result in the Corporation being required to hold its annual meeting (and elections) no earlier than May 10th of each year (approximately 120 days from fiscal year end). As there is no compliance issue with SEC rules, we reject the request of Farmer Mac to follow the SEC in this regard. We prefer a date certain under which the Corporation must distribute its annual report to shareholders. However, we have restored the existing 120-day deadline for distribution of the annual report to shareholders. We continue to believe the Corporation is more than capable of issuing the report sooner, but agree that the additional time is beneficial to the director nomination process (due to the report's connection to holding annual meetings/elections under SEC rules).

d. Interim Reports, Proxy Statements, and Notices

We proposed in § 655.15 that the Corporation provide us copies of interim reports (*e.g.,* 8–K), proxy statements, and notices sent to SEC. We also proposed that this same information be posted on the Corporation's Web site for public viewing, but that links to the SEC electronic filings may be used to satisfy this requirement. Farmer Mac commented that these requirements were an unjustified regulatory burden. Farmer Mac then asked that we clarify the scope of notices, interim reports, and proxy statements required to be sent to OSMO under § 655.15(a). Farmer Mac also asked that we remove the requirement to post on its Web site these same notices, interim reports, and proxy statements. Farmer Mac stated concern with the public posting requirement since these filings include all papers and documents made part of the filing, contending confidential communication with the SEC may be made public.

We decline to remove the § 655.15(a) requirement to provide these complete filings to OSMO as we continue to believe it is essential that communications between the Corporation and OSMO, its primary regulator, include the substantive communications the Corporation has with the SEC. We also fail to see how providing us copies of reports and filings already being prepared is a burden on the Corporation. We have clarified in § 655.15(b) that the public Web site postings may be limited to the public aspects of the notices, interim reports, and proxy statements.

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

Farmer Mac objected to being required in § 655.20 to send paper copies to us of reports on unregistered securities activities. We have removed the requirement for both electronic and paper copies, replacing it with a requirement for either a paper or electronic copy, whichever is most conducive to transmitting the information. We also added language to clarify the reports are to be sent to the Director of OSMO.

Farmer Mac requested we clarify the types of documents covered by § 655.20 and whether daily transactions (*e.g.,* issuance of unregistered debt securities) needed to be filed with us. Farmer Mac explained that many documents and daily activities could be covered by the rule under some interpretations. If so, the burden of providing that information to us would be significantly increased. As we made little change to existing requirements in this area, we question the assertion that the rule could be misinterpreted or is a burden on Farmer Mac. Farmer Mac has made reports to us on its activities regarding securities not registered under the Securities Act under this regulatory requirement since 1993. As such, Farmer Mac should continue its current practices addressing daily activities for filings made under this requirement, unless we later advise them otherwise. The Corporation at a minimum must make special filings with us regarding those items specifically listed in the rule. We encourage the Corporation to contact us when questions arise as to whether a specific securities action requires a filing under § 655.20.

Farmer Mac requested we update existing terminology in § 655.20(b)(2) regarding securities purchased by the Corporation under section 8.6(e) of the Act. We agree that the specific citation to the Act needed to be updated to reference the correct paragraph of section 8.6.[37] The current reference predates Congress moving the relevant provision from section 8.6(g) to section 8.6(e) of the Act.[38] We also revise the ''pooling and servicing agreements'' terminology as requested by Farmer Mac. The existing rule used this phrase to reference those documents employed in the exercise of the Corporation's authority to purchase and hold securities that are backed by pools of qualified loans (which loans are secured by a first lien on agricultural real estate, per section 8.0(9)(A) of the Act).[39] The phrase ''pooling and servicing agreements'' is outdated as such documents are no longer a fundamental prerequisite to doing business with Farmer Mac. We replace this phrase with one that refers to those documents supporting issuances of these types of guaranteed securities and which are material to the transaction(s).

5. Correspondence Related to Securities Activities [New Subpart C: Existing § 655.50; New § 655.21]

We proposed expanding the existing requirement to send us copies of substantive correspondence between Farmer Mac and the SEC or U.S. Treasury to cover all subject matters, instead of just those substantive communications related to securities activities and SEC compliance matters. We also proposed adding similar

[34] SEC Web site, *www.sec.gov/answers/form10k.htm. See also* Instructions to Form 10–K at section A.2, *www.sec.gov.*

[35] The SEC-required annual report to shareholders is usually includes an opening letter from the Chief Executive Officer, financial data, results of operations, market segment information, new product plans, subsidiary activities, and research and development activities on future programs. Companies sometimes elect to send their annual report on Form 10–K to their shareholders in lieu of, or in addition to, providing shareholders with a separate annual report to shareholders. SEC Web site, *www.sec.gov/answers/annrep.htm.*

[36] 17 CFR 240.14a–16.

[37] 12 U.S.C. 2279aa–6(e).

[38] Public Law 104–105, 110 Stat. 164 (February 10, 1996).

[39] *See* former § 621.20(b)(2)(ii) (58 FR 48786, September 20, 1993) referring to Farmer Mac I securities, relocated to existing § 655.50(b)(2)(ii)(70 FR 40635, July 14, 2005). Farmer Mac I securities are those backed by pools of qualified loans as defined in section 8.0(9)(A) of the Act.

communications with the NYSE and setting timeframes for providing the information to us. Farmer Mac asked for clarification on the types of correspondence between the Corporation and the SEC or NYSE that needed to be sent to us, adding that sending all substantive communique could be unworkably burdensome. Farmer Mac did acknowledge that the provision was within our oversight authority, but stated the scope of communication was too broad. Farmer Mac went on to equate ''substantive'' correspondence with ''routine'' communications received by many employees of the Corporation through subscriptions to NYSE market data.

Material such as mass-produced market updates are not ''substantive correspondence between the Corporation and the SEC, U.S. Treasury, or NYSE'' nor would we expect to be sent SEC and NYSE communique provided to a subscriber list. However, to alleviate any confusion, we clarify that correspondence directly addressing the activities of the Corporation is what is covered by the provision. Further, we refer to past clarifications on this issue, explaining that non-substantive transmittal letters accompanying SEC filings, for example, would not be considered ''substantial'' and therefore not required to be filed with the FCA.[40] On the other hand, we have particular interest in interpretive rulings of the NYSE, the SEC, or the Treasury Department bearing on Farmer Mac's ongoing business activities and expect such correspondence to be filed with us under this provision.

Farmer Mac asked that we exclude communications to NYSE that would be duplicative of official filings with the SEC. We agree and have changed the language of § 655.21(a) accordingly. Farmer Mac also requested guidance on how to transmit to us communique issued via secure electronic portals. We encourage Farmer Mac to contact us when they have such communique, at which time we will provide instructions on how to provide us copies of such.

In addition, Farmer Mac objected to being required in § 655.21(c) to notify us of any exemption it obtained from the SEC. Farmer Mac asked that we limit the requirement to those SEC exemptions obtained under the Securities Act of 1934. In making this request, Farmer Mac explained it is not subject to complete regulation by SEC and, except for certain mortgage-backed securities, it is not subject to the 1933 Securities Act and must only file reports under the 1934 Securities Act. We decline the request to limit the rule by naming a specific securities law. The definition for ''securities'' contained in § 655.1 explains that it means the securities law(s) appropriate to the context of the employing provision. However, we have changed the requirement to only require notice to us of those exemptions that are not generally available under SEC rules to similarly situated filers.

E. Other Comments

We received comments on portions of the proposed rule preamble language that do not address regulatory provisions and result in no change to the rule. These comments are discussed below.

1. Regulatory Flexibility Act Certification

We received a comment from an agent of Farmer Mac regarding the Regulatory Flexibility Act (RFA).[41] The commenter argued this rulemaking would impact a substantial number of small businesses, with whom Farmer Mac conducts business, and therefore would alter our assessment of the economic impact of the rulemaking. In the proposed rule, we certified that the rule would not have a significant economic impact on a large number of small entities, and that Farmer Mac did not qualify as a ''small entity'' as defined under the RFA. The RFA does not: (1) Seek preferential treatment for small entities; (2) require agencies to adopt regulations that impose the least burden on small entities; or (3) mandate exemptions for small entities. Rather, it requires agencies to examine public policy issues using an analytical process that identifies, among other things, barriers to small business competitiveness. Meaning, it requires agencies to analyze the economic impact of proposed regulations when there is likely to be a significant economic impact on a substantial number of small entities covered by the rulemaking, and to consider regulatory alternatives that will achieve the agency's goal while minimizing the burden on those same small entities. The rule is directed at Farmer Mac, which is not a small business. Further, we see nothing in this final rulemaking that creates significant economic barriers to small businesses. Those areas of the rule referencing agents of Farmer Mac expound upon existing regulations or statutory provisions and make no reference to the size of entity serving as an agent to Farmer Mac.

2. Need for Rulemaking

One stockholder-commenter expressed general concern with FCA regulating the corporate governance and disclosures for Farmer Mac given existing SEC rules in these areas. This commenter asked FCA to use caution as SEC rules are constantly changing. The commenter also stated FCA did not need to regulate governance behavior at Farmer Mac as the Corporation has a strong history of sophisticated corporate governance practices.

Voluntary governance is valuable, but it does not replace the stability that rules provide in assuring stakeholders of the safety and soundness of the Corporation. Our governance rules set a minimum level of performance that is mandatory for the Corporation. While we believe it is important to preserve individual operating flexibility wherever and whenever possible, our responsibility as regulator requires us to issue regulations we determine appropriate for safety and soundness reasons. We believe the assurances derived from a regulatory minimum standard, combined with the Corporation's voluntary governance efforts, will increase stockholder, investor, and public confidence in Farmer Mac.

Farmer Mac questioned the need for any regulatory changes, stating that insufficient recognition was given to its status as a public company. Farmer Mac also stated that it is unnecessary for FCA to regulate many corporate governance areas due to SEC requirements and thus we should remove those provisions. Farmer Mac explained that it is the mission of the SEC to protect investors, and the SEC provides sufficient regulation of board activities and corporate disclosures. Farmer Mac added that portions of the rule presented compliance concerns with other regulatory elements unrelated to FCA, but provided no specific citation to these other rules. Farmer Mac also asserted that the rulemaking would potentially harm the Corporation and those it serves in a material way instead of enhance safe and sound operations, but again offered no specifics.

The FCA, acting through OSMO, examines and provides general supervision over the activities of Farmer Mac pursuant to section 8.11 of the Act. As discussed elsewhere in this preamble, the role the SEC plays in the disclosure and reporting aspects of the Corporation does not remove our

[40] *See* 58 FR 48786 (September 20, 1993), where FCA responded in 1993 to a similar comment of Farmer Mac regarding the meaning of ''substantive''.

[41] Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (codified at 5 U.S.C. 601).

responsibility to regulate Farmer Mac's safe and sound operations. We have a responsibility to address corporate governance within the Corporation given its importance to the safe and sound operations of the Corporation and the current business climate in which Farmer Mac operates. As a GSE, the Corporation has strategic objectives that are both commercially and public policy oriented. Thus, governance of the Corporation must be understood and interpreted not only in the context of the fiduciary responsibilities to the Corporation and its shareholders, but also in the context of the statutory duty to further the Congressional purposes the Corporation was chartered to achieve. In addition, we explained in the proposed rule preamble that Farmer Mac, as a publicly traded company, is subject to many of the governance requirements of Sarbanes-Oxley, Dodd-Frank, and SEC disclosure regulations for publicly traded companies. However, with the recent events in the financial industry, increased sophistication in financial markets, and on-going scrutiny of GSE financial activities and related reporting practices, we believed it prudent to update our current regulatory standards related to Farmer Mac's Board governance, reporting, and disclosures.

Farmer Mac stated that FCA did not publish its current concerns with the risk management and governance operations of the Corporation in support of the rulemaking. This rulemaking is intended to ensure that appropriate board governance and risk management practices are in place at Farmer Mac. We are not limited to issuing regulations only when there is an existing adverse risk or problem. Our responsibilities as a safety and soundness regulator requires us to be proactive and prudent in our rulemaking, as well as reactive by providing standards that help avert potential problems. Thus, we have flexibility to issue rules either in response to a problem or proactively to ensure the Corporation's continued safe and sound business operations.

Farmer Mac also asserted FCA has in the past ''deferred'' to the oversight of the SEC and NYSE. We reject this assertion. The FCA, as an independent regulator of the Corporation, is not required to follow the actions of other regulators and we have never deferred our regulatory oversight to another agency. We do not view our past efforts to accommodate the Corporation's requests to modify our regulations in light of those issued by other regulators (whose regulations also affect the Corporation's operations) as a relinquishment of our safety and soundness authority.

3. Terminology

Farmer Mac asked that we define an assortment of terms and phrases used throughout the rule, asserting that many of these terms and phrases are not ''established'' in a body of law. Most of the terms and phrases identified by Farmer Mac are derived from corporate case law, model codes, and the Act itself. As such, we do not believe it necessary to further define them.

4. Regulatory Burden

Farmer Mac commented that it viewed many aspects of the rule as unnecessary and burdensome, making them inconsistent with the ''Congressional mandate'' that we eliminate unnecessary regulations. As we understand this comment, Farmer Mac is referring to the instructions of the Farm Credit System Reform Act of 1996 (1996 Act) [42] to reduce regulatory burdens. Section 212(b) of the 1996 Act requires us to continuously review our regulations to eliminate rules that are unnecessary, unduly burdensome, costly, or not based on law. The 1996 Act specifies that we are to make these eliminations only if they would be consistent with law, safety, and soundness. As explained throughout this preamble, Congress charged us to issue regulations to ensure the safety and soundness of the Corporation and this rule is consistent with the law and safety and soundness concerns.

IV. Regulatory Flexibility Act

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

List of Subjects

12 CFR Part 650

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

12 CFR Part 651

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

12 CFR Part 653

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

12 CFR Part 655

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

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

PART 650—FEDERAL AGRICULTURAL MORTGAGE CORPORATION GENERAL PROVISIONS

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

Authority: Secs. 4.12, 5.9, 5.17, 5.25, 8.11, 8.12, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of Pub. L. 92–181, 85 Stat. 583 (12 U.S.C. 2183, 2243, 2252, 2261, 2279aa–11, 2279aa–12, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

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

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

■ 3. Add a new subpart A to read as follows:

Subpart A—Regulation, Examination and Enforcement

Sec.

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

[42] Public Law 104–105, 110 Stat. 162 (February 10, 1996).

Subpart A—Regulation, Examination and Enforcement

§ 650.1 Definitions.

The following definitions apply to this part:

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

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

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

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

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

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

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

SEC means the Securities and Exchange Commission.

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

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

§ 650.2 Regulatory authority.

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

(b) *Primary regulator.* The FCA, operating through OSMO, holds primary regulatory, examination, and enforcement authority over the Corporation. The FCA, operating through OSMO, is responsible for the general supervision of the safe and sound exercise of the Corporation's powers, functions, and duties and compliance with applicable laws and regulations.

(c) *Other regulatory authorities.* The Corporation registers its common stock and certain offerings of Farmer Mac Guaranteed Securities under the Securities Act and related regulations so must comply with certain SEC reporting requirements.

§ 650.3 Supervision and enforcement.

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

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

(1) Issue an order to cease and desist;

(2) Issue a temporary order to cease and desist;

(3) Assess civil monetary penalties against the Corporation and its directors, officers, employees, and agents; and

(4) Issue an order to suspend, remove, or prohibit directors and officers.

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

§ 650.4 Access to Corporation records and personnel.

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

(b) The Corporation must make directors, officers, employees and other individuals or entities engaged by the Corporation to participate in the conduct of the Corporation's business available to OSMO during the course of an examination or supervisory action when OSMO determines it necessary to facilitate an examination or supervisory action.

§ 650.5 Reports of examination.

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

§ 650.6 Criminal referrals.

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

■ 4. Revise part 651 to read as follows:

PART 651—FEDERAL AGRICULTURAL MORTGAGE CORPORATION GOVERNANCE

Subpart A—General

Sec.
651.1 Definitions.
651.2 [Reserved]

Subpart B—Standards of Conduct

651.21 [Reserved]
651.22 Conflict-of-interest policy.
651.23 Implementation of policy.
651.24 Director, officer, employee, and agent responsibilities.

Subpart C—Board Governance

651.30 [Reserved]
651.35 [Reserved]
651.40 [Reserved]
651.50 Committees of the Corporation's board of directors.

Authority: Secs. 4.12, 5.9, 5.17, 8.3, 8.11, 8.14, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of Pub. L. 92–181, 85 Stat. 583 (12 U.S.C. 2183, 2243, 2252, 2279aa–3, 2279aa–11, 2279aa–14, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

Subpart A—General

§ 651.1 Definitions.

The following definitions apply to this part:

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

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

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

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

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

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

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

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

Corporation means the Federal Agricultural Mortgage Corporation and its affiliates.

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

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

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

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

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

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

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

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

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

Person means individual or entity.

Reasonable person means a person under similar circumstances exercising the average level of care, skill, and judgment in his or her conduct.

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

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

§ 651.2 [Reserved]

Subpart B—Standards of Conduct

§ 651.21 [Reserved]

§ 651.22 Conflict-of-interest policy.

The Corporation shall establish and administer a conflict-of-interest policy that will provide reasonable assurance that the directors, officers, employees, and agents of the Corporation discharge their official responsibilities in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation. The policy shall, at a minimum:

(a) Define the types of transactions, relationships, or activities that could reasonably be expected to give rise to potential conflicts of interest. For the purpose of determining whether a potential conflict of interest exists, the following interests shall be imputed to a person subject to this regulation as if they were that person's own interests:

(1) Interests of any individual residing in that person's household;

(2) Interests of any individual identified as a legal dependent of that person;

(3) Interests of that person's general business partner;

(4) Interests of an organization or entity that the person serves as officer, director, trustee, general partner or employee; and

(5) Interests of a person, organization, or entity with which that person is negotiating for or has an arrangement concerning current or prospective employment.

(b) Require each director, officer, and employee to report in writing, annually, and at such other times as conflicts may arise, sufficient information about financial interests, transactions, relationships, and activities to inform the Corporation of potential conflicts of interest;

(c) Require each director, officer, and employee who had no transaction, relationship, or activity required to be reported under paragraph (b) of this section at any time during the year to file a signed statement to that effect;

(d) Establish guidelines for determining when a potential conflict is material in accordance with this subpart;

(e) Establish procedures for resolving or disclosing material conflicts of interest.

(f) Provide internal controls to ensure that reports are filed as required and that conflicts are resolved or disclosed in accordance with this subpart.

(g) Notify directors, officers, and employees of the conflict-of-interest policy and any subsequent changes thereto and allow them a reasonable period of time to conform to the policy.

§ 651.23 Implementation of policy.

(a) The Corporation shall disclose any unresolved material conflicts of interest involving its directors, officers, and employees to:

(1) Shareholders through annual reports and proxy statements; and

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

(b) The Corporation shall make available to any shareholder, investor, or potential investor, upon request, a copy of its policy on conflicts of interest. The Corporation may charge a nominal fee to cover the costs of reproduction and handling.

(c) The Corporation shall maintain all reports of all potential conflicts of interest and documentation of materiality determinations and resolutions of conflicts of interest for a period of 6 years.

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

(a) Each director, officer, employee, and agent of the Corporation shall:

(1) Conduct the business of the Corporation following high standards of honesty, integrity, impartiality, loyalty, and care, consistent with applicable law and regulation in furtherance of the Corporation's public purpose;

(2) Adhere to the requirements of the conflict-of-interest policy established by the Corporation and provide any information the Corporation deems necessary to discharge its responsibilities under this subpart.

(b) Directors, officers, employees, and agents of the Corporation shall be subject to the penalties of part C of title V of the Farm Credit Act of 1971, as amended, for violations of this regulation, including failure to adhere to the conflict-of-interest policy established by the Corporation.

Subpart C—Board Governance

§ 651.30 [Reserved]

§ 651.35 [Reserved]

§ 651.40 [Reserved]

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

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

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

(c) *Charter.* Each committee required by this section must develop a formal written charter that specifies the scope of the committee's powers and responsibilities, as well as the committee's structure, processes, and membership requirements. To be effective, the charter must be approved by action of the full board of directors. No director may serve as chairman of more than one of the board committees required by this section.

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

■ 5. Add part 653 to read as follows:

PART 653—FEDERAL AGRICULTURAL MORTGAGE CORPORATION RISK MANAGEMENT

Sec.

653.1 Definitions.
653.2 General.
653.3 Risk management.
653.4 Internal controls.

Authority: Secs. 8.3, 8.4, 8.6, 8.8, and 8.10 of Pub. L. 92–181, 85 Stat. 583 (12 U.S.C. 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–8, and 2279aa–10).

§ 653.1 Definitions.

The following definitions apply to this part:

Corporation means the Federal Agricultural Mortgage Corporation and its affiliates.

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

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

§ 653.2 General.

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

§ 653.3 Risk management.

(a) *Risk management program.* The Corporation's board of directors must establish, maintain, and periodically update an enterprise-wide risk management program addressing how the Corporation's activities are exercised in a safe and sound manner. The implementation of the risk management program may reside with senior management. The risk management program at a minimum must:

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

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

(3) Specify management's authority to carry out risk management responsibilities.

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

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

(b) *Risk committee.* The Corporation's board-level risk committee assists the full board of directors in the oversight of the enterprise-wide risk management program of the Corporation.

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

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

(i) Periodically assessing management's implementation of the enterprise-wide risk management program;

(ii) Recommending changes to the risk management program to keep the program commensurate with the Corporation's capital structure, risk appetite, complexity, activities, size, and other appropriate risk-related factors; and

(iii) Receiving and reviewing regular reports directly from personnel responsible for implementing the Corporation's risk management program.

(c) *Management of risk.* The Corporation must have a risk officer, however styled, who is responsible for implementing and maintaining the enterprise-wide risk management practices of the Corporation. The risk officer must have risk management experience commensurate with the Corporation's capital structure, risk appetite, complexity, activities, and size. The responsibilities of the risk officer include, but are not limited to:

(1) Identifying and monitoring compliance with risk limits, exposures, and controls;

(2) Implementing risk management policies, procedures, and risk controls;

(3) Developing appropriate processes and systems for identifying and reporting risks, including emerging risks;

(4) Reporting on risk management issues, emerging risks, and compliance concerns; and

(5) Making recommendations on adjustments to the risk management policies, procedures, and risk controls of the Corporation.

§ 653.4 Internal controls.

(a) The Corporation's board of directors must adopt an internal controls policy that provides adequate directions for, and identifies expectations in, establishing effective safety and soundness control over, and accountability for, the Corporation's operations, programs, and resources.

(b) The internal controls system must address:

(1) The efficiency and effectiveness of the Corporation's activities;

(2) Safeguarding the assets of the Corporation;

(3) Evaluating the reliability, completeness, and timely reporting of financial and management information;

(4) Compliance with applicable laws, regulations, regulatory directives, and the policies of the Corporation's board of directors and senior management;

(5) The appropriate segregation of duties among the Corporation personnel so that personnel are not assigned conflicting responsibilities; and

(6) The completeness and quality of information provided to the Corporation's board of directors.

(c) The Corporation is responsible for establishing and implementing an effective system to identify internal controls weaknesses and taking action to correct detected weaknesses. The Corporation must document:

(1) The process used to identify weaknesses,

(2) Any found weaknesses, and

(3) How identified weaknesses were addressed.

■ 6. Revise part 655 to read as follows:

PART 655—FEDERAL AGRICULTURAL MORTGAGE CORPORATION DISCLOSURE AND REPORTING REQUIREMENTS

Subpart A—General

Sec.
655.1 Definitions.

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

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

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

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

Authority: Secs. 5.9, 8.3, 8.11, and 8.12 of Pub. L. 92–181, 85 Stat. 583 (12 U.S.C. 2243, 2279aa–3, 2279aa–11, 2279aa–12).

Subpart A—General

§ 655.1 Definitions.

The following definitions apply to this part:

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

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

Corporation means the Federal Agricultural Mortgage Corporation and its affiliates.

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

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

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

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

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

Person means individual or entity.

SEC means the Securities and Exchange Commission.

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

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

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

§ 655.10 Reports of condition.

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

(b) *Signatures and certification.* Each report issued under this subpart must be signed. The Corporation must designate the representatives who will sign each report. The name and position title of each person signing the report must be printed beneath his or her signature. The signatories must certify the report by using the SEC rules on certifications for disclosures in annual reports to shareholders.

(c) *Distribution.* The Corporation must distribute the signed annual report of condition to its shareholders within 120 days of its fiscal year-end. Within 5 days of signing, the Corporation must provide us one paper and one electronic copy of every signed report that is distributed to its shareholders. If the report is the same as that filed with the SEC, the Corporation may instead provide the signed reports to us only in electronic form and simultaneous with filing the report with the SEC.

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

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

§ 655.15 Interim reports, notices, and proxy statements.

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

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

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

§ 655.20 Securities not registered under the Securities Act.

The Corporation must make special filings with the Director of OSMO for securities either issued or guaranteed by the Corporation that are not registered under the Securities Act. These filings include, but are not limited to:

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

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

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

(2) The final agreement and all supporting documents material to the Corporation's purchase of a security under section 8.6(e) of the Act.

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

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

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

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

(c) The Corporation must notify us within 1 business day if it becomes exempt or claims exemption from the filing requirements of the Securities Act. Notice is not required when the Corporation claims an exemption that is generally available under SEC rules and regulations to similarly situated filers.

Date: July 20, 2016.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2016–17455 Filed 7–26–16; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8435; Directorate Identifier 2015–NM–049–AD; Amendment 39–18594; AD 2016–15–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. This AD was prompted by reports of operator inability to open the main passenger door following severe hot soak conditions. This AD requires the incorporation of a new configuration to the passenger door external handle detent to enhance the performance across the full range of the airplane operating temperatures. We are issuing this AD to prevent thermal expansion and permanent deformation at severe hot soak conditions, creating high friction between the spring pot housing and the slider that could result in inability to open the main passenger door and impede evacuation in the event of an emergency.

DATES: This AD is effective August 31, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 31, 2016.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8435.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8435; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Cesar A. Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7318; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. The NPRM published in the **Federal Register** on January 13, 2016 (81 FR 1584) (''the NPRM''). The NPRM was prompted by reports of operator inability to open the main passenger door following severe hot soak conditions. The NPRM proposed to require the incorporation of a new configuration to the passenger door external handle detent to enhance the performance across the full range of the airplane operating temperatures. We are issuing this AD to prevent thermal expansion and permanent deformation at severe hot soak conditions, creating high friction between the spring pot housing and the slider that could result in inability to open the main passenger door and impede evacuation in the event of an emergency.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–03, dated March 13, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states:

> There have been reports where operators experienced an inability to open the main passenger door following severe hot soak conditions.
>
> Investigation determined that the nylon slider in the plunger assembly of the door handle is susceptible to thermal expansion