to meet the requirements contained in section 13(b) of these Crop Provisions;

(2) The value of the following appraised sweet corn production will not be less than the dollar amount obtained by multiplying the number of containers of appraised sweet corn by the minimum value for the planting period:

(i) Unharvested marketable sweet corn production (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count unless such production is later harvested and sold for any purpose);

* * * * *

(3) The value of all harvested production of sweet corn from the insurable acreage, except production that is sold by direct marketing as specified in section (c)(4) below:

(i) For sold production, will be the greater of:

(A) The dollar amount obtained by multiplying the total number of containers of sweet corn sold by the minimum value; or

(B) The dollar amount obtained by multiplying the average net value per container from all sweet corn sold by the total number of all containers of sweet corn sold.

(ii) For marketable sweet corn production that is not sold, will be the dollar amount obtained by multiplying the number of containers of such sweet corn by the minimum value for the planting period. Harvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count unless such production is sold.

(4) If all the requirements of insurability are met, the value of insurable production that is sold by direct marketing will be the greater of:

(i) The actual value received by you for direct marketed production; or

(ii) The dollar amount obtained by multiplying the total number of containers of appraised sweet corn sold by direct marketing by the minimum value.

* * * * *

16. Minimum Value Option

* * * * *

(b) In lieu of the provisions contained in section 14(c)(3) of these Crop Provisions, the total value of harvested production that is not sold by direct marketing will be determined as follows:

(1) The dollar amount obtained by multiplying the average net value per container from all sweet corn sold by the total number of all containers of sweet corn sold (this result may not be less than the minimum value option amount shown in the actuarial documents);

(2) For marketable sweet corn production that is not sold, the value of such production will be the dollar amount obtained by multiplying the total number of containers of such sweet corn by the minimum value for the planting period. Harvested production that is damaged or defective due to insurable causes and is not marketable will not be included as production to count.

(c) If all the requirements of insurability are met, the value of insurable production that is sold by direct marketing will be the greater of:

(1) The actual value received by you for direct marketed production; or

(2) The dollar amount obtained by multiplying the total number of containers of sweet corn sold by direct marketing by the minimum value.

* * * * *

Signed in Washington, DC, on September 12, 2007.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E7–18781 Filed 9–25–07; 8:45 am]

BILLING CODE 3410–08–P

FARM CREDIT ADMINISTRATION

12 CFR Part 627

RIN 3052–AC38

Title IV Conservators, Receivers, and Voluntary Liquidations; Priority of Claims—Subordinated Debt

AGENCY: Farm Credit Administration.

ACTION: Direct final rule with opportunity to comment.

SUMMARY: The Farm Credit Administration (FCA, Agency, we), issues a direct final rule amending its priority of claims regulations. The effect of the amendments is to provide that, when the assets of a Farm Credit System (FCS or System) institution in liquidation are distributed, the claims of holders of subordinated debt will be paid after all general creditor claims.

DATES: If no significant adverse comment is received on or before October 26, 2007, these regulations will be effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**. If significant adverse comment is received on an amendment, paragraph, or section of this rule, and that provision may be addressed separately from the remainder of the rule, the FCA will withdraw that amendment, paragraph, or section and adopt as final those provisions of the rule that are not the subject of a significant comment. In such case, we will then tell you how we expect to continue further rulemaking on the provisions that were the subject of significant adverse comment.

ADDRESSES: We offer a variety of methods for you to submit comments. For accuracy and efficiency reasons, we encourage commenters to submit comments by e-mail or through the Agency's Web site or the Federal eRulemaking Portal. As faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, please consider another means to submit your comment if possible. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov.*
- *Agency Web site: http://www.fca.gov.* Once you are at the Web site, select ''Public Commenters,'' then ''Public Comments.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.
- *FAX*: (703) 883–4477. Posting and processing of faxes may be delayed. Please consider another means to comment, if possible.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Public Commenters,'' then select ''Public Comments,'' then select ''Submitting a Comment'' and follow the instructions there. We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Christopher D. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4434, or

Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

Our objective in this direct final rule is to clarify the claims priority of subordinated debt in the event of the liquidation of a System institution.

II. Background

Part 627 of our regulations governs the conduct of System institution conservatorships and receiverships. Sections 627.2745, 627.2750, and 627.2752 set forth the priority of claims by creditors for the distribution of the assets of associations, banks and other Farm Credit institutions, respectively, in liquidation. Section 627.2755(b) provides that, ''[f]ollowing the payment of all claims, the receiver shall distribute the remainder of the assets of the institution to the owners of stock, participation certificates, and other equities in accordance with the priorities for impairment set forth in the bylaws of the institution.'' These provisions do not expressly provide for payments on claims by holders of unsecured obligations that, according to the terms of such obligations, are subordinated to the claims of general creditors (subordinated debt). A System bank that recently issued subordinated debt has requested that we amend our regulations to clarify that holders of subordinated debt would be paid after general creditors are paid. The System bank made this request in a comment to a proposed rule published on March 12, 2007, that would provide priority of claims rights to System banks if they make payments under a contractual agreement to reallocate joint and several liability.[1] The Agency has adopted that proposal as a final rule concurrent with this direct final rule.

Subordinated debt is a type of obligation whose repayment, in a liquidation context, is subordinated to the claims of general creditors but is paid ahead of claims of equity holders. Subordinated debt that meets certain characteristics can be an attractive method of funding for regulated financial institutions, such as System institutions and commercial banks, because of the lower cost of funding and the ability to include some or all of the debt in regulatory capital.[2] An institution can issue more than one class of subordinated debt and can provide for all classes of the debt to have the same claims priority upon liquidation. Alternatively, an institution with multiple classes of subordinated debt can provide for one or more classes of subordinated debt to be subordinated to one or more other classes of subordinated debt.

This rule is intended to clarify the payment priority of subordinated debt holders with respect to holders of other debt and among holders of different classes of subordinated debt.

III. Description of Rule

Sections 627.2745, 627.2750, and 627.2752 are amended by adding language to each section to provide that, in the liquidation of banks, associations, and other Farm Credit institutions, respectively, the holders of claims subordinated to general creditors' claims will be paid after general creditors according to the priority specified in the written documents evidencing those claims. We have used the more general term ''claims'' to include, in addition to subordinated debt, any other instruments whose payment in liquidation is subordinated to payments to general creditors but ahead of payments made to equity holders under § 627.2755(b).

Our rule is intended also to provide that the receiver will pay these claims in accordance with the subordination priorities established by the issuing institution. We note that, unlike the other paragraphs in §§ 627.2745, 627.2750, and 627.2752, the new paragraph in each section can cover multiple classes of claimants, and we are adding a reference to § 627.2755(a) to each new paragraph to clarify this.

IV. Direct Final Rulemaking

With the promulgation of this rule, the FCA is using the ''Direct Final'' procedure for rulemaking. Direct final rulemaking permits agencies to adopt noncontroversial rules on an expedited basis, without going through the usual proposal and final stages of notice-and-comment rulemaking. Direct final rulemaking was recommended for promulgation of noncontroversial rules by the Administrative Conference of the United States (ACUS) in its Recommendation 95–4, adopted June 15, 1995.

The FCA's use of innovative rulemaking techniques furthers its strategic goal of implementing effective and efficient regulations. We believe that the use of direct final rulemaking in appropriate circumstances can streamline the rulemaking process for noncontroversial rules by reducing the time and resources needed for development, review, clearance, and publication, while still affording the public adequate opportunity to comment on or object to a rule.

In direct final rulemaking, the agency gives notice that a rule will become final at a specified future date unless the agency receives significant adverse comment on the rule during the comment period established in the rulemaking notice. The Administrative Procedure Act, 5 U.S.C. 551–59, *et seq.* (APA), supports this streamlined technique of rulemaking. Direct final rulemaking is justified under section 553(b)(B) of the APA. Section 553(b)(B) is the APA's ''good cause'' exemption for omitting notice and comment on a rule where an agency finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' In direct final rulemaking, the agency finds that the rule is sufficiently straightforward and noncontroversial to make normal notice and comment unnecessary under the APA. However, rather than eliminating public comment altogether, as would be permissible under section 553(b)(B), the agency gives the public an opportunity to rebut the agency's conclusion that public input on the rule is unnecessary.

Notwithstanding this ''good cause'' rationale under section 553(b)(B), direct final rulemaking also meets the basic notice-and-comment requirements of the APA, although the timing and format of notice and opportunity for comment necessarily differs from a typical notice-and-comment rulemaking. If, during the comment period provided, the agency receives a significant adverse comment on an amendment, paragraph, or section of this rule, and that provision may be addressed separately from the remainder of the rule, the agency commits to withdraw that amendment, paragraph, or section and adopt as final those provisions of the rule that are not subject of a significant comment. In such case, we would then notify the public how we expect to continue further rulemaking on the provisions that were the subject of the significant adverse comment. A significant adverse comment is defined as one where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In

[1] *See* 72 FR 10939.

[2] System institutions may include debt in regulatory capital only when the FCA determines that the debt is appropriate to be considered permanent capital or that the debt is the functional equivalent of core surplus or total surplus. *See* 12 U.S.C. 2154a(a)(1)(E); 12 CFR 615.5201 definition of permanent capital (7); 12 CFR 615.5301(b)(1)(iv) and (i)(6).

general, a significant adverse comment would raise an issue serious enough to warrant a substantive response from the agency in a notice-and-comment proceeding.

The FCA believes that these amendments fit the category of rules appropriate for direct final rulemaking. These changes merely clarify that holders of subordinated debt, which is subordinate to general creditors by definition and by the terms of the subordinated debt instruments, are entitled to payment in a liquidation only after general creditors are paid. For these reasons, the FCA does not anticipate that there will be significant adverse comment on this rulemaking. Nonetheless, in keeping with the recommended procedures, the FCA is providing a 30-day period from publication during which members of the public may comment on the rule. If significant adverse comment is received during the comment period, we will publish a notice of withdrawal of the relevant provisions of this rule that will also indicate how further rulemaking will proceed. If no significant adverse comment is received, the FCA will publish a notice of the effective date under section 5.17(c)(1) of the Act.

V. 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 rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the 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, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 627

Agriculture, Banks, Banking, Claims, Rural areas.

■ For the reasons stated in the preamble, we amend part 627 of chapter VI, title 12 of the Code of Federal Regulations to read as follows:

PART 627—TITLE IV CONSERVATORS, RECEIVERS, AND VOLUNTARY LIQUIDATIONS

■ 1. The authority citation for part 627 continues to read as follows:

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58, 5.61 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7, 2277a–10).

Subpart B—Receivers and Receiverships

■ 2. Amend § 627.2745 by adding a new paragraph (i) to read as follows:

§ 627.2745 Priority of claims—associations.

* * * * *

(i) All claims that, by their terms, are subordinated in whole or in part to the claims of general creditors, other than distributions covered under § 627.2755(b). Such claims shall receive the priority specified in the written instruments that evidence the claims and, to the extent that the written documents provide different priorities for different categories of such claims, each category shall be considered a class of claims for purposes of § 627.2755(a).

■ 3. Amend § 627.2750 by adding a new paragraph (j) to read as follows:

§ 627.2750 Priority of claims—banks.

* * * * *

(j) All claims that, by their terms, are subordinated in whole or in part to the claims of general creditors, other than distributions covered under § 627.2755(b). Such claims shall receive the priority specified in the written instruments that evidence the claims and, to the extent that the written documents provide different priorities for different categories of such claims, each category shall be considered a class of claims for purposes of § 627.2755(a).

■ 4. Amend § 627.2752 by adding a new paragraph (h) to read as follows:

§ 627.2752 Priority of claims—other Farm Credit institutions.

* * * * *

(h) All claims that, by their terms, are subordinated in whole or in part to the claims of general creditors, other than distributions covered under § 627.2755(b). Such claims shall receive the priority specified in the written instruments that evidence the claims and, to the extent that the written documents provide different priorities for different categories of such claims, each category shall be considered a class of claims for purposes of § 627.2755(a).

Dated: September 20, 2007.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

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BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 627

RIN 3052–AC16

Title IV Conservators, Receivers, and Voluntary Liquidations; Priority of Claims—Joint and Several Liability

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, we), issues this final rule amending the priority of claims regulations to provide priority of claims rights to Farm Credit System (System, FCS, Farm Credit) banks if they make payments under a reallocation agreement to holders of consolidated and System-wide obligations on behalf of a defaulting System bank. The final rule also clarifies that payments to a class of claims will be on a pro rata basis.

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:

Christopher D. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4434, or

Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

Our objectives in this final rule are to:

• Provide System banks that make payments under a reallocation agreement to holders of consolidated and System-wide obligations of a defaulting bank the same priority of claims rights they would have for payments made under statutory joint and several calls by the FCA; and

• Clarify that claims in the same class will receive payments on a pro rata basis if there are insufficient assets in a receivership to pay the entire class in full.

II. Background

A. Joint and Several Liability Under the Act

System associations obtain funding by means of direct loans from their affiliated Farm Credit banks. The banks in turn obtain their funding primarily by