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

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1210

[FV-01-701 FR C]

#### Watermelon Research and Promotion Plan: Referendum Procedures; Correction

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Agricultural Marketing Service (AMS) published a final rule in the **Federal Register** on November 7, 2001 (66 FR 56386), establishing referendum procedures to be used in connection with the Watermelon Research and Promotion Plan. The final rule contained errors in the section numbers. This document corrects those errors.

**EFFECTIVE DATE:** April 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Manzoni, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250-0244; telephone (202) 720-9915; faximile (202) 205-2800; or [daniel.manzoni@usda.gov](mailto:daniel.manzoni@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department of Agriculture (Department) published a final rule in the **Federal Register** in November 2, 2001, [66 FR 56386], establishing referendum procedures pursuant to the Watermelon Research and Promotion Plan [7 CFR part 1210]. The Plan is issued under the Watermelon Research and Promotion Act [7 U.S.C. 4901-4916].

#### Need for Correction

As published, there were typographical errors in the final rule. Several section numbers in the final rule did not reference the correct sections of the Code of Federal Regulations. Accordingly, this correction document replaces the incorrect section numbers, §§ 1240.601 through § 1240.607, with the correct section numbers §§ 1210.601 through 1210.607.

#### List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelon promotion.

#### PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

Accordingly, 7 CFR part 1210 is corrected by redesignating §§ 1240.601 through 1240.607 as §§ 1210.601 through 1210.607.

Dated: April 8, 2002.

A.J. Yates,

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02-8944 Filed 4-11-02; 8:45 am]

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## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 611 and 614

**RIN 3052-AB86**

#### Organization; Loan Policies and Operations; Termination of Farm Credit Status

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends our regulations to allow a Farm Credit System (FCS, Farm Credit or System) bank or association to terminate its FCS charter and become a financial institution under another Federal or State chartering authority. Our purpose is to amend the existing regulations so they apply to all System banks and associations and to make other changes.

**EFFECTIVE DATE:** This regulation will become 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:

Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4479, TTY (703) 883-4434;

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-2020.

#### SUPPLEMENTARY INFORMATION:

##### I. Objectives

The objectives of our rule are to:

- Provide a termination procedure for Farm Credit associations and banks under section 7.10 of the Farm Credit Act of 1971, as amended (Act);
- Ensure that nonterminating FCS institutions can continue fulfilling their congressional mandate of serving the credit needs of farmers, ranchers, and cooperatives;
- Ensure that nonterminating FCS institutions are able to operate safely and soundly;
- Ensure that all equity holders of a terminating institution are treated fairly and equitably; and
- Ensure that stockholder disclosure materials are accurate, informative, and easy to understand.

##### II. Introduction

We proposed amendments to our existing termination rule on November 5, 1999. (See 64 FR 60370 for a full discussion of the 1999 proposal.) We also published a sample exit fee calculation for a hypothetical FCS bank and association choosing to terminate their Farm Credit status under the 1999 proposal. See 65 FR 5286, Feb. 3, 2000.

After further deliberations and consultation with the Farm Credit System Insurance Corporation (FCSIC), we repropose our termination rule primarily to change the method of calculating the equity of "dissenters." "Dissenters," for purposes of this preamble discussion, include (1) "dissenting stockholders," who are defined in the regulation as equity holders other than System institutions that choose not to hold stock in the successor institution, and (2) System institutions who choose not to hold stock in the successor institution. See 66 FR 43536, Aug. 20, 2001.

Our 1999 proposal required a terminating institution to retire the equities of dissenters, in cash or in exchange for other debt or equity in the successor institution (if the dissenter agreed), before calculation of the exit fee. We noted in the preamble to the 1999 proposal that such a calculation would enable dissenters to receive approximately the same payment for their equities that they would receive if the institution were liquidated.

Our reproposal and this final rule require the calculation of dissenters' equity "after payment" of the exit fee. Congress required System institutions to make a payment to the Farm Credit Insurance Fund (Insurance Fund) as one of the prerequisites to the exercise of the authority to terminate status as a System institution. Section 7.10(a)(4) of the Act provides for the terminating institution to pay "the amount by which the total capital of the institution exceeds, 6 percent of the assets." In addition, section 7.10(a)(7) of the Act provides that the terminating institution must meet "such other conditions as the Farm Credit Administration Board by regulation considers appropriate."

Calculating and deducting the exit fee before other payments maximizes the payment to the Insurance Fund. It also means that stockholders of a terminating institution will receive approximately the same proportionate value for their equities, whether they dissent or choose to be stockholders of the successor institution. Dissenters will not receive a windfall at the expense of the continuing stockholders, and vice versa. We believe the consequence is that stockholders will base their decision to support or dissent from termination on other aspects of the proposal, such as whether giving up Farm Credit status will benefit borrowers.

This final rule would make the following additional changes to the existing rule:

- The final rule applies to all FCS banks and associations. The existing rule applies to small associations only. In the existing rule, an association is defined as "small" when its investment in its affiliated FCS bank is 25 percent or less of the bank's capital, or when its loan from the bank totals 25 percent or less of the bank's total loans.

- In the final rule, an institution's exit fee is calculated on the date of termination. In the existing rule, the date of the exit fee calculation is the quarter end before the termination application is filed.

- In the final rule, terminating institutions must escrow 110 percent of both the estimated exit fee and cash stock retirements to dissenters pending

a final audit. After the audit confirms the final exit fee, the escrow agent will disburse the funds. In the existing rule, there are no escrow requirements.

- In the final rule, a terminating association may repay its direct loan on a schedule agreed to by its bank. In the existing rule, a terminating association must repay its direct loan in 3 years or less.

- If a bank and a terminating association are unable to agree on when and how the bank will retire the association's investment in the bank, the final rule requires the bank to retire the investment on or before the date the association's direct loan is repaid. In the existing rule, the FCA specifies how the investment is retired if the bank and the association cannot agree.

- In the final rule, System institutions have the option of exchanging their investments in a terminating institution for equity in the successor to the extent permitted by law. In the existing rule, System institutions do not have this option.

- In the final rule, a terminating bank's payment to the Farm Credit System Financial Assistance Corporation (FAC) is based on its retail loan volume, the loan volume of associations terminating with the bank, and the loan volume of associations maintaining their direct loan with the bank after termination. Payments to FAC by a bank are not covered in the existing rule because the existing rule does not cover the termination of an FCS bank.

### III. Comments

We received two comment letters on our reproposal—one from the Farm Credit Council (Council) on behalf of its member FCS banks and associations and one from the Independent Community Bankers of America (ICBA). The ICBA is a trade association that represents approximately 5,000 community banks across the country. After carefully considering these comments, we have decided to adopt the final rule with no changes from the reproposal.

The Council requested that we amend the summary of our preamble to clarify that only a System bank or association may apply to terminate under this rule. We have done so.

The ICBA asserted that we should not allow any Farm Credit bank to terminate System status and that only FCS associations be allowed to terminate. However, the termination provisions of the Act apply to banks as well as associations. Section 7.10(a) of the Act permits any System "institution" to terminate its System status if that institution meets the conditions of

section 7.10(a)(1) through (7). Because the term "institution" is used throughout the Act to include banks as well as associations, section 7.10 of the Act clearly covers the termination of System banks. Therefore, the final rule continues to include banks and associations.

The ICBA further asserted this rule has the potential for creating an unlevel playing field, especially when the terminating bank's financial resources are the result of its government sponsorship as a System institution. However, section 7.10(a)(4) of the Act requires a terminating institution to pay an exit fee to the Insurance Fund in an amount by which the institution's total capital exceeds 6 percent of its assets. Therefore, the successor institution would keep only a limited amount of the financial resources that it accumulated as a System institution.

The ICBA recommended that we include termination procedures for other financing institutions (OFI) including how an OFI would obtain its capital should it decide to terminate its relationship with a Farm Credit bank. While OFIs have discount relationships with System banks pursuant to section 1.7(b)(1)(B) of the Act, they are not System institutions. Therefore, OFIs are not covered by section 7.10 of the Act.

### 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 the 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

##### 12 CFR Part 611

Agriculture, Banks, banking, Organization and functions (Government agencies), Rural areas.

##### 12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping, Rural areas.

For the reasons stated in the preamble, parts 611 and 614 of chapter VI, title 12 of the Code of Federal Regulations are amended to read as follows:

**PART 611—ORGANIZATION**

1. The authority citation for part 611 is revised to read as follows:

**Authority:** Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 6.9, 6.26, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2278a–9, 2278b–6, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

2. Revise subpart P to read as follows:

**Subpart P—Termination of System Institution Status**

Sec.

- 611.1200 Applicability of this subpart.
- 611.1205 Definitions that apply in this subpart.
- 611.1210 Commencement resolution and advance notice.
- 611.1215 Prohibited acts.
- 611.1220 Filing of termination application.
- 611.1221 Filing of termination application—timing.
- 611.1222 Plan of termination—contents.
- 611.1223 Information statement—contents.
- 611.1230 FCA review and approval.
- 611.1240 Voting record date and stockholder approval.
- 611.1245 Stockholder reconsideration.
- 611.1250 Preliminary exit fee estimate.
- 611.1255 Exit fee calculation.
- 611.1260 Payment of debts and assessments—terminating association.
- 611.1265 Retirement of a terminating association's investment in its affiliated bank.
- 611.1270 Repayment of obligations—terminating bank.
- 611.1275 Retirement of equities held by other System institutions.
- 611.1280 Dissenting stockholders' rights.
- 611.1285 Loan refinancing by borrowers.
- 611.1290 Continuation of borrower rights.

**Subpart P—Termination of System Institution Status****§ 611.1200 Applicability of this subpart.**

The regulations in this subpart apply to each bank and association that desires to terminate its System institution status and become chartered as a bank, savings association, or other financial institution.

**§ 611.1205 Definitions that apply in this subpart.**

*Assets* means all assets determined in conformity with GAAP, except as otherwise required in this subpart.

*GAAP* means “generally accepted accounting principles” as that term is defined in § 621.2(c) of this chapter.

*OFI* means an “other financing institution” that has a funding and discount agreement with a Farm Credit bank under section 1.7(b)(1) of the Act.

*Successor institution* means the bank, savings association, or other financial institution that the terminating bank or association will become when we revoke its Farm Credit charter.

**§ 611.1210 Commencement resolution and advance notice.**

(a) *Adoption of commencement resolution.* Your board of directors must begin the termination process by adopting a commencement resolution stating your intention to terminate Farm Credit status under section 7.10 of the Act.

(b) *Advance notice.* Within 5 days after adopting the commencement resolution, you must:

(1) Send a certified copy of the commencement resolution to us and the Farm Credit System Insurance Corporation (FCSIC). If your institution is an association, also send a copy to your affiliated bank. If your institution is a bank, also send a copy to your affiliated associations, the other Farm Credit banks, the Federal Farm Credit Banks Funding Corporation (Funding Corporation), and the Farm Credit System Financial Assistance Corporation (FAC);

(2) Mail an announcement to all equity holders stating you are taking steps to terminate Farm Credit status and describing the following:

- (i) The process of termination;
- (ii) The expected effect of termination on equity holders, including the effect on borrower rights and the consequences of any stock retirements before termination;
- (iii) The type of charter the successor institution will have; and
- (iv) Any bylaw creating a special class of borrower stock and participation certificates under paragraph (f) of this section.

(c) *Bank negotiations on joint and several liability.* If your institution is a terminating bank, within 10 days of adopting the commencement resolution, your bank and the other Farm Credit banks must begin negotiations to provide for your satisfaction of liabilities (other than your primary liability) under section 4.4 of the Act. The Funding Corporation may, at its option, be a party to the negotiations to the extent necessary to fulfill its duties with respect to financing and disclosure. The agreement must comply with the requirements in § 611.1270(c).

(d) *Disclosure to customers after commencement resolution.* Between the date of the commencement resolution and the termination date, you must give the following information to your customers:

(1) For each applicant who is not a current stockholder, describe at the time of loan application:

(i) The effect of the proposed termination on the borrower's loan; and

(ii) Whether the borrower will continue to have any of the borrower rights provided under the Act and regulations.

(2) For any equity holders who ask to have their equities retired, explain that the retirement would extinguish the holder's right to exchange those equities for an interest in the successor institution. In addition, inform holders of equities entitled to your residual assets in liquidation that retirement before termination would extinguish their right to dissent from the termination and have their equities retired.

(e) *Terminating bank's right to continue issuing debt.* Through the termination date, a terminating bank may continue to participate in the issuance of consolidated and Systemwide obligations to the same extent it would be able to participate if it were not terminating.

(f) *Special class of stock.* Notwithstanding any requirements to the contrary in § 615.5230(b) of this chapter, you may adopt bylaws providing for the issuance of a special class of stock and participation certificates between the date of adoption of a commencement resolution and the termination date. Your stockholders must approve the special class before you adopt the commencement resolution. The equities must comply with section 4.3A of the Act and be identical in all respects to existing classes of equities that are entitled to the residual assets of the institution in a liquidation, except for the value a holder will receive in a termination. In a termination, the holder of the special class of stock receives value equal to the lower of either par (or face) value, or the value calculated under § 611.1280(c) and (d). A holder must have the same right to vote (if the equity is held on the voting record date) and to dissent as holders of similar equities issued before the commencement resolution. If the termination does not occur, the special classes of stock and participation certificates must automatically convert into shares of the otherwise identical equities.

**§ 611.1215 Prohibited acts.**

(a) *Statements about termination.* Neither the institution nor any director, officer, employee, or agent may make any untrue or misleading statement of a material fact, or fail to disclose any

material fact, about the termination to a current or prospective equity holder.

(b) *Representations regarding FCA approval.* Neither the institution nor any director, officer, employee, or agent may make an oral or written representation to anyone that a preliminary or final approval of the termination by us is, directly or indirectly, either a recommendation on the merits of the proposal or an assurance that the information you give to your equity holders is adequate or accurate.

**§ 611.1220 Filing of termination application.**

(a) *Adoption of termination resolution.* Your board must adopt a termination resolution authorizing the application for termination and for a new charter.

(b) *Contents of termination application.* Send us an original and five copies of the termination application for review and preliminary approval. If you send us the application in electronic form, you must send us at least one hard copy application with original signatures. The application must contain:

- (1) A certified copy of the termination resolution;
- (2) A copy of the plan of termination required under § 611.1222;
- (3) An information statement that complies with § 611.1223;
- (4) All other information that you give to current or prospective equity holders in connection with the termination; and
- (5) Any additional information that either we request or your board of directors wishes to submit in support of the application.

(c) *Requirement to update application.* You must immediately send us any material changes to information in the plan of termination, including financial information, that occur between the date you file the application and the termination date. In addition, send us copies of any additional written information on the termination that you give to current or prospective equity holders before termination.

**§ 611.1221 Filing of termination application—timing.**

If we receive the termination application required in § 611.1220 less than 30 days after receiving the advance notice, we may in our discretion disapprove the application.

**§ 611.1222 Plan of termination—contents.**

The plan of termination must include:

- (a) Copies of all contracts, agreements, and other documents on the proposed

termination and organization of the successor institution.

(b) A statement of how you will transfer assets to, and have your liabilities assumed by, the successor institution.

(c) Your plan to retire outstanding equities or convert them to equities of the successor institution.

(d) A copy of the charter application for the successor institution, with any exhibits or other supporting information.

(e) A statement, if applicable, whether the successor institution will continue to borrow from a Farm Credit bank and how such a relationship will affect your provision for payment of debts. The plan of termination must include evidence of any agreement and plan for satisfaction of outstanding debts (including amounts you owe to the FAC because of the termination).

**§ 611.1223 Information statement—contents.**

(a) *Plain language requirements.* (1) Present the contents of the information statement in a clear, concise, and understandable manner.

(2) Use short, explanatory sentences, bullet lists or charts where helpful, and descriptive headings and subheadings.

(3) Minimize the use of glossaries or defined terms.

(4) Write in the active voice when possible.

(5) Avoid legal and highly technical business terminology.

(b) *Disclaimer.* Place the following statement in boldface type in the material sent to equity holders, either on the notice of meeting or the first page of the information statement:

*The Farm Credit Administration has not determined if this information is accurate or complete. You should not rely on any statement to the contrary.*

(c) *Summary.* The first part of the information statement must be a summary that concisely explains:

- (1) Which stockholders have a right to vote on termination;
- (2) The material changes the termination will cause to the rights of stockholders, borrowers, and other equity holders;
- (3) The effect of those changes;
- (4) The potential benefits and disadvantages of the termination;
- (5) The right of certain stockholders to dissent and receive payment for their existing equities; and
- (6) The proposed termination date.

(d) *Remaining requirements.* The rest of the information statement must contain the following:

- (1) *Plan of termination.* Describe the plan of termination.

(2) *Benefits and disadvantages.*

Provide the following information:

(i) An enumerated statement of the anticipated benefits and potential disadvantages of the termination;

(ii) An explanation of the preliminary exit fee estimate, with any adjustments we require, and estimated expenses of termination and organization of the successor institution; and

(iii) An explanation of the board's basis for recommending the termination.

(3) *Initial board of directors.* List the initial board of directors and senior officers for the successor institution, with a brief description of the business experience of each person, including principal occupation and employment during the past 5 years.

(4) *Bylaws and charter.* Summarize the provisions of the bylaws and charter of the successor institution that differ materially from your bylaws and charter. The summary must state:

(i) Whether the successor institution will require a borrower to hold an equity interest as a condition for having a loan; and

(ii) Whether the successor institution will require stockholders to do business with the institution.

(5) *Changes to equity.* Explain any changes in the nature of equity investments in the successor institution, such as changes in dividends, patronage, voting rights, preferences, retirement of equities, and liquidation priority. If equities protected under section 4.9A of the Act are outstanding, the information statement must state that the Act's protections will be extinguished on termination.

(6) *Effect of termination on statutory and regulatory rights.* Explain the effect of termination on rights granted by the Act and FCA regulations. You must explain the effect termination will have on borrower rights granted in the Act and subparts K, L, and N of part 614 of this chapter.

(7) *Loan refinancing by borrowers.* (i) State, as applicable, that borrowers may seek to refinance their loans with the System institutions that already serve, or will be permitted to serve, your territory. State that no System institution is obligated to refinance your loans.

(ii) If we have assigned your territory to another System institution before the information statement is mailed to equity holders, or if another System institution is already chartered to make the same type of loans you make in your territory, identify such institution(s) and provide the following information:

- (A) The name, address, and telephone number of the institution; and

(B) An explanation of the institution's procedures for borrowers to apply for refinancing.

(iii) If we have not assigned the territory before you mail the information statement, give the name, address, and telephone number of the System institution specified by us and state that borrowers may contact the institution for information about loan refinancing.

(8) *Equity exchanges.* Explain the formula and procedure to exchange equity in your institution for equity in the successor institution.

(9) *Employment, retirement, and severance agreements.* Describe any employment agreement or arrangement between the successor institution and any of your senior officers (as defined in § 620.1 of this chapter) or directors. Describe any severance and retirement plans that cover your employees or directors and state the costs you expect to incur under the plans in connection with the termination.

(10) *Exit fee calculation.* Explain how the exit fee will be calculated.

(11) *New charter.* Describe the nature and type of financial institution the successor institution will be and any conditions of approval of the new chartering authority or regulator.

(12) *Differences in successor institution's programs and policies.* Summarize any differences between you and the successor institution on:

(i) Interest rates and fees;  
(ii) Collection policies;  
(iii) Services provided; and  
(iv) Any other item that would affect a borrower's lending relationship with the successor institution, including whether a stockholder's ability to borrow from the institution will be restricted.

(13) *Capitalization.* Discuss expected capital requirements of the successor institution, and the amount and method of capitalization.

(14) *Sources of funding.* Explain the sources and manner of funding for the successor institution's operations.

(15) *Contingent liabilities.* Describe how the successor institution will address any contingent liability it will assume from you.

(16) *Tax status.* Summarize the differences in tax status between your institution and the successor institution, and explain how the differences will affect stockholders.

(17) *Regulatory environment.* Describe briefly how the regulatory environment for the successor institution will differ from your current regulatory environment, and any effect on the cost of doing business or the value of stockholders' equity.

(18) *Dissenters' rights.* Explain which equity holders are entitled to dissenters'

rights and what those rights are. The explanation must include the estimated liquidation value of the stock, procedures for exercising dissenters' rights, and a statement of when the rights may be exercised.

(19) *Financial information.* (i) Present the following financial data:

(A) A balance sheet and income statement for each of the 3 preceding fiscal years;

(B) A balance sheet as of a date within 90 days of the date you mail the termination application to us, presented on a comparative basis with the corresponding period of the previous 2 fiscal years;

(C) An income statement for the interim period between the end of the last fiscal year and the date of the balance sheet required by paragraph (d)(19)(i)(B) of this section, presented on a comparative basis with the corresponding period of the previous 2 fiscal years;

(D) A pro forma balance sheet of the successor institution presented as if termination had occurred as of the date of the most recent balance sheet presented in the statement; and

(E) A pro forma summary of earnings for the successor institution presented as if the termination had been effective at the beginning of the interim period between the end of the last fiscal year and the date of the balance sheet presented under paragraph (d)(19)(i)(D) of this section.

(ii) The format for the balance sheet and income statement must be the same as the format in your annual report and must contain appropriate footnote disclosures, including data on high-risk assets, other property owned, and allowance for losses.

(iii) The financial statements must include either:

(A) A statement signed by the chief executive officer and each board member that the various financial statements are unaudited but have been prepared in all material respects in conformity with GAAP (except as otherwise disclosed) and are, to the best of each signer's knowledge, a fair and accurate presentation of the financial condition of the institution; or

(B) A signed opinion by an independent certified public accountant that the various financial statements have been examined in conformity with generally accepted auditing standards and included such tests of the accounting records and other such auditing procedures as were considered necessary in the circumstances, and, as of the date of the statements, present fairly the financial position of the institution in conformity with GAAP

applied on a consistent basis, except as otherwise disclosed.

(20) *Subsequent financial events.*

Describe any event after the date of the financial statements, but before the date you send the termination application to us, that would have a material impact on your financial condition or the condition of the successor institution.

(21) *Other subsequent events.*

Describe any event after you send the termination application to us that could have a material impact on any information in the termination application.

(22) *Other material disclosures.*

Describe any other material fact or circumstance that a stockholder would need to know to make an informed decision on the termination, or that is necessary to make the disclosures not misleading.

(23) *Ballot and proxy.* Include a ballot and proxy, with instructions on the purpose and authority for their use, and the proper method for the stockholder to sign the proxy.

(24) *Board of directors certification.*

Include a certification signed by the entire board of directors as to the truth, accuracy, and completeness of the information contained in the information statement. If any director refuses to sign the certification, the director must inform us of the reasons for refusing.

#### § 611.1230 FCA review and approval.

(a) *FCA review period.* We will review a termination application and either give preliminary approval or disapprove the application no later than 60 days after we receive the application.

(b) *Reservation of right to disapprove termination.* In addition to any other reason for disapproval, we may disapprove a termination if we determine that the termination would have a material adverse effect on the ability of the remaining System institutions to fulfill their statutory purpose.

(c) *Conditions of final FCA approval.* We will give final approval to your termination application only if:

(1) Your stockholders vote in favor of termination in the termination vote and in any reconsideration vote;

(2) You give us executed copies of all contracts, agreements, and other documents submitted under § 611.1222;

(3) You have paid or made adequate provision for payment of debts, including responsibility for any contingent liabilities, and for retirement of equities;

(4) A Federal or State chartering authority has granted a new charter to the successor institution;

(5) You deposit into escrow an amount equal to 110 percent of the estimated exit fee plus 110 percent of the estimated amount you must pay to retire equities of dissenting stockholders and Farm Credit institutions, as described in § 611.1255(c); and

(6) You have fulfilled any other condition of termination we have imposed.

(d) *Effective date of termination.* If we grant final approval, we will revoke your charter, and the termination will be effective on the last to occur of:

(1) Fulfillment of all conditions listed in paragraph (c) of this section;

(2) Your proposed termination date;

(3) Ninety (90) days after we receive the notice described in § 611.1240(e); and

(4) Fifteen (15) days after any reconsideration vote.

#### **§ 611.1240 Voting record date and stockholder approval.**

(a) *Stockholder meeting.* You must call the meeting by written notice in compliance with your bylaws. The stockholder meeting to vote on the termination must occur within 60 days of our preliminary approval (or, if we take no action, within 60 days of the end of our approval period).

(b) *Voting record date.* The voting record date may not be more than 70 days before the stockholders' meeting.

(c) *Information statement.* You must provide all equity holders with a notice of meeting and the information statement required by § 611.1223 at least 30 days before the stockholder vote.

(d) *Voting procedures.* The voting procedures must comply with § 611.330. You must have an independent third party count the ballots. If a voting stockholder notifies you of the stockholder's intent to exercise dissenters' rights, the tabulator must be able to verify to you that the stockholder voted against the termination. Otherwise, the votes of stockholders must remain confidential.

(e) *Notice to FCA and equity holders of voting results.* Within 10 days of the termination vote, you must send us a certified record of the results of the vote. You must notify all equity holders of the results within 30 days after the stockholder meeting. If the stockholders approve the termination, you must give the following information to equity holders:

(1) Stockholders who voted against termination and equity holders who were not entitled to vote have a right to dissent as provided in § 611.1280; and

(2) Voting stockholders have a right, under § 611.1245, to file a petition with the FCA for reconsideration within 35

days after the date you mail to them the notice of the results of the termination vote.

(f) *Requirement to notify new equity holders.* You must provide the information described in paragraph (e)(1) of this section to each person that becomes an equity holder after the termination vote and before termination.

#### **§ 611.1245 Stockholder reconsideration.**

(a) *Right to reconsider termination.* Voting stockholders have the right to reconsider their approval of the termination if a petition signed by 15 percent of the stockholders is filed with us within 35 days after you mail notices to stockholders that the termination was approved. If we determine that the petition complies with the requirements of section 7.9 of the Act, you must call a special stockholders' meeting to reconsider the vote. The meeting must occur within 60 days after the date on which you mailed to stockholders the results of the termination vote. If a majority of the stockholders voting, in person or by proxy, vote against the termination, the termination may not take place.

(b) *Stockholder list and expenses.* You must, at your expense, timely give stockholders who request it a list of the names and addresses of stockholders eligible to vote in the reconsideration vote. The petitioners must pay all other expenses for the petition. You must pay expenses that you incur for the reconsideration vote.

#### **§ 611.1250 Preliminary exit fee estimate.**

(a) *Preliminary exit fee estimate—terminating association.* You must provide a preliminary exit fee estimate to us when you submit the termination application. Calculate the preliminary exit fee estimate in the following order:

(1) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period as of the quarter end immediately before the date you send us your termination application.

(2) Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as "dollar amount."

(3) Compute the average daily balances based on financial statements that comply with GAAP. The financial statements, as of the quarter end immediately before the date you send us your termination application, must be independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter. We may, in our discretion, waive the audit

requirement if an independent audit was performed as of a date less than 6 months before you submit the termination application.

(4) Make adjustments to assets as follows:

(i) Add back expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, auditing, business planning, and application fees for the termination and reorganization.

(ii) Subtract the following:

(A) The dollar amount of your estimated payment (to your affiliated bank) related to FAC obligations as described in § 611.1260(d); and

(B) The dollar amount of your estimated taxes due to the termination.

(iii) Adjust for the dollar amount of significant transactions you reasonably expect to occur between the quarter end before you file your termination application and termination. Examples of these transactions include, but are not limited to, gains or losses on the sale of assets, retirements of equity, loan repayments, and patronage distributions. Do not make adjustments for future expenses related to termination, such as severance or special retirement payments, or stock retirements to dissenting stockholders and Farm Credit institutions.

(5) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(6) Make any adjustments we require under paragraph (c) of this section.

(7) After making these adjustments to assets and liabilities, subtract liabilities from assets. This is your preliminary total capital for purposes of termination.

(8) Multiply assets as adjusted above by 6 percent, and subtract this amount from preliminary total capital. This is your preliminary exit fee estimate.

(b) *Preliminary exit fee estimate—terminating bank.* (1) Affiliated associations that are terminating with you must calculate their individual preliminary exit fee estimates as described in paragraph (a) of this section.

(2) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period as of the quarter end immediately before the date you send us your termination application.

(3) Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as "dollar amount."

(4) Compute the average daily balances based on bank-only financial statements that comply with GAAP. The financial statements, as of the quarter end immediately before the date you send us your termination application, must be independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter. We may, in our discretion, waive this requirement if an independent audit was performed as of a date less than 6 months before you submit the termination application.

(5) Make adjustments to assets and liabilities as follows:

(i) Add back to assets the following:

(A) Expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, auditing, business planning, and application fees for the termination and reorganization; and

(B) Any specific allowance for losses, and a pro rata portion of any general allowance for loan losses, on direct loans to associations that you do not expect to incur before or at termination.

(ii) Subtract from your assets and liabilities an amount equal to your direct loans to your affiliated associations that are not terminating.

(iii) Subtract the following from assets:

(A) Equity investments in your institution that are held by nonterminating associations and that you expect to transfer to another System bank before or at termination. A nonterminating association's investment consists of purchased equities, allocated equities, and a share of the bank's unallocated surplus calculated in accordance with the bank's bylaw provisions on liquidation. We may require a different calculation method for the unallocated surplus if we determine that using the liquidation provision would be inequitable to stockholders;

(B) The dollar amount of your estimated termination payment to the FAC, as described in § 611.1270(d); and

(C) The dollar amount of estimated taxes due to the termination.

(iv) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(v) Adjust for the dollar amount of significant transactions you reasonably expect to occur between the quarter end before you file your termination application and termination. Examples of these transactions include, but are not limited to, retirements of equity, loan repayments, and patronage distributions. Do not make adjustments

for future expenses related to termination, such as severance or special retirement payments, or stock retirements to dissenting stockholders and Farm Credit institutions.

(6) Add to assets the dollar amount of estimated termination payments of the terminating associations related to FAC obligations.

(7) Make any adjustments we require under paragraph (c) of this section.

(8) After the above adjustments, combine your balance sheet with the balance sheets of your terminating associations after they have made the adjustments required in paragraph (a) of this section. Subtract liabilities from assets. This is your preliminary total capital estimate for purposes of termination.

(9) Multiply the assets of the combined balance sheet after the above adjustments by 6 percent. Subtract this amount from the preliminary total capital estimate of the combined balance sheet. The remainder is the preliminary exit fee estimate of the bank and terminating affiliated associations.

(10) Your preliminary exit fee estimate is the amount by which the preliminary exit fee estimate for the combined entity exceeds the total of the individual preliminary exit fee estimates of your affiliated terminating associations.

(c) *Three-year look-back.* (1) We will review your transactions over the 3 years before the date of the termination resolution under § 611.1220. Our review will include, but not be limited to, the following:

(i) Additions to or subtractions from any allowance for losses;

(ii) Additions to assets or liabilities, or subtractions from assets or liabilities, due to transactions that are outside your ordinary course of business;

(iii) Dividends or patronage refunds exceeding your usual practices;

(iv) Changes in the institution's capital plan, or in implementing the plan, that increased or decreased the level of borrower investment;

(v) Contingent liabilities, such as loss-sharing obligations, that can be reasonably quantified; and

(vi) Assets that may be overvalued, undervalued, or not recorded on your books.

(2) If we determine the account balances do not accurately show the value of your assets and liabilities (whether the assets and liabilities were booked before or during the 3-year look-back period), we will make any adjustments we deem necessary.

(3) We may require you to reverse the effect of a transaction if we determine that:

(i) You have retired capital outside the ordinary course of business;

(ii) You have taken any other actions unrelated to your core business that have the effect of changing the exit fee; or

(iii) You incurred expenses related to termination prior to the 12-month average daily balance period on which the exit fee calculation is based.

(4) We may require you to make these adjustments to the preliminary exit fee estimate that is disclosed in the information statement, the final exit fee calculation, and the calculations of the value of equities held by dissenting stockholders, Farm Credit institutions that choose to have their equities retired at termination, and reaffiliating associations.

#### **§ 611.1255 Exit fee calculation.**

(a) *Final exit fee calculation—terminating association.* Calculate the final exit fee in the following order:

(1) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period preceding the termination date. Assume for this calculation that you have not paid or accrued the items described in paragraph (a)(4)(ii) of this section.

(2) Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as "dollar amount."

(3) Compute the average daily balances based on financial statements that comply with GAAP. The financial statements, as of the termination date, must be independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter.

(4) Make adjustments to assets and liabilities as follows:

(i) Add back expenses related to termination incurred in the 12 months before termination. Related expenses include, but are not limited to, legal services, accounting services, auditing, business planning, payments of severance and special retirements, and application fees for the termination and reorganization.

(ii) Subtract from assets the following:

(A) The dollar amount of your termination payment (to your affiliated bank) related to FAC obligations as described in § 611.1260(d); and

(B) The dollar amount of taxes you will have to pay due to the termination;

(iii) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(iv) Make the adjustments that we require under § 611.1250(c). For the



final exit fee, we will review and may require additional adjustments for transactions between the date you adopted the termination resolution and the termination date.

(5) After making these adjustments to assets and liabilities, subtract liabilities from assets. This is your total capital for purposes of termination.

(6) Multiply assets by 6 percent, and subtract this amount from total capital. This is your final exit fee.

(b) *Final exit fee calculation—terminating bank.* (1) The individual exit fees of affiliated associations that are terminating with you must be calculated as described in paragraph (a) of this section.

(2) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period preceding the termination date. Assume for this calculation that you have not paid or accrued the items described in paragraph (b)(5)(iii)(B) and (C) of this section.

(3) Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as “dollar amount.”

(4) Compute the average daily balances based on bank-only financial statements that comply with GAAP. The financial statements, as of the termination date, must be independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter.

(5) Make adjustments to assets and liabilities as follows:

(i) Add back the following to your assets:

(A) Expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, auditing, business planning, payments of severance and special retirements, and application fees for the termination and reorganization.

(B) The dollar amount of the termination payments to you by the terminating associations related to FAC obligations.

(C) Any specific allowance for losses, and a pro rata share of any general allowance for losses, on direct loans to associations that are paid off or transferred before or at termination.

(ii) Subtract from your assets and liabilities your direct loans to affiliated associations that were paid off or transferred in the 12-month period before termination or at termination.

(iii) Subtract from your assets the following:

(A) Equity investments held in your institution by affiliated associations that you transferred at termination or during the 12 months before termination;

(B) The dollar amount of your termination payment to the FAC; and

(C) The dollar amount of taxes paid or accrued due to the termination;

(iv) Subtract from liabilities any liability that we treat as regulatory capital (or that we do not treat as a liability) under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(v) Make the adjustments that we require under § 611.1250(c). For the final exit fee, we will review and may require additional adjustments for transactions between the date you adopted the termination resolution and the termination date.

(6) After the above adjustments, combine your balance sheet with the balance sheets of terminating associations after making the adjustments required in paragraph (a) of this section.

(7) Subtract combined liabilities from combined assets. This is the total capital of the combined balance sheet.

(8) Multiply the assets of the combined balance sheet after the above adjustments by 6 percent. Subtract this amount from the total capital of the combined balance sheet. This amount is the combined final exit fee for your institution and the terminating affiliated associations.

(9) Your final exit fee is the amount by which the combined final exit fee exceeds the total of the individual final exit fees of your affiliated terminating associations.

(c) *Payment of exit fee.* On the termination date, you must:

(1) Deposit into an escrow account acceptable to us and the FCSIC an amount equal to 110 percent of the preliminary exit fee estimate, adjusted to account for stock retirements to dissenting stockholders and Farm Credit institutions, and any other adjustments we require.

(2) Deposit into an escrow account acceptable to us an amount equal to 110 percent of the equity you must retire for dissenting stockholders and System institutions holding stock that would be entitled to a share of the remaining assets in a liquidation.

(d) *Pay-out of escrow.* Following the independent audit of the institution's account balances as of the termination date, we will determine the amount of the final exit fee and the amounts owed to stockholders to retire their equities. We will then direct the escrow agent to:

(1) Pay the exit fee to the Farm Credit Insurance Fund;

(2) Pay the amounts owed to dissenting stockholders and Farm Credit institutions; and

(3) Return any remaining amounts to the successor institution.

(e) *Additional payment.* If the amount held in escrow is not enough to pay the amounts under paragraph (d)(1) and (2) of this section, the successor institution must pay any remaining liability to the escrow agent for distribution to the appropriate parties. The termination application must include evidence that, after termination, the successor institution will pay any remaining amounts owed.

#### **§ 611.1260 Payment of debts and assessments—terminating association.**

(a) *General rule.* If your institution is a terminating association, you must pay or make adequate provision for the payment of all outstanding debt obligations and assessments.

(b) *No OFI relationship.* If the successor institution will not become an OFI, you must either:

(1) Pay debts and assessments owed to your affiliated Farm Credit bank at termination; or

(2) With your affiliated Farm Credit bank's concurrence, arrange to pay any obligations or assessments to the bank after termination.

(c) *Obligations to other Farm Credit institutions.* You must pay or make adequate provision for payment of obligations to any Farm Credit institution (other than your affiliated bank) under any loss-sharing or other agreement.

(d) *FAC payments.* Before termination, you must pay the estimated present value of future assessments and payment obligations to your affiliated Farm Credit bank to the extent required by subparagraphs (c)(5)(F) and (d)(1)(C)(v) of section 6.26 of the Act. The FAC must make the present value estimations, subject to our approval, based on an appropriate discount rate. The appropriate discount rate is the non-interest-bearing U.S. Treasury security rate for securities with a maturity as near as possible to the period remaining until the terminating association's obligations under this paragraph would be due (but before the due date).

#### **§ 611.1265 Retirement of a terminating association's investment in its affiliated bank.**

(a) *Safety and soundness restrictions.* Notwithstanding anything in this subpart to the contrary, we may prohibit a bank from retiring the equities you hold in the bank if the retirement would cause the bank to fall below its



regulatory capital requirements after retirement, or if we determine that the bank would be in an unsafe or unsound condition after retirement.

(b) *Retirement agreement.* Your affiliated bank may retire the purchased and allocated equities held by your institution in the bank according to the terms of the bank's capital revolving plan or an agreement between you and the bank.

(c) *Retirement in absence of agreement.* Your affiliated bank must retire any equities not subject to an agreement or revolving plan no later than when you or the successor institution pays off your loan from the bank.

(d) *No retirement of unallocated surplus.* When your bank retires equities you own in the bank, the bank must pay par or face value for purchased and allocated equities, less any impairment. The bank may not pay you any portion of its unallocated surplus.

(e) *Exclusion of equities from capital ratios.* If another Farm Credit institution makes an agreement to retire equities you hold in that institution after termination, we may require that institution to exclude part or all of those equities from assets and capital when the institution calculates its capital and net collateral ratios under subparts H and K of part 615 of this chapter.

#### **§ 611.1270 Repayment of obligations—terminating bank.**

(a) *General rule.* If your institution is a terminating bank, you must pay or make adequate provision for the payment of all outstanding debt obligations, and provide for your responsibility for any probable contingent liabilities identified.

(b) *Satisfaction of primary liability on consolidated or Systemwide obligations.* After consulting with the other Farm Credit banks, the Funding Corporation, and the FCSIC, you must pay or make adequate provision for payment of your primary liability on consolidated or Systemwide obligations in a method that we deem acceptable. Before we make a final decision on your proposal and as we deem necessary, we may consult with the other Farm Credit banks, the Funding Corporation, and the FCSIC.

(c) *Satisfaction of joint and several liability and liability for interest on individual obligations.* (1) You and the other Farm Credit banks must enter into an agreement, which is subject to our approval, covering obligations issued under section 4.2 of the Act and outstanding on the termination date. The agreement must specify how you and your successor institution will

make adequate provision for the payment of your joint and several liability to holders of obligations other than those obligations on which you are primarily liable, in the event we make calls for payment under section 4.4 of the Act. You and your successor institution must also provide for your liability under section 4.4(a)(1) of the Act to pay interest on the individual obligations issued by other System banks. As a part of the agreement, you must also agree that your successor institution will provide ongoing information to the Funding Corporation to enable it to fulfill its funding and disclosure duties. The Funding Corporation may, at its option, be a party to the agreement to the extent necessary to fulfill its duties with respect to financing and disclosure.

(2) If you and the other Farm Credit banks are unable to reach agreement within 90 days before the proposed termination date, we will specify the manner in which you will make adequate provision for the payment of the liabilities in question and how we will make joint and several calls for those obligations outstanding on the termination date.

(3) Notwithstanding any other provision in these regulations, the successor institution will be jointly and severally liable for consolidated and Systemwide debt outstanding on the termination date (other than the obligations on which you are primarily liable). The successor institution will also be liable for interest on other banks' individual obligations as described in section 4.4(a)(1) of the Act and outstanding on the termination date. The termination application must include evidence that the successor institution will continue to be liable for consolidated and Systemwide debt and for interest on other banks' individual obligations.

(d) *Payment to the FAC.* (1) Before termination, you must pay to the FAC the amounts required by section 6.9(e)(3)(C)(ii) of the Act and by subparagraphs (c)(5)(E)(i) and (d)(1)(C)(iv) of section 6.26 of the Act. To make the calculations for section 6.26, you must include your retail loan volume, the retail loan volume of the associations that are terminating with you, and the retail loan volume of the affiliated associations that continue their direct lending relationships with the successor institution, but you must not include the retail loan volume of associations that reaffiliate with another bank and transfer or repay their direct loan on or before termination.

(2) The FAC must make the present value estimations, subject to our

approval, based on an appropriate discount rate. The appropriate discount rate is the non-interest-bearing U.S. Treasury security rate for securities with a maturity as near as possible to the period remaining until your obligations under this paragraph would be due (but before the due date).

(3) If your bank or your predecessor bank has redeemed early any preferred stock issued to the FAC, we may require you to confirm in writing that your successor institution will assume responsibility for any and all of your contingent liabilities under any FAC-preferred stock redemption agreement and indemnification agreement.

#### **§ 611.1275 Retirement of equities held by other System institutions.**

(a) *Retirement at option of equity holder.* If your institution is a terminating institution, System institutions that own your equities have the right to require you to retire the equities on the termination date.

(b) *Value of equity holders' interests.* You must retire the equities in accordance with the liquidation provisions in your bylaws unless we determine that the liquidation provisions would result in an inequitable distribution to stockholders. If we make such a determination, we will require you to distribute the equity in accordance with another method that we deem equitable to stockholders. Before you retire any equity, you must make the following adjustments to the amount of stockholder equity as stated in the financial statements on the termination date:

(1) Make deductions for any FAC obligations and taxes due to the termination that you have not yet recorded;

(2) Deduct the amount of the exit fee; and

(3) Make any adjustments described under § 611.1250(c) that we may require as we deem appropriate.

(c) *Transfer of affiliated association's investment.* As an alternative to equity retirement, an affiliated association that reaffiliates with another Farm Credit bank instead of terminating with its bank has the right to require the terminating bank to transfer its investment to its new affiliated bank when it reaffiliates. If your institution is a terminating bank, at the time of reaffiliation you must transfer the purchased and allocated equities held by the association, as well as its share of unallocated surplus, to the new affiliated bank. Calculate the association's share before deduction of the exit fee as of the month end preceding the reaffiliation date (or the

termination date if it is the same as the reaffiliation date) in accordance with the liquidation provisions of your bylaws, unless we determine that the liquidation provisions would result in an inequitable distribution. If we make such a determination, we will require you to distribute the association's share of your unallocated surplus in accordance with another method that we deem equitable to stockholders. Before you distribute any unallocated surplus, you must make the following adjustments to stockholder equity as stated in the financial statements as of the month end preceding the reaffiliation date (or the termination date if it is the same as the reaffiliation date):

(1) Add back any deductions of FAC obligations due to the termination, taxes due to the termination, and the exit fee; and

(2) Make any adjustments described under § 611.1250(c) that we may require as we deem appropriate.

(d) *Prohibition on certain affiliations.* No Farm Credit institution may retain an equity interest otherwise prohibited by law in a successor institution.

#### **§ 611.1280 Dissenting stockholders' rights.**

(a) *Definition.* A dissenting stockholder is an equity holder (other than a System institution) in a terminating institution on the termination date who either:

(1) Was eligible to vote on the termination resolution and voted against termination;

(2) Was an equity holder on the voting record date but was not eligible to vote; or

(3) Became an equity holder after the voting record date.

(b) *Retirement at option of a dissenting stockholder.* A dissenting stockholder may require a terminating institution to retire the stockholder's equity interest in the terminating institution.

(c) *Value of a dissenting stockholder's interest.* You must pay a dissenting stockholder according to the liquidation provision in your bylaws, except that you must pay at least par or face value for eligible borrower stock (as defined in section 4.9A(d)(2) of the Act). If we determine that the liquidation provision is inequitable to stockholders, we will require you to calculate their share in accordance with another formula that we deem equitable.

(d) *Calculation of interest of a dissenting stockholder.* Before you retire any equity, you must make the following adjustments to the amount of stockholder equity as stated in the

financial statements on the termination date:

(1) Deduct any FAC obligations and taxes due to the termination that you have not yet recorded;

(2) Deduct the amount of the exit fee; and

(3) Make any adjustments described under § 611.1250(c) that we may require as we deem appropriate.

(e) *Form of payment to a dissenting stockholder.* You must pay a dissenting stockholder for his equities as follows:

(1) Pay cash for the par or face value of purchased stock, less any impairment;

(2) For equities other than purchased equities, you may:

(i) Pay cash;

(ii) Cause or otherwise provide for the successor institution to issue, on the date of termination, subordinated debt to the stockholder with a face value equal to the value of the remaining equities. This subordinated debt must have a maturity date of 7 years or less, must have priority in liquidation ahead of all equity, and must carry a rate of interest not less than the rate (at the time of termination) for debt of comparable maturity issued by the U.S. Treasury plus 1 percent; or

(iii) Provide for a combination of cash and subordinated debt as described above.

(f) *Payment to holders of special class of stock.* If you have adopted bylaws under § 611.1210(f), you must pay a dissenting stockholder who owns shares of the special class of stock an amount equal to the lower of the par (or face) value or the value of such stock as determined under § 611.1280(c) and (d).

(g) *Notice to equity holders.* The notice to equity holders required in § 611.1240(e) must include a form for stockholders to send back to you, stating their intention to exercise dissenters' rights. The notice must contain the following information:

(1) A description of the rights of dissenting stockholders set forth in this section and the approximate value per share that a dissenting stockholder can expect to receive. State whether the successor institution will require borrowers to be stockholders or whether it will require stockholders to be borrowers.

(2) A description of the current book and par value per share of each class of equities, and the expected book and market value of the stockholder's interest in the successor institution.

(3) A statement that a stockholder must return the enclosed form to you within 30 days if the stockholder chooses to exercise dissenters' rights.

(h) *Notice to subsequent equity holders.* Equity holders that acquire their equities after the termination vote must also receive the notice described in paragraph (g) of this section. You must give them at least 5 business days to decide whether to request retirement of their stock.

(i) *Reconsideration.* If a reconsideration vote is held and the termination is disapproved, the right of stockholders to exercise dissenters' rights is rescinded. If a reconsideration vote is held and the termination is approved, you must retire the equities of dissenting stockholders as if there had been no reconsideration vote.

#### **§ 611.1285 Loan refinancing by borrowers.**

(a) *Disclosure of credit and loan information.* At the request of a borrower seeking refinancing with another System institution before you terminate, you must give credit and loan information about the borrower to such institution.

(b) *No reassignment of territory.* If, at the termination date, we have not assigned your territory to another System institution, any System institution may lend in your territory, to the extent otherwise permitted by the Act and the regulations in this chapter.

#### **§ 611.1290 Continuation of borrower rights.**

You may not require a waiver of contractual borrower rights provisions as a condition of borrowing from and owning equity in the successor institution. Institutions that become other financing institutions on termination must comply with the applicable borrower rights provisions in the Act and subparts K, L, and N of part 614 of this chapter.

### **PART 614—LOAN POLICIES AND OPERATIONS**

3. The authority citation for part 614 continues to read as follows:

**Authority:** 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5, of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279c-1, 2279f, 2279f-1, 2279aa, 2279aa-5); sec. 413 of Pub. L. 100-233, 101 Stat. 1568, 1639.

**Subpart C—Bank/Association Lending Relationship****§ 614.4130 [Amended]**

4. Amend § 614.4130 by removing the reference “§ 611.1205(c)” and adding in its place the reference “§ 611.1205” in paragraph (a).

Dated: April 5, 2002.

**Kelly Mikel Williams,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 02–8711 Filed 4–11–02; 8:45 am]

BILLING CODE 6705–01–P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 98–NM–196–AD; Amendment 39–12702; AD 2002–07–08]

RIN 2120–AA64

**Airworthiness Directives; Boeing Model 737–200, –200C, –300, –400, and –500 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that currently requires repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found. That amendment also requires modification of the fuselage lap joints at certain locations, which constitutes terminating action for repetitive inspections of the modified areas. This amendment adds repetitive inspections and requires replacement of the current preventive modification with an improved modification. This amendment is prompted by the FAA's determination that, in light of additional crack findings, certain modifications of the fuselage lap joints do not provide an adequate level of safety. The actions specified by this AD are intended to find and fix cracking of the fuselage lap joints, which could result in sudden decompression of the airplane.

**DATES:** Effective May 17, 2002.

The incorporation by reference certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of May 17, 2002.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle,

Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Scott Fung, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–1221; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–22–07, amendment 39–10179 (62 FR 55732, October 28, 1997), which is applicable to certain Boeing Model 737 series airplanes, was published in the **Federal Register** on July 12, 2001 (66 FR 36509). The action proposed to continue to require repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found. That action also adds a requirement for modification of the fuselage lap joints at certain locations, which constitutes terminating action for repetitive inspections of the modified areas. That action also adds new repetitive inspections and requires replacement of the current preventive modification with an improved modification.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter supports the intent of the proposed rule. Another commenter states that the proposed rule does not affect its fleet.

**Typographical Error**

One commenter states that in the section titled, “Other Relevant Proposed Rulemaking,” specified in the proposed rule, the line numbers listed for replacement of certain Structural Repair Manual (SRM) repairs are line numbers 292 through 2595 inclusive. The commenter notes that the correct reference is line numbers 292 through 2565 inclusive. The FAA agrees that a typographical error was made in that section, however, that section is not carried over to the final rule so no change is necessary.

**Clarify Paragraphs (a) and (g)**

One commenter states that the repetitive low frequency eddy current

inspections (LFEC) of the crown areas as specified in paragraph (a) of the proposed rule need clarification. The commenter notes that the crown areas are not defined in the proposed rule and Part 1.E.1. (“Compliance”) of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001 (specified in the proposed rule as the source of service information for doing the specified actions), defines the areas to be inspected. The commenter adds that the lap joint modification (repair) in the crown areas, as specified in paragraph (g) of the proposed rule, needs clarification. The commenter notes that the crown areas are not defined in the proposed rule and Part 1.E.1. (“Compliance”) of the service bulletin defines the areas to be inspected.

The FAA agrees that inclusion of references to Part 1.E.1. (“Compliance”) in paragraphs (a) and (g) of this final rule provides clarification of the crown lap joint areas to be inspected. We have changed paragraphs (a) and (g) of the final rule accordingly.

**Credit for Previously Accomplished Modifications**

Two commenters ask that paragraph (g) of the proposed rule be changed to include credit for lap joint modifications (repairs) accomplished per the instructions described in Boeing Service Bulletin 737–53A1177, Revision 4, dated September 2, 1999, or Revision 5, dated February 15, 2001. One commenter adds that this would terminate the post-NACA-modification inspections required by paragraph (i) of the proposed rule.

We agree that accomplishment of the lap joint modification (repairs) per Revision 4 or 5 of the referenced service bulletin meets the requirements specified in paragraph (g) of the final rule and terminates the repetitive post-NACA-modification inspections required by paragraph (i) of the final rule, as those revisions are technically equivalent to the modification specified in Revision 6 of the service bulletin. We have changed paragraph (g) of the final rule accordingly.

**Change Paragraph (g)(5)**

One commenter asks that paragraph (g)(5) of the proposed rule, for airplanes having a NACA modification per Boeing Alert Service Bulletin 737–53A1177, Revision 3, dated September 18, 1997, be changed to include airplanes that have been modified per Revision 1, dated September 19, 1996, or Revision 2, dated July 24, 1997, of that service bulletin.

We agree that airplanes having a NACA modification per Revision 1 or 2