Example 1: You select 75 percent coverage level, 100 percent of the price election, and have a 100 percent share in 50.0 acres of type A prunes in the unit. The production guarantee is 2.5 tons per acre and your price election is $630.00 per ton. You harvest 10.0 tons. Your indemnity would be calculated as follows:

(1) 50.0 acres × 2.5 tons = 125.0-ton production guarantee;
(2) 125.0-ton guarantee × $630.00 price election = $78,750 value of production guarantee;
(3) $78,750 + $55,000 = $133,750 total indemnity payment.

Example 2: In addition to the information in the first example, you have an additional 50.0 acres of type B prunes with 100 percent share in the same unit. The production guarantee is 2.0 tons per acre and the price election is $550.00 per ton. You harvest 5.0 tons. Your total indemnity for both types A and B would be calculated as follows:

(1) 50.0 acres × 2.5 tons = 125.0-ton production guarantee for type A and 100.0-ton production guarantee for type B;
(2) 125.0-ton guarantee × $630.00 price election = $78,750 value of production guarantee for type B;
(3) $78,750 + $55,000 = $133,750 total value of production guarantee;
(4) 10.0 tons × $630.00 price election = $6,300 value of production to count for type A and 5.0 tons × $550.00 price election = $2,750 value of production to count for type B;
(5) $6,300 + $2,750 = $9,050 total value of production to count;
(6) $9,050 – $6,300 = $2,750 indemnity payment; and
(7) $72,450 × 1.00 share = $72,450 indemnity payment.

II. Background

The Farm Credit Act of 1971, as amended (Act),1 authorizes the FCA to issue regulations implementing the Act’s provisions.2 Our regulations are intended to ensure the safe and sound operations of System institutions and to govern the disclosure of financial information to shareholders of, and investors in, the System. Section 630.6(a) of our existing regulations requires the Funding Corporation to establish and maintain the SAC, including providing monetary and nonmonetary resources for SAC operations. Our existing regulation requires a two-thirds vote of the full Funding Corporation board to deny any SAC request for resources.

In a May 2010 petition, the SAC requested that we amend § 630.6(a) to allow the SAC the un fettered ability to engage outside advisors, consultants and legal counsel in the performance of its duties. In a February 14, 2012, proposed rulemaking, we proposed:

• Removing the requirement that the Funding Corporation Board deny a SAC request for resources by a two-thirds majority vote of the full board;
• The SAC use resources in a manner that would not adversely affect the safety and soundness of the System; and
• Disclosure of resources used by, and the composition of, the SAC.3

The 60-day comment period for the proposed rule closed on April 16, 2012.

III. Comments and Our Responses

We received comment letters on the proposed rule from each of the four Farm Credit banks, the Farm Credit Council (Council) on behalf of its membership, and a joint letter from the Funding Corporation and the SAC (joint letter). The Farm Credit banks and the Council expressed support for the comments made in the joint letter. We discuss the comments to our proposed rule and our responses below. Unless otherwise discussed in this preamble, those areas of the proposed rule not receiving comment are finalized as proposed.

A. System Audit Committee Authority

All commenters supported removing the requirement that a two-thirds majority vote of the full Funding Corporation board of directors was needed to deny a SAC request for resources. Also, commenters supported the requirement that the SAC report at least quarterly to the Funding Corporation board on its use of resources.

Commenters expressed concern with the requirement that the SAC use Funding Corporation resources in a...
manner that would not adversely affect the safety and soundness of the System. They stated that the safety and soundness provision was not operational and could be subject to different interpretations. One commenter provided an example in which the SAC may choose not to investigate or uncover potential financial wrongdoing because disclosing how it used the resources and the results from the use of those resources may impact the System’s cost of funds in a manner that could adversely affect the safety and soundness of the System. The commenter noted that failure of the SAC to investigate or uncover a potential financial wrongdoing could also adversely affect the safety and soundness of the System. We respectfully disagree with comments arguing that the provision may not be operational when there may be a duty to disclose financial wrongdoing which might adversely affect the cost of funds for the System. Uncovering financial wrongdoing and any unavoidable impact would not be contrary to the rule. While the wrongdoing itself may affect safety and soundness, the corrective actions taken to respond to and resolve the wrongdoing would be a positive impact on the safety and soundness of the System and, therefore, not prohibited under the rule. It is the financial wrongdoing that could adversely affect the safety and soundness of the System, not the action taken by the SAC to uncover and correct it.

Commenters stated that requiring the SAC to use Funding Corporation resources in a manner that would not adversely affect the safety and soundness of the System provision would create a standard that is stricter than that applied under governance best practices and should not be required. Some commenters expressed that requiring the SAC to use Funding Corporation resources in a manner that would not adversely affect the safety and soundness of the System provision may hinder the Funding Corporation’s ability to attract and retain SAC members, which could potentially damage the safety and soundness of the System. As the safety and soundness regulator of System institutions, including the Funding Corporation and its SAC, we expect all institutions to use resources according to law and regulations and in a safe and sound manner. We believe using resources accordingly and in such a manner should always be considered a best practice. Further, since the SAC is not composed solely of members of the board of directors as are other System institution audit committees,4 we want to be clear that the SAC is held to the same safety and soundness standard. Commenters stated the SAC cannot guarantee that the use of resources would lead directly to results that ensure the safety and soundness of the System. One commenter noted that the requirement may discourage the SAC from engaging outside third parties to assist with investigations or prevent the SAC from seeking their advice. The rule does not require the SAC use of resources guarantee the System’s safety and soundness. Instead, the rule requires that the SAC not use Funding Corporation resources in a manner that would adversely affect the safety and soundness of the System or be contrary to law and regulation. We refer again to the example in which the SAC would use resources to uncover financial wrongdoing. The actual act of financial wrongdoing may adversely affect the safety and soundness of the System. The use of resources by the SAC to uncover and correct the wrongdoing may not be considered to have caused the adverse effect, but may help preserve and promote the safety and soundness of the System.

The joint letter asserted that the SAC is already bound by its fiduciary duties to act prudently. The joint letter stated that the Business Judgment Rule allows SAC members to rely on the advice of experts, but the safety and soundness provision would create a judicial and regulatory hindsight that the Business Judgment Rule was meant to deter. The commenter stated that this could potentially lead to a liability for SAC members.

The Business Judgment Rule provides a measure of liability protection to directors, officers, employees, and agents of a corporation when, in the course of decision-making, they place a reasonable reliance on expert advice. When applying the Business Judgment Rule, the courts consider whether the decision-making process involved careful consideration of reasonably available and relevant facts and whether the decision-maker honestly and reasonably believed that the decision was in the best interest of the institution. The safety and soundness of the System is in the best interest of the SAC and the Funding Corporation. We see nothing in the requirement to use Funding Corporation resources in a safe and sound manner that is contrary to the SAC’s fiduciary duties or diminishes the protection offered the SAC under the “Business Judgment Rule.” As such, the argument that the provision hinders or otherwise contradicts the principals behind the Business Judgment Rule is not meritorious.

The SAC’s use of Funding Corporation resources must have the intended purpose of preserving or promoting the safety and soundness of the System. We do not believe that it is more difficult for the SAC to carry out its responsibilities in a manner that does not adversely affect the System’s safety and soundness than it is for other System institution audit committees. However, in consideration of the comments, we are modifying the language to clarify the requirement. The provision as finalized places a positive duty on the SAC to use resources in a lawful manner and to preserve and promote the safety and soundness of the System. This provision does not prevent the Funding Corporation board from developing its own policies and procedures to address the request for and use of resources by the SAC.

B. External Auditors

All commenters agreed with the proposed clarification that the SAC determines the appointment, compensation, and retention of the external auditor only with the agreement of the Funding Corporation board. However, commenters asked that the rule text make clear that this authority relates to the performance of the audit of the System-wide combined financial statements and not the audit fees related to the performance of the audit of the financial statements of individuals banks and associations. We do not believe any changes are needed to the language in § 630.6(a)(4)(ii). The rule clearly states that the appointment, compensation and retention of the external auditors relates solely to issuing the combined System-wide audit report and not the audit report of individual banks and associations. Our rule at § 620.30(d)(2) gives that authority to the audit committees of individual banks and associations. In addition, in a 2006 rulemaking, we made changes to our rules to limit the authority of the Funding Corporation, and by extension the SAC, to intervene in the activities of any bank or association’s external auditor.5

The joint letter requested that the rule not require Funding Corporation board concurrence for ordinary or recurring external auditor fees. We do not believe

---

4 The SAC is only required to have one-third of its membership from the Funding Corporation board of directors. Audit committee members of Farm Credit banks and associations are composed solely of members of the respective institution’s board of directors.

this change is necessary because, as previously stated, the Funding Corporation board may develop its own procedures to address the activities of the SAC as long as those procedures do not conflict with law or regulation.

We finalize the provisions of § 630.6(a)(4)(ii)(A) as proposed.

C. Disclosure of System Audit Committee Expenditures [§ 630.20(n)]

We proposed in § 630.20(n) that Funding Corporation resources used by the SAC be disclosed by category and amount in the annual System-wide report to investors if the total of each expense category for the reporting year was $5,000 or more. The proposed categories included, at a minimum, administrative expenses, contracted legal services, contracted consultants and advisors, and other contracted services performed on behalf of the SAC. We proposed excluding from this section disclosure of the fees paid to the external auditor issuing System-wide audit reports. That disclosure is required by existing § 630.20(k)(2).

Commenters expressed concern with the additional disclosures proposed in § 630.20(n). Other commenters contended that the disclosure placed a higher standard on the SAC than what is required of entities registered with the Securities Exchange Commission (SEC) or as required by the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley). The joint letter stated the disclosures were unnecessary and explained that as a best practice the SAC follows most SEC disclosure requirements, using a materiality assessment. Commenters suggested disclosures not be required before any investigation or similar inquiry by the SAC is completed. One commenter stated that the disclosures could reveal confidential information and might affect the ability of the SAC to engage outside consultants. The joint letter asserted attorney-client communications would also be compromised.

We believe disclosure of the use of Funding Corporation resources by the SAC provides transparency to System stockholders and investors and strengthens board and management accountability. Further, we believe removing the provision that a two-thirds majority vote of the full Funding Corporation board be required to deny an SAC request for resources necessitates an added level of accountability by the SAC.

We do not believe that disclosing the dollar amount of resources used to hire legal counsel, consultants and other categories of services would compromise confidentiality or attorney-client relations. The provision does not require the disclosure in the annual System-wide report to investors of the name of or service performed by legal counsel, advisors or outside consultants engaged by the SAC. Instead, the provision requires reporting the cost of and benefits to the System from the use of those resources. However, since disclosure of benefits derived from using those resources appears to be the source of commenters’ concerns, and considering the safety and soundness constraints placed on the use of resources, we are finalizing the rule with the cost disclosure only and without the requirement to report the benefits of resources used. We expect the SAC to disclose information on the benefit from the use of resources to the Funding Corporation board.

One commenter requested that we limit the definition of external resources to “experts” engaged by the SAC and not include resources used by the SAC for off-site meeting facilities. The commenter stated that the use of these resources should instead be periodically reported to the Funding Corporation board. We respectfully disagree with the suggestion of limiting the disclosure on the SAC’s use of resources to only “experts.” The Funding Corporation is required to provide both monetary and nonmonetary resources to the SAC and we proposed disclosures of those resources to ensure that investors are provided transparent and complete disclosure on the use of resources by the SAC. Further, we identified categories of resources based on use, including a disclosure category of “administrative expenses,” which may include either internal or external resources or both. Thus, if the SAC uses Funding Corporation resources for meeting sites, those expenses would be reported in the “administrative expense” category.

One commenter asserted that the $5,000 de minimis reporting threshold was too low and should be increased. We believe this threshold is reasonable given we are removing the requirement for a two-thirds majority vote of the full Funding Corporation board to deny an SAC request for resources. In addition, the threshold resembles other disclosure thresholds established elsewhere in our rules. We are not increasing the reporting threshold in this final rule.

One commenter requested that we clarify the relationship of the proposed § 630.20(n) exemption from reporting external audit fees for issuance of System-wide audit reports with the existing requirement of § 630.20(k)(2), which requires the disclosure of fees. Existing § 630.20(k)(2) requires disclosure of fees paid to the external auditor during the reporting period for audit services, tax services, and non-audit services. Because § 630.20(k)(2) currently requires disclosure of these fees, we did not also propose requiring a similar disclosure requirement in § 630.20(n). We are revising the language in § 630.20(n) for clarity.

No comments were received on the proposed requirement to disclose in the annual System-wide report to investors the name, experience, and compensation of SAC members. Also, we received no comments on the categories of resources used by the SAC that were identified in the proposed rule and required to be disclosed. We finalize these provisions as proposed.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the FCA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not “small entities” as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 630

Accounting, Agriculture, Banks, banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, part 630 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 630—DISCLOSURE TO INVESTORS IN SYSTEM-WIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM

§ 630.20 Report to investors of system-wide and consolidated bank debt obligations.

1. The authority citation for part 630 is revised to read as follows:

§ 630.6 Funding Corporation committees.

(a) * * *

(3) Resources. The Funding Corporation must provide the SAC monetary and nonmonetary resources the SAC determines necessary to enable it to perform the duties listed in paragraph (a)(4) of this section. The Funding Corporation must permit the SAC to contract, for reasons directly related to the duties listed in paragraph (a)(4) of this section, the services of external auditors, independent legal counsel, and outside advisors. The SAC must only use the resources of the Funding Corporation in a manner that complies with laws and regulations and for the purpose of preserving and promoting the safety and soundness of the System. The SAC must provide the Funding Corporation board of directors a quarterly accounting of expenditures made pursuant to this section.

(4) * * *

(ii) Contracted legal services, identifying the services.

§ 630.20 Contents of the annual report to investors.

(n) System Audit Committee. The Funding Corporation must include in the System-wide Report to Investors a description of the System Audit Committee and its activities during the reporting period. At a minimum, the description must:

(1) List the names of the System Audit Committee members, including each member’s term of office and principal occupation during the past 5 years. For each member, state the total cash and noncash compensation paid for services on the System Audit Committee during the reporting period.

(2) Disclose by category the monetary and nonmonetary resources used by the System Audit Committee during the reporting period. Discuss only those categories where the resources used within a category equaled or exceeded a total aggregate value of $5,000 during the reporting period. Fees paid for the audit of the System-wide financial statements, which are disclosed under paragraph (k)(2) of this section, are not included in any category under this paragraph. At a minimum, there must be separate categories for:

(i) Administrative expenses,

(ii) Contracted legal services,

(iii) Contracted consultants and advisors, and

(iv) Other contracted services.

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
15 CFR Part 902
[FR Doc. 2012–23723 Filed 9–25–12; 8:45 am]
BILLING CODE 6705–01–P

Fishing for the Exclusive Economic Zone Off Alaska; Monitoring and Enforcement Requirements in the Bering Sea and Aleutian Islands Freezer Longline Fleet

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations that modify equipment and operational requirements for freezer longliners (catcher/processors) named on License Limitation Program (LLP) licenses endorsed to catch and process Pacific cod at sea with hook-and-line gear in the Bering Sea and Aleutian Islands Management Area (BSAI). These regulations require vessel owners to select between two monitoring options: carry two observers so that all catch can be sampled, or carry one observer and use a motion-compensated scale to weigh Pacific cod before it is processed. The selected monitoring option is required to be used when the vessel is operating in either the BSAI or Gulf of Alaska groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is fishing for groundfish under the Western Alaska Community Development Quota (CDQ) Program. A vessel owner who notifies NMFS that the vessel will not be used to conduct directed fishing for Pacific cod in the BSAI or to conduct groundfish CDQ fishing at any time during a particular year will not be required to select one of the monitoring options and will continue to follow observer coverage and catch reporting requirements that apply to catcher/processors not subject to this action. These regulatory amendments address the need for enhanced catch accounting, monitoring, and enforcement created by the formation of a voluntary cooperative by the BSAI longline catcher/processor subsector in 2010, and are necessary to improve the precision of the accounting for allocated quota species. This action is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

DATES: Effective October 26, 2012.

ADDRESSES: Electronic copies of the proposed rule, the Environmental Assessment/Regulatory Impact Review (EA/RIR) for this action may be obtained from http://www.regulations.gov or from the Alaska Region Web site at http://alaskafisheries.noaa.gov.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; and by email to OIRA_Submission@omb.eop.gov, or by fax to 202–355–7285.

FOR FURTHER INFORMATION CONTACT: Jennifer Watson, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). The FMPs were prepared by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce under authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. (Magnuson-Stevens Act). The FMPs are implemented by regulations at 50 CFR parts 679 and 680.