Turkey, and Ukraine will be subject to additional permit and quarantine requirements.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of HPAI subtype H5N1 into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the regulations concerning the importation of animals and animal products by adding Kazakhstan, Romania, Russia, Turkey, and Ukraine to the list of regions in which HPAI subtype H5N1 is considered to exist. We are taking this action because there have been outbreaks of HPAI subtype H5N1 in those countries. This action is necessary to prevent the introduction of HPAI subtype H5N1 into the United States.

Poultry production in Kazakhstan, Romania, Russia, Turkey, and Ukraine represents a small portion of world production. Imports of poultry and poultry products from these five countries into the United States are not large. In fact, from 2004 to 2005, of the five, Russia and Ukraine were the only countries exporting poultry and poultry products to the United States (table 1). In 2004, the United States imported a total of over $2.3 million worth of live birds and over $204 million worth of down feathers from all countries. Imports of poultry and poultry products from Russia and Ukraine comprised less than 1 percent of all imports to the United States annually.

TABLE 1.—VALUE OF U.S. IMPORTS OF LIVE BIRDS AND POULTRY PRODUCTS FROM RUSSIA AND UKRAINE

Product	2004	2005 (January–October)
Live birds	$158,000	$28,000
Feathers and down for stuffing, clean	786,235	991,549

Source: World Trade Atlas.

Adding Kazakhstan, Romania, Russia, Turkey, and Ukraine to the list of regions in which HPAI subtype H5N1 is considered to exist is not likely to have a measurable economic impact on the agricultural economy as a whole or on small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has retroactive effect to July 18, 2005, with respect to Russia; to July 22, 2005, with respect to Kazakhstan; to October 1, 2005, with respect to Turkey; to October 4, 2005, with respect to Romania; and to November 25, 2005, with respect to Ukraine; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 94.6, paragraph (d) is revised to read as follows:

§ 94.6 Carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where exotic Newcastle disease or highly pathogenic avian influenza subtype H5N1 is considered to exist.

* * * * *

(d) Highly pathogenic avian influenza (HPAI) subtype H5N1 is considered to exist in the following regions: Cambodia, China, Indonesia, Japan, Kazakhstan, Laos, Malaysia, Romania, Russia, South Korea, Thailand, Turkey, Ukraine, and Vietnam.

* * * * *

Done in Washington, DC, this 7th day of February 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–1303 Filed 2–10–06; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1412

RIN 3055–AA08

Golden Parachute and Indemnification Payments

AGENCY: Farm Credit System Insurance Corporation (FCSIC or Corporation).

ACTION: Final rule.

SUMMARY: The FCSIC is issuing a final rule limiting golden parachute and indemnification payments to institution-related parties (IRPs) by Farm Credit System institutions, including their subsidiaries, service corporations and affiliates. The purpose of the rule is to prevent abuses in golden parachute and indemnity payments and to protect the assets of the institution and the Farm Credit System Insurance Fund.

DATES: *Effective Date:* This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dorothy L. Nichols, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive,

McLean, VA, 22102, 703–883–4211, TTY 703–883–4390, Fax 703–790–9088.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is contained in the proposed rule. Consequently, no information was submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the proposed rule will not have significant impact on a substantial number of small entities.

Background

Section 218 of the Farm Credit System Reform Act of 1996 (''Reform Act'') amended the Farm Credit Act of 1971 by adding a new section 5.61B. *See* Pub. L. 104–105, Feb. 10, 1996. This section authorizes the Corporation to prohibit or limit, by regulation or order, golden parachute and indemnification payments. *See* 12 U.S.C. 2277a–10b. Section 5.61B is similar to legislative authorities given to the other Federal financial institution regulators. *See e.g.* 12 U.S.C. 1828(k).

The terms golden parachute and indemnification payment are defined in the statute at 12 U.S.C. 2277a–10b(a)(1) and (2). In general, golden parachutes are employment contracts that offer substantial payments when employment is terminated. Indemnification payments are often used to reimburse officers or directors for personal losses due to judgments or litigation costs incurred while exercising official duties. The golden parachute portion of the rule applies to any Farm Credit System institution seeking to make golden parachute payments only when the institution is in a ''troubled condition.'' The indemnification part of the rule applies to Farm Credit System institutions regardless of their financial condition. Its primary purpose is to prohibit reimbursements that benefit wrongdoers. For example, an institution could not indemnify officers or directors for legal expenses or liabilities that result from a successful Farm Credit Administration (FCA) administrative action. However, if the officer or director is cleared of the charges, legal fees and costs can be reimbursed.

Golden Parachute Prohibition

The regulation follows the statutory definition of a golden parachute payment. It is a payment (or an agreement to make a payment) that:

- Is in the nature of compensation by any System institution for the benefit of any current or former institution-related party;
- Is based on an obligation that is contingent on termination; and
- Is received on or after, or is made in contemplation of certain events that signify the System institution is in a troubled condition.

Following the criteria set out in section 5.61B(a)(1) of the Reform Act, the rule prohibits golden parachute payments by institutions that are insolvent, in conservatorship or receivership, or rated a ''4'' or ''5'' in the FCA Financial Institution Rating System. Section 5.61B(a)(1)(A) also authorizes the Corporation to define by regulation other circumstances that warrant a determination that an institution is in a troubled condition.

The rule defines troubled condition to include any institution: (1) Subject to a cease-and-desist order or written agreement issued by the FCA requiring it to improve its financial condition; (2) subject to an FCA proceeding that may result in an order that requires improvement in financial condition; or (3) informed in writing by the Corporation that it is in troubled condition based on its most recent report of examination or other pertinent information. For banks, troubled condition also includes a bank that is: (1) Unable to make timely payments of principal and interest on bank-insured obligations; or (2) receiving assistance from the Insurance Fund. For the Federal Agricultural Mortgage Corporation (''Farmer Mac''), troubled condition also includes inability to make timely payments of principal and interest on its debt obligations or an inability to fulfill its guarantee obligations. The definition of troubled condition in the rule is similar to the definition in rules adopted by the other Federal financial institution regulators. *See e.g.*, 12 CFR 359.1(f); 12 CFR 563.555 and 12 CFR 701.14.

Exceptions

The rule lists eight exceptions to the prohibition on golden parachute payments in § 1412.2(f)(2). Four of these are listed in the statute: ERISA [1] qualified retirement plans; nonqualified ''bona fide'' deferred or supplemental compensation plans; other nondiscriminatory benefit plans; and payments made by reason of death or disability. *See* 12 U.S.C. 2277a–10b(a)(1)(c).

Nondiscriminatory means a plan or arrangement that applies to all employees who meet customary eligibility requirements such as minimum length-of-service standards. We understand that many severance plans pay somewhat more generous benefits to higher ranking employees. The rule would allow a modest disparity in nondiscriminatory severance benefits linked to objective criteria like job title or length of service. The definition of nondiscriminatory specifies a maximum 20 percent in any one criteria, unless a request for a larger amount is granted by the Corporation. For example, if lower-level employees are provided 50 percent of their yearly salary and 1 week of salary for each year of service, higher level employees could receive 60 percent of their yearly salary plus 1 week of salary for each year of service. Our hope is that this permitted modest discrepancy would allow System institutions to offer severance benefits that conform to industry norms for nondiscriminatory benefit plans. The statute grants the Corporation authority to determine other permissible arrangements and four of the eight exceptions in § 1412.2(f)(2) are exceptions added by the Board for System institutions. They include payments required by state or foreign law and a safe harbor provision.

Section 1412.2(f)(2)(viii) adds an exception that can be used in lieu of paragraph (f)(2)(vii) for severance pay plans or arrangements that do not meet the regulatory definition of nondiscriminatory. We understand that at times different benefit arrangements may be made available to different employees. For example, an institution that is experiencing financial trouble may want to terminate some employees immediately while providing incentive payments to employees with critical functions so as to delay their departures. The rule limits payments or arrangements under this exception to 12-months' base salary, unless a request for a larger payment is granted by the Corporation. Minor deviations in severance benefits that involve tangible property would also be permitted. For example, an institution may want to give some departing employees their laptops but other employees would get no additional benefits. We would not treat this as a prohibited golden parachute payment, as long as the cost is reasonable and the practice customary. We hope this provision provides a workable safe harbor for institutions that want to reward more highly compensated employees that

[1] Employee Retirement Income Security Act of 1974, as amended. (29 U.S.C. 1002(1)).

have greater responsibilities without undermining the intent of the legislation.

Section 1412.5(a)(2) permits a troubled institution to hire a ''white knight'', an individual hired to improve the institution's condition, and agree to pay a golden parachute payment upon termination of employment, provided the institution obtains the prior written consent of the FCA and the Corporation. Such an agreement has the potential to benefit the institution and the Insurance Fund. We recognize that individuals who possess the experience and expertise necessary to reverse a troubled institution may not take the job unless they receive an agreement for a severance payment reflecting market rates, in the event that their efforts are not successful.

Section 1412.5(a)(3) contains an exception for a change in control. In the proposed rule, we allowed System institutions to pay up to 12-month's salary in the event of a change of control with the prior consent of the FCA. The Board believed 1-year's salary would provide a sufficient incentive for a senior executive to objectively consider a merger that may result in the loss of that executive's job at a troubled institution. A commenter took issue with this provision, stating that after an informal survey of practices in the financial industry generally and within the Farm Credit System, an 18-month period was more typical. The Corporation has changed § 1412.5(a)(3) to allow up to 18-month's salary. This is the only substantive change in the final rule.

Finally, the rule in § 1412.5(a)(1) sets out a procedure to allow System institutions to request authority for what would otherwise be a prohibited golden parachute payment. This provision recognizes that there may be valid business reasons to seek an agreement not covered by any of the express exceptions, which the institution believes should not be prohibited. If an institution seeks such an authorization, the statute sets out a number of factors that the FCA and the Corporation may consider. *See* 12 U.S.C. 2277a–10b(c). The rule at § 1412.5(a)(4) and (b) enumerates the factors that the FCA and the Corporation will consider, including whether the IRP committed any fraudulent acts, breached a fiduciary duty or played a substantial role in the institution's troubled condition. Under the rule, the institution making the request should address the factors specified in the rule so that the FCA and the Corporation can consider whether the requested payment would be contrary to the intent of the prohibition. The institution should include any information of which it has knowledge that indicates there is a reasonable basis to believe that the IRP satisfies any of the criteria set out in § 1412.5(a)(4) and (b). If the applicant is not aware of any such information, it shall certify that it is not. A commenter suggested that FCSIC consider the time frame in which the severance plan was adopted. For example, the commenter notes that an institution could have adopted the severance plan several years before the institution became ''troubled''. The comment letter suggests that it may be inappropriate to treat such plans in the same manner as severance plans adopted when an institution is either in, or near ''troubled'' status. We would point out that the situation described could be a factor highlighted by the institutions if it made a request for an exception under § 1412(a)(1) to pay what would otherwise be a prohibited golden parachute.

Indemnification Payments

The statute prohibits Farm Credit System institutions from making an indemnification payment for any liability or legal expense arising from an administrative or civil action brought by FCA that results in a civil money penalty, removal from office or a prohibition on participation in the System institution's business. *See* 12 U.S.C. 2277a–10b(a)(2). Institutions may purchase directors and officers insurance to cover the legal expenses even if the individual loses the legal action and pays settlement costs. *See* 12 U.S.C. 2277a–10b(e)(l). Nevertheless, the institution cannot use directors and officers insurance to pay the civil money penalty.

The rule, at § 1412.2(l), follows the definition of a prohibited indemnification payment set out in the statute. It includes any payment or agreement to pay an institution-related party for any civil money penalty or judgment resulting from an administrative or civil action brought by FCA where the person must pay a civil money penalty, is removed from office or is subject to a cease and desist action. There are two exceptions in the rule. The first allows System institutions to purchase commercial insurance to cover expenses other than judgments and penalties. Second, the rule permits a partial indemnification. If there has been a finding that clears the individual, indemnification is permitted for the legal or professional expenses attributable to these charges. In addition, § 1412.6 sets out criteria for permissible ''up front'' indemnification payments. The System institution's board of directors must determine that the party requesting indemnification acted in good faith. Also, the payment cannot materially adversely affect the institution's safety and soundness. Finally, the party must agree to reimburse the institution for advanced indemnification payments if they become prohibited payments later, due to an unfavorable ruling.

Farm Credit System Institutions

The prohibitions in 12 U.S.C. 2277a–10b apply to all Farm Credit System institutions. The rule at § 1412.2(b) defines Farm Credit System institutions to include all associations, banks, service corporations and their subsidiaries and affiliates, except the Farm Credit Financial Assistance Corporation. It also includes Farmer Mac and its subsidiaries and affiliates, which is described in 12 U.S.C. 2279aa–1(a)(2) as an institution of the Farm Credit System. Furthermore, 12 U.S.C. 2277a–10b(b) specifies that the prohibition on golden parachute and indemnity payments was meant to include all Farm Credit System institutions, including even a conservatorship or receivership of Farmer Mac. The legislative history of the Reform Act makes this point clear. It states: ''New subsection (a) provides that FCSIC has authority to prohibit or limit golden parachutes or indemnifications, including the Federal Agricultural Mortgage Corporation (Farmer Mac).'' H.R. Rep. 104–421, 104th Cong., 1st Sess. 12 (1995).

Institution-Related Party

The rule prohibits certain golden parachute and indemnification payments made to or for an institution-related party. The term institution-related party (IRP) is defined in the statute at 12 U.S.C. 2277a–10b(a)(3). It includes directors, officers, employees or agents for a Farm Credit System institution, stockholders (other than another Farm Credit System institution), consultants, joint venture partners and any one else who FCA determines has participated in the affairs of the institution. Additionally, IRPs include independent contractors, including attorneys, appraisers or accountants that knowingly or recklessly participate in an unsafe or unsound practice that caused or is likely to cause harm to the institution. We will examine very closely any attempt by a Farm Credit System institution to avoid the regulation by employing the IRP in some other capacity (*e.g.*, a consultant) and calling the arrangement consulting compensation rather than a severance payment or golden parachute.

Receivership Issues

Section 1412.8 of the rule explains that this regulation is not meant to bind any receiver of a failed Farm Credit System institution. The fact that FCSIC or FCA consents to a particular payment does not mean that the approving entity or the receiver will be responsible for making the payments in the event of a receivership or that the recipient will receive some sort of preference over other creditors from the receivership.

Enforcement

The statute at 12 U.S.C. 2277a–10b(b) grants the FCSIC authority to prohibit golden parachute and indemnity payments by regulation or order. The Board believes that a regulation proscribing limits, defining ''troubled condition'' and setting out procedures for seeking approval of a payment that is not specified in one of the exceptions is usually preferable to a case-by-case approach. Nevertheless, FCSIC could deal with abuses on a case-by-case basis through an enforcement proceeding.

The regulation is similar to the regulations of the other Federal financial regulators with similar statutory authority. *See*, *e.g.*, 12 CFR 359. Rather than prohibit all the golden parachute payments above a certain threshold, the regulation allows a Farm Credit System institution that is in a troubled condition, as defined in the regulation, to seek approval for an otherwise prohibited golden parachute payment to an IRP. Similarly, the rule on indemnity payments seeks a rational and fair approach for determining indemnification in order to avoid abuses.

The statute at 12 U.S.C. 2277a–10b(c) provides that FCSIC ''shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action under subsection (b) [its authority to prohibit or limit golden parachute payments and indemnity payments]. The section also sets out a number of illustrative factors that may be considered when taking action under subsection (b): for example, whether an IRP has committed acts of fraud, breach of fiduciary duty, or insider abuse that has had a detrimental effect on the financial condition of the institution; whether there is a reasonable basis to believe that the IRP has violated the law or regulations; whether the IRP was in a position of managerial or fiduciary responsibility; and the length of time the party was related to the institution and the reasonableness of the compensation. In addition, section 2277a–10b(d) specifies that certain payments are prohibited. No Farm Credit System institution may prepay the salary or any liability or legal expense of any IRP if the payment is made in contemplation of insolvency or such payment has the result of preferring one creditor over another.

The Corporation has considered the prohibited payments and the illustrative factors in preparing its regulation. It has also reviewed the legislative history of the Reform Act and the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 (the Fraud Act), which added similar authority for the Federal Deposit Insurance Corporation in a new section 18(k)(1) to the Federal Deposit Insurance Act. Public Law 101–647, Sec. 2523 (1990). The Corporation is aware that the Federal financial regulators have encountered abuses with golden parachutes when institutions pay substantial sums to top executives who resign after an institution is troubled or immediately before the institution is sold. Ultimately, the Corporation has concluded that to avoid such abuses golden parachute payments should be prohibited for Farm Credit System institutions that are in a troubled condition, as defined in the regulation, except under the circumstances set forth in the proposed rule. If an institution in a troubled condition or an IRP wants to make a payment or enter into an agreement that it believes should not be prohibited and the payment or agreement is not covered by one of the exceptions specified in the regulation, it may seek approval from FCA and FCSIC. When it does, the regulation requires the institution or IRP to address some of the factors listed in the statute so that the FCA and FCSIC can consider them in determining whether the proposed payment or agreement should be allowed, limited or prohibited. The Corporation believes this rule will best protect the financial integrity of the institution and safeguard its assets as Congress intended.

In issuing the indemnification rule, the Corporation has considered the prohibited payments and the illustrative factors set out in the statute as well as the legislative history. The Corporation believes that individuals that violate the law or regulations should pay penalties out of their own pockets and not be reimbursed by a Farm Credit System institution. The Corporation believes that this regulation on indemnification payments preserves the deterrent effects of administrative enforcements and civil actions even though it does not prohibit all indemnification payments.

As noted, the rule sets forth circumstances under which indemnification payments may be made. For example, the Corporation has decided to allow indemnification ''up front'' for an IRP's legal or other professional expenses if: (1) Its board of directors determines that the party requesting indemnification acted in good faith, (2) the payment will not materially adversely affect the institution, and (3) the person agrees in writing to reimburse the institution if the alleged violations of law, regulation or fiduciary duty are upheld. If these criteria are met, the institution's board of directors will have concluded in good faith that the party requesting indemnification did not commit a fraudulent act, insider abuse or some other actionable offense that had a material adverse effect on the financial condition of the institution. Consideration of these factors in this regulatory requirement is what Congress intended FCSIC to do in taking action under section 5.61B(b) and (c) (12 U.S.C. 2277a–10b(b) and (c)). Also, the Corporation has decided to permit partial indemnification for that portion of the liability or legal expenses incurred where there is a determination on part of the charges in favor of the IRP. Finally, an institution may purchase insurance to cover expenses other than judgments or penalties.

FCSIC's authority to regulate golden parachutes and indemnity payments is in addition to FCA's safety and soundness enforcement authority pursuant to the Farm Credit Act of 1971, as amended. Furthermore, nothing in this regulation limits the powers, functions, or responsibilities of the FCA.

List of Subjects in 12 CFR Part 1412

Banks, banking, Golden parachute payment, Indemnification payment, Institution-related party, Penalties, Prohibitions.

■ For the reasons set out in the preamble, 12 CFR part 1412 is added as set forth below:

PART 1412—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

Sec.

Authority: 12 U.S.C. 2277a–10b.

§ 1412.1 Scope.

(a) This part limits and/or prohibits, in certain circumstances, the ability of Farm Credit System (System) institutions, their service corporations, subsidiaries and affiliates from making golden parachute and indemnification payments to institution-related parties (IRPs).

(b) This part applies to System institutions in a troubled condition that seek to make golden parachute payments to their IRPs.

(c) The limitations on indemnification payments apply to all System institutions, their service corporations, subsidiaries and affiliates regardless of their financial health.

§ 1412.2 Definitions.

(a) *Act* or *Farm Credit Act* means Farm Credit Act of 1971 (12 U.S.C. 2002(a)), as amended by the Farm Credit System Reform Act of 1996, amending 12 U.S.C. 2277a–10.

(b) *Farm Credit System institution* or *System institution* means any ''institution'' enumerated in section 1.2 of the Act including, but not limited to, associations, banks, service corporations, the Federal Farm Credit Banks Funding Corporation, the Farm Credit Leasing Services Corporation and their subsidiaries and affiliates, as well as, the Federal Agricultural Mortgage Corporation and its subsidiaries and affiliates, as described in 12 U.S.C. 2279aa–1(a).

(c) *Benefit plan* means any plan, contract, agreement or other arrangement which is an ''employee welfare benefit plan'' as that term is defined in section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1002(1)), or other usual and customary plans such as dependent care, tuition reimbursement, group legal services or other benefits provided under a cafeteria plan sponsored by the System institution; provided however, that such term shall not include any plan intended to be subject to paragraph (f)(2)(iii), (vii) and (viii) of this section.

(d) *Bona fide deferred compensation plan or arrangement* means any plan, contract, agreement or other arrangement whereby:

(1) An IRP voluntarily elects to defer all or a portion of the reasonable compensation, wages or fees paid for services rendered which otherwise would have been paid to such party at the time the services were rendered (including a plan that provides for the crediting of a reasonable investment return on such elective deferrals) and the System institution either:

(i) Recognizes compensation expense and accrues a liability for the benefit payments according to generally accepted accounting principles (GAAP); or

(ii) Segregates or otherwise sets aside assets in a trust which may only be used to pay plan and other benefits, except that the assets of such trust may be available to satisfy claims of the System institution's creditors in the case of insolvency; or

(2) The System institution establishes a nonqualified deferred compensation or supplemental retirement plan, other than an elective deferral plan described in paragraph (d)(1) of this section:

(i) Primarily for the purpose of providing benefits for certain IRPs in excess of the limitations on contributions and benefits imposed by sections 415, 401(a)(17), 402(g) or any other applicable provision of the Internal Revenue Code of 1986 (26 U.S.C. 415, 401(a)(17), 402(g)); or

(ii) Primarily for the purpose of providing supplemental retirement benefits or other deferred compensation for a select group of directors, management or highly compensated employees (excluding severance payments described in paragraph (f)(2)(v) of this section and permissible golden parachute payments described in § 1412.5); and

(3) In the case of any nonqualified deferred compensation or supplemental retirement plans as described in paragraphs (d)(1) and (2) of this section, the following requirements shall apply:

(i) The plan was in effect at least 1 year prior to any of the events described in paragraph (f)(1)(ii) of this section;

(ii) Any payment made pursuant to such plan is made in accordance with the terms of the plan as in effect no later than 1 year prior to any of the events described in paragraph (f)(1)(ii) of this section and in accordance with any amendments to such plan during such 1 year period that do not increase the benefits payable thereunder;

(iii) The IRP has a vested right, as defined under the applicable plan document, at the time of termination of employment to payments under such plan;

(iv) Benefits under such plan are accrued each period only for current or prior service rendered to the employer (except that an allowance may be made for service with a predecessor employer);

(v) Any payment made pursuant to such plan is not based on any discretionary acceleration of vesting or accrual of benefits which occurs at any time later than 1 year prior to any of the events described in paragraph (f)(1)(ii) of this section;

(vi) The System institution has previously recognized compensation expense and accrued a liability for the benefit payments according to GAAP or segregated or otherwise set aside assets in a trust which may only be used to pay plan benefits, except that the assets of such trust may be available to satisfy claims of the System institution's creditors in the case of insolvency; and

(vii) Payments pursuant to such plans shall not be in excess of the accrued liability computed in accordance with GAAP.

(e) *Corporation or FCSIC* mean the Farm Credit System Insurance Corporation, in its corporate capacity.

(f) *Golden parachute payment.* (1) The term ''golden parachute payment'' means any payment (or any agreement to make any payment) in the nature of compensation by any System institution for the benefit of any current or former IRP pursuant to an obligation of such System institution that:

(i) Is contingent on the termination of such party's primary employment or relationship with the System institution; and

(ii) Is received on or after, or is made in contemplation of, any of the following events:

(A) The insolvency (or similar event) of the System institution which is making the payment or bankruptcy or insolvency (or similar event) of the service corporation, subsidiary or affiliate which is making the payment; or

(B) The System institution is assigned a composite rating of 4 or 5 by the FCA; or

(C) The appointment of any conservator or receiver for such System institution; or

(D) A determination by the Corporation, that the System institution is in a troubled condition, as defined in paragraph (m) of this section; and

(iii) Is payable to an IRP whose employment by or relationship with a System institution is terminated at a time when the System institution by which the IRP is employed or related satisfies any of the conditions enumerated in paragraphs (f)(1)(ii)(A) through (D) of this section, or in contemplation of any of these conditions.

(2) *Exceptions.* The term ''golden parachute payment'' shall not include:

(i) Any payment made pursuant to a pension or retirement plan which is qualified (or is intended within a reasonable period of time to be qualified) under section 401 of the

Internal Revenue Code of 1986 (26 U.S.C. 401); or

(ii) Any payment made pursuant to a benefit plan as that term is defined in paragraph (c) of this section; or

(iii) Any payment made pursuant to a ''bona fide'' deferred compensation plan or arrangement as defined in paragraph (d) of this section; or

(iv) Any payment made by reason of death or by reason of termination caused by the disability of IRP; or

(v) Any severance or similar payment which is required to be made pursuant to a state statute or foreign law which is applicable to all employers within the appropriate jurisdiction (with the exception of employers that may be exempt due to their small number of employees or other similar criteria); or

(vi) Any other payment which the Corporation determines to be permissible in accordance with § 1412.6, on permissible indemnification payments; or

(vii) Any payment made pursuant to a nondiscriminatory severance pay plan or arrangement that provides for payment of severance benefits to all eligible employees upon involuntary termination other than for cause, voluntary resignation, or early retirement. Furthermore, such severance pay plan or arrangement shall not have been adopted or modified to increase the amount or scope of severance benefits at a time when the System institution was in a condition specified in paragraph (f)(1)(ii) of this section or in contemplation of such a condition without the prior written consent of the FCA; or in lieu of a payment made pursuant to this paragraph;

(viii) Any payment made pursuant to a severance pay plan or arrangement that provides severance benefits upon involuntary termination other than for cause, voluntary resignation, or early retirement. No employee shall receive any payment under this subpart which exceeds the base compensation paid to such employee during the 12 months (or longer period or greater benefit as the Corporation shall consent to) immediately proceeding termination of employment. Furthermore, such severance pay plan or arrangement shall not have been adopted or modified to increase the amount or the scope of the severance benefits at a time when the System institution was in a condition specified in paragraph (f)(1)(ii) of this section or in contemplation of such a condition without the written approval of the FCA.

(g) The *FCA* means the Farm Credit Administration.

(h) *Institution-related party (IRP)* means:

(1) Any director, officer, employee, or controlling stockholder (other than another Farm Credit System institution) of, or agent for a System institution;

(2) Any stockholder (other than another Farm Credit System institution), consultant, joint venture partner, and any other person as determined by the FCA (by regulation or case-by-case) who participates in the conduct of the affairs of a System institution; and

(3) Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the System institution.

(i) *Liability or legal expense* means:

(1) Any legal or other professional fees and expenses incurred in connection with any claim, proceeding, or action;

(2) The amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or actions; and

(3) The amount of, any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, processing, or action.

(j) *Nondiscriminatory* means that the plan, contract or arrangement in question applies to all employees of a System institution who meet reasonable and customary eligibility requirements applicable to all employees, such as minimum length of service requirements. A nondiscriminatory plan, contract or arrangement may provide different benefits based only on objective criteria such as salary, total compensation, length of service, job grade or classification, which are applied on a proportionate basis, with a modest disparity in severance benefits relating to any one criterion of 20 percent.

(k) *Payment* means:

(1) Any direct or indirect transfer of any funds or any asset;

(2) Any forgiveness of any debt or other obligation;

(3) The conferring of benefits in the nature of compensation, including but not limited to stock options and stock appreciation rights; or

(4) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of or arrangement for any letter of credit or other instrument, for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which such funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(i) The determination, after such date, of the liability for the payment of such amount; or

(ii) The liquidation, after such date, of the amount of such payment.

(l) *Prohibited indemnification payment.* (1) The term ''prohibited indemnification payment'' means any payment (or any agreement or arrangement to make any payment) by any System institution for the benefit of any person who is or was an IRP of such System institution, to pay or reimburse such person for any civil money penalty or judgment resulting from any administrative or civil action instituted by the FCA, or any other liability or legal expense with regard to any administrative proceeding or civil action instituted by the FCA which results in a final order or settlement pursuant to which such person:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the institution; or

(iii) Is required to cease and desist from or take any affirmative action with respect to such institution.

(2) *Exceptions.* (i) The term ''prohibited indemnification'' payment shall not include any reasonable payment by a System institution which is used to purchase any commercial insurance policy or fidelity bond, provided that such insurance policy or bond shall not be used to pay or reimburse an IRP for the cost of any judgment or civil money penalty assessed against such person in an administrative proceeding or civil action commenced by the FCA, but may pay any legal or professional expenses incurred in connection with such proceeding or action or the amount of any restitution to the System institution or receiver.

(ii) The term ''prohibited indemnification payment'' shall not include any reasonable payment by a System institution that represents partial indemnification for legal or professional expenses specifically attributable to particular charges for which there has been a formal and final adjudication or finding in connection with a settlement that the IRP has not violated certain FCA laws or regulations or has not engaged in certain unsafe or unsound practices or breaches of fiduciary duty, unless the administrative action or civil proceedings has resulted in a final prohibition order against the IRP.

(m) *Troubled condition* means a System institution that:

(1) Is subject to a cease-and-desist order or written agreement issued by the FCA that requires action to improve the financial condition of the System institution or is subject to a proceeding initiated by the FCA which contemplates the issuance of an order that requires action to improve the financial condition of the institution, unless otherwise informed in writing by the FCA; or

(2) Is unable to make a timely payment of principal or interest on any insured obligation (as defined in section 5.51(3) of the Farm Credit Act; 12 U.S.C. 2277a(3)); or

(3) Is receiving assistance as described in section 5.61 of the Farm Credit Act, 12 U.S.C. 2277a–10; or

(4) Is unable to make timely payment of principal or interest on debt obligations issued under the authority of section 8.6(e)(2) of the Farm Credit Act; 12 U.S.C. 2279aa–6(e)(2) or is unable to fulfill the guarantee obligations provided under section 8.6 of the Farm Credit Act; 12 U.S.C. 2279aa–6; or

(5) Is informed in writing by the Corporation that it is in a ''troubled condition'' for purposes of the requirements of this subpart on the basis of the System institution's most recent report of condition or report of examination or other information available to the Corporation.

§ 1412.3 Golden parachute payments prohibited.

No System institution shall make or agree to make any golden parachute payment, except as provided in this part.

§ 1412.4 Prohibited indemnification payments.

No System institution shall make or agree to make any prohibited indemnification payment, except as provided in this part.

§ 1412.5 Permissible golden parachute payments.

(a) A System institution may agree to make or may make a golden parachute payment if and to the extent that:

(1) The FCA, with the written concurrence of the Corporation, determines that such a payment or agreement is permissible; or

(2) Such an agreement is made in order to hire a person to become an IRP either at a time when the System institution satisfies or in an effort to prevent it from imminently satisfying any of the criteria set forth in § 1412.2(f)(1)(ii), and the FCA and the Corporation consent in writing to the amount and terms of the golden parachute payment. Such consent by the Corporation and the FCA shall not improve the IRP's position in the event of the insolvency of the institution since such consent can neither bind a receiver nor affect the provability of receivership claims. In the event that the institution is placed into receivership or conservatorship, the Corporation and/or the FCA shall not be obligated to pay the promised golden parachute and the IRP shall not be accorded preferential treatment on the basis of such prior approval; or

(3) Such a payment is made pursuant to an agreement which provides for a reasonable severance payment, not to exceed 18-months' salary, to an IRP in the event of a change in control of the System institution; *provided, however,* that the System institution shall obtain the consent of the FCA prior to making such a payment and this paragraph (a)(3) shall not apply to any change in control of System institution which results from an assisted transaction as described in section 5.61 of the Farm Credit Act; 12 U.S.C. 2277a–10 or the System institution being placed into conservatorship or receivership; and

(4) A System institution or IRP making a request pursuant to paragraphs (a)(1) through (3) of this section shall demonstrate that it is not aware of any information, evidence, documents or other materials which would indicate that there is a reasonable basis to believe, at the time such payment is proposed to be made, that:

(i) The IRP has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the System institution that has had or is likely to have a material adverse effect on the institution;

(ii) The IRP is substantially responsible for the insolvency of, the appointment of a conservator or receiver for, or the troubled condition, as defined by applicable regulations concerning the System institution;

(iii) The IRP has materially violated any applicable Federal or state law or regulation that has had or is likely to have a material effect on the System institution; and

(iv) The IRP has violated or conspired to violate section 215, 657, 1006, 1014, or 1344 of title 18 of the United States Code or section 1341 or 1343 of such title affecting a Farm Credit System institution.

(b) In making a determination under paragraphs (a)(1) through (3) of this section the FCA and the Corporation may consider:

(1) Whether, and to what degree, the IRP was in a position of managerial or fiduciary responsibility;

(2) The length of time the IRP was affiliated with the System institution, and the degree to which the proposed payment represents reasonable compensation earned over the period of employment and reasonable payment for services rendered; and

(3) Any other factors or circumstances which would indicate that the proposed payment would be contrary to the intent of the Act or this part.

§ 1412.6 Permissible indemnification payments.

(a) A System institution may make or agree to make reasonable indemnification payments to an IRP with respect to an administrative proceeding or civil action initiated by the FCA if:

(1) The System institution's board of directors, in good faith, determines in writing after due investigation and consideration that the IRP acted in good faith and in a manner he/she believed to be in the best interests of the institution;

(2) The System institution's board of directors, in good faith, determines in writing after due investigation and consideration that the payment of such expenses will not materially adversely affect the institution's safety and soundness;

(3) The indemnification payments do not constitute prohibited indemnification payments as that term is defined in § 1412.2(l); and

(4) The IRP agrees in writing to reimburse the System institution, to the extent not covered by payments from insurance or bonds purchased pursuant to § 1412.2(l)(2), for that portion of the advanced indemnification payments which subsequently become prohibited indemnification payments, as defined herein.

(b) An IRP requesting indemnification payments shall not participate in any way in the board's discussion and approval of such payments; *provided, however,* that such IRP may present his/her request to the board and respond to any inquiries from the board concerning his/her involvement in the circumstances giving rise to the administrative proceeding or civil action.

(c) In the event that a majority of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the remaining members of the board may authorize independent legal counsel to review the indemnification request and

provide the remaining members of the board with a written opinion of counsel as to whether the conditions delineated in paragraph (a) of this section have been met. If independent legal counsel opines that said conditions have been met, the remaining members of the board of directors may rely on such opinion in authorizing the requested indemnification.

(d) In the event that all of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the board shall authorize independent legal counsel to review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions delineated in paragraph (a) of this section have been met. If independent legal counsel opines that said conditions have been met, the board of directors may rely on such opinion in authorizing the requested indemnification.

§ 1412.7 Filing instructions.

Requests to make excess nondiscriminatory severance plan payments and permitted golden parachute payments shall be submitted in writing to the FCA and the Corporation. The request shall be in letter form and shall contain all relevant factual information as well as the reasons why such approval should be granted.

§ 1412.8 Application in the event of receivership.

The provisions of this part or any consent or approval granted under the provisions of this part by the Corporation (in its corporate capacity), shall not in any way bind any receiver of a failed System institution. Any consent or approval granted under the provisions of this part by the Corporation or the FCA shall not in any way obligate such agency or receiver to pay any claim or obligation pursuant to any golden parachute, severance, indemnification or other agreement. Claims for employee welfare benefits or other benefits which are contingent, even if otherwise vested, when the Corporation is appointed as receiver for any System institution, including any contingency for termination of employment, are not provable claims or actual, direct compensatory damage claims against such receiver. Nothing in this part may be construed to permit the payment of salary or any liability or legal expense of any IRP contrary to 12 U.S.C. 2277a–10b(d).

Dated: February 7, 2006.

Roland E. Smith,

Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 06–1299 Filed 2–10–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22398; Airspace Docket No. 05–ASO–7]

RIN 2120–AA66

Establishment of High Altitude Area Navigation Routes; South Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes 16 high altitude area navigation (RNAV) routes in the South Central United States in support of the High Altitude Redesign (HAR) program. The FAA is taking this action to enhance safety and to facilitate the more flexible and efficient use of the navigable airspace.

EFFECTIVE DATE: 0901 UTC, April 13, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On September 27, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish 16 RNAV routes in the South Central United States, within the airspace assigned to the Memphis Air Route Traffic Control Center (ARTCC) (70 FR 56391). The routes were proposed as part of the HAR program to enhance safety and facilitate the more flexible and efficient use of the navigable airspace for en route instrument flight rules (IFR) aircraft operations. Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. One comment was received in response to the NPRM. The comment supported the proposal.

High altitude area navigation routes are published in paragraph 2006 of FAA Order 7400.9N dated September 1, 2005 and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The area navigation routes listed in this document will be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing 16 RNAV routes in the South Central United States, within the airspace assigned to Memphis ARTCC. The FAA is taking this action in support of the HAR program to enhance safety and to facilitate the more flexible and efficient use of the navigable airspace for en route instrument flight rules (IFR) operations. This rule includes several corrections to the route descriptions published in the NPRM. In route Q–26, the name of the fix ''ABROC'' is being changed to ''DEVAC.'' In route Q–31, the name of the waypoint ''TOROS'' is changed to ''JODOX,'' and in route Q–40, the waypoint name ''SALVA'' is changed to ''WINAP.'' These changes affect only the fix or waypoint names; the latitude and longitude coordinates for these points remain the same as published in the NPRM. The name changes are necessary to avoid duplication with other fixes. Finally, the order of the points listed for routes Q–19 and Q–33 has been reversed to comply with policy that odd numbered routes be described with the points listed from South to North. This does not affect the actual alignment of routes Q–19 and Q–33. Except for these changes, the routes in this rule are the same as those proposed in the NPRM.

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental