



[6710-01-1788]

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1411

RIN 3055-AA11

Rules of Practice and Procedure; Adjusting Civil Money  
Penalties for Inflation

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Final rule.

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SUMMARY: This rule implements inflation adjustments to civil money penalties (CMPs) that the Farm Credit System Insurance Corporation (FCSIC) may impose under the Farm Credit Act of 1971, as amended. These adjustments are required by 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990.

DATES: This rule is effective on August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Howard Rubin, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 883-4380, TTY (703) 883-4390.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) amended the Federal

Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act)<sup>1</sup> to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The Inflation Adjustment Act provides for the regular evaluation of CMPs and requires FCSIC, and every other Federal agency with authority to impose CMPs, to ensure that CMPs continue to maintain their deterrent values.<sup>2</sup>

FCSIC must enact regulations that adjust its CMPs pursuant to the inflation adjustment formula of the amended Inflation Adjustment Act and rounded using a method prescribed by the Inflation Adjustment Act. The new amounts will apply to penalties assessed on or after the effective date of this rule. Agencies do not have discretion in choosing whether to adjust a CMP, by how much to adjust a CMP, or the methods used to determine the adjustment.

B. CMPs Imposed Pursuant to Section 5.65 of the Farm Credit Act

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<sup>1</sup> Pub. L. 101-410, Oct. 5, 1990, 104 Stat. 890, as amended by Pub. L. 104-134, title III, sec. 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321-373; Pub. L. 105-362, title XIII, sec. 1301(a), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 114-74, title VII, sec. 701(b), Nov. 2, 2015, 129 Stat. 599.

<sup>2</sup> Under the amended Inflation Adjustment Act, a CMP is defined as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. All three requirements must be met for a fine to be considered a CMP.

First, section 5.65(c) of the Farm Credit Act, as amended (Act), provides that any insured Farm Credit System bank that willfully fails or refuses to file any certified statement or pay any required premium shall be subject to a penalty of not more than \$100 for each day that such violations continue, which penalty FCSIC may recover for its use.<sup>3</sup> Second, section 5.65(d) of the Act provides that, except with the prior written consent of the Farm Credit Administration, it shall be unlawful for any person convicted of any criminal offense involving dishonesty or a breach of trust to serve as a director, officer, or employee of any System institution.<sup>4</sup> For each willful violation of section 5.65(d), the institution involved shall be subject to a penalty of not more than \$100 for each day during which the violation continues, which FCSIC may recover for its use.

FCSIC's current § 1411.1, promulgated in 2001 pursuant to the Inflation Adjustment Act as then in effect, provides that FCSIC can impose a maximum penalty of \$117 per day for a violation under section 5.65(c) and (d) of the Act. FCSIC has not been required to make adjustments under the Inflation Adjustment Act since 2001.<sup>5</sup>

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<sup>3</sup> 12 U.S.C. 2277a-14(c).

<sup>4</sup> 12 U.S.C. 2277a-14(d)

<sup>5</sup> FCSIC's most recent notice assessing the need for cost-of-living adjustments to CMPs was published on October 24, 2013 (78 FR 63465).

### C. Required Adjustments

The 2015 Act requires agencies to (1) adjust the level of civil monetary penalties with an initial "catch-up" adjustment through an interim final rulemaking (IFR) and (2) make subsequent annual adjustments for inflation. Catch-up adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October of the year in which the CMP was established or adjusted (other than through Inflation Adjustment Act adjustments), and the October 2015 CPI-U. Annual inflation adjustments will be based on the percent change between the October CPI-U preceding the date of the adjustment and the prior year's October CPI-U. CMPs provided for in section 5.65 of the Act were enacted in 1988 and not subsequently changed (other than through Inflation Adjustment Act adjustments). In accordance with guidance issued by the Office of Management and Budget (pursuant to a directive in the 2015 Act), FCSIC must multiply the maximum amount of civil money penalty provided for in section 5.65(c) and (d) of the Farm Credit Act (\$100) by 1.97869.<sup>6</sup> This results in a revised penalty amount of \$198, after rounding to the nearest dollar as required by the 2015 Act.

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<sup>6</sup> OMB Memorandum M-16-06 (Feb. 24, 2015).

D. Notice and Comment Not Required by Administrative  
Procedure Act

The 2015 Act specifically directs Federal agencies to “adjust civil money penalties through an interim final rulemaking” and the Inflation Adjustment Act gives agencies no discretion in the calculation of the adjustment. Therefore, FCSIC concludes that public notice and an opportunity to comment are not necessary or appropriate under the Administrative Procedure Act and adopts this rule in final form.

E. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act<sup>7</sup>, FCSIC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks of the Farm Credit System, together with their affiliated associations, has assets and annual income in excess of amounts that would qualify them as “small entities” under the Regulatory Flexibility Act.

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<sup>7</sup> 5 U.S.C. 601, et seq.

List of Subjects in 12 CFR Part 1411

Banks, banking, civil money penalties, penalties.

For the reasons stated in the preamble, part 1411 of chapter XIV, title 12 of the Code of Federal Regulations is amended as follows:

PART 1411--RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 1411 continues to read as follows:

Authority: Secs. 5.58(10), 5.65(c) and (d) of the Farm Credit Act (12 U.S.C. 2277a-7(10), 2277a-14(c) and (d)); 28 U.S.C. 2461 note.

2. Revise § 1411.1 to read as follows:

§ 1411.1 Inflation adjustment of civil money penalties for failure to file a certified statement, pay any premium required or obtain approval before employment of persons convicted of criminal offenses.

In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, a civil money penalty imposed pursuant to section 5.65(c) or (d) of the

Farm Credit Act of 1971, as amended, for a violation occurring on or after August 1, 2016 shall not exceed \$198 per day for each day the violation continues.

Dated: May 12, 2016.

Dale L. Aultman,  
Secretary to the Board,  
Farm Credit System Insurance Corporation.

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