viscerotropic velogenic Newcastle disease (VVND), African swine fever, hog cholera, and swine vesicular disease.

Prior to the effective date of this document, § 94.16(a) of the regulations provided that cheese, butter, and butteroil were exempt from the provisions of Part 94. Milk and milk products, other than cheese, butter, and butteroil, are subject to the provisions of § 94.16, which restrict the importation of certain milk and milk products originating in, or shipped from any country designated in the regulations as a country infected with rinderpest or FMD.

It is necessary to amend § 94.16(a) to provide that cheese exempt from the provisions of Part 94 does not include cheese with liquid. It has been determined, based on research and Departmental experience, that cheeses with liquid milk or milk products that had been added after processing, such as ricotta cheese and cottage cheese, may contain rinderpest or FMD virus if from a country infected with rinderpest or FMD. If cheeses with liquid are presented for entry into the United States, it is often impossible to tell upon visual inspection at the port of entry whether the liquid is milk or a milk product and whether the liquid had been added to the cheese after processing.

It was further intended under § 94.16(a) that cheese exempt from the provisions of Part 94 not include cheese containing items regulated by other sections of Part 94, unless the items are independently eligible for importation into the United States under Part 94. These items include, among other things, certain meat of cattle, sheep, other ruminants, or swine regulated because of rinderpest or FMD; carcasses of poultry, game birds, and other birds and parts or products thereof regulated because of VVND; and pork and pork products regulated because of African swine fever, hog cholera, or swine vesicular disease. It has been determined, based on research and Departmental experience, that items regulated by sections of Part 94 other than § 94.16 may present a risk of introducing one or more of the diseases listed above unless they comply with all of the provisions in Part 94 for importation into the United States.

Under the circumstances explained above, it is necessary to amend § 94.16 to provide that the cheese exempt from the provisions of Part 94 does not include cheese with liquid or cheese containing any items regulated by other sections of Part 94 unless the items are independently eligible under the provisions of Part 94 for importation into the United States.

## Emergency Action

Dr. J.K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for a public comment period. It is necessary to make this amendment effective immediately in order to help protect animals from the threat of introduction and dissemination of rinderpest, FMD, VVND, African swine fever, hog cholera, and swine vesicular disease.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this emergency action are unnecessary and contrary to the public interest, and good cause is found for making this emergency action effective upon publication. Comments have been solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register.**

## Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

No significant change in the amounts of cheese imported into the United States is anticipated as a result of this action.

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

## List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic newcastle disease, Foot-and-mouth disease, Hog cholera, Rinderpest, Swine vesicular diseases.

## PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, 9 CFR Part 94 is amended as follows:

1. The authority for Part 94 is revised to read:

**Authority:** 19 U.S.C. 1306; 21 U.S.C. 111, 134a, 134b, 134c, and 134f; 7 CFR 2.17, 2.51, and 371.2(d), unless otherwise noted.

2. Paragraph (a) of § 94.16 is revised to read:

### § 94.16 Milk and milk products.

(a) The following milk products are exempt from the provisions of this part:

(1) Cheese, but not including cheese with liquid and not including cheese containing any item that is regulated by other sections of this part, unless such item is independently eligible for importation into the United States under this part;

(2) Butter; and

(3) Butteroil.

* * * * *

Done at Washington, D.C. this 9th day of May 1985.

G.J. Fichtner,

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 85-11827 Filed 5-15-85; 8:45 am]

BILLING CODE 3410-34-M

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# FEDERAL HOME LOAN BANK BOARD

## 12 CFR Part 563b

[No. 85-321]

## Facilitation of Modified Conversions

April 30, 1985.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Home Loan Bank Board is amending its regulations governing modified conversions of mutual insured institutions to stock form. The amendments are intended to facilitate the modified-conversion procedure and enhance its use as a capitalization vehicle.

**EFFECTIVE DATE:** June 11, 1985.

**FOR FURTHER INFORMATION CONTACT:** James C. Stewart, Senior Attorney, (202-

377-6457), J. Larry Fleck, Deputy Director, (202-377-6413), or Julie L. Williams, Director, (202-377-6459) Corporate and Securities Division, Office of the General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

**SUPPLEMENTARY INFORMATION:** In Resolution No. 84-655, dated November 16, 1984, the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), proposed to amend its regulations governing modified conversions to the stock form of mutual thrift institutions whose deposits are insured by the Corporation ("insured institutions"). *Modified Conversions*, 49 FR 47271 (Dec. 3, 1984). The primary proposed revisions would have: (1) Amended the qualifications guidelines of 12 CFR 563b.36(b)(1) to allow applicants to recognize deferred loan losses and disregard appraised equity capital in determining whether the applicant's regulatory net worth is sufficiently low to justify a modified converson; (2) deleted the requirement that the modified conversion restore the institution to regulatory new-worth compliance on the basis of generally accepted accounting principles ("GAAP") and instead allow the use of regulatory accounting principles ("RAP") in this determination; and (3) allowed insured institutions pursuing modified conversions to limit the preemptive subscription rights of their account holders and other members. Upon reviewing the comment letters and other available information, the Board has determined to adopt these amendments substantially as proposed, with the changes discussed below.

## Modified Conversion in General

The authority for the modified-conversion process derives from section 121 of the Garn-St Germain Depository Institutions Act of 1982, which allows the Board to approve stock conversions notwithstanding other provisions of state or federal law, when the Board determines that the converting institution faces severe financial conditions that threaten its stability and conversion is likely to imporve the institution's condition. 12 U.S.C. 1464(p) (1982). Under the Board's modified-conversion regulations, 12 CFR Part 563b, Subpart D (1985), mutual insured institutions experiencing such difficulties may undertake conversions in which the substantive and procedural rights granted to members in converting mutual association by the Board's standard conversion rules may be restricted. *Conversions from Mutual to Stock Form*, 48 FR 15599 (Apr. 12, 1983).

In its standard conversion regulations, contained in Subpart A of 12 CFR Part 563b (1985), the Board has given extensive recognition to the rights and interests of the account holders and other members who are the legal owners of mutual institutions. Subpart A requires the informed approval of members to effect a conversion and gives account holders and other voting members preemptive subscription rights in the stock issued by the converting institution. The standard conversion regulations additionally seek to ensure that a fair price is paid by the subsequent stockholders for their ownership of the institution by mandating that the total price of the stock sold equals the institution's appraised *pro forma* market value. Subpart A seeks to sustain the liquidation interests of account holders by requiring the establishment of a liquidation account for the benefit of account holders in the amount of the net worth of the institution at the date of conversion. Maximum purchase limits and the requirement of widespread stock distribution also serve account holders' interests by preventing parties from using the conversion to acquire control of the institution without premium or gain control of the conversion proceeds to the detriment of account holders and other stockholders.

The conversion approval authority contained in section 121 of the Garn-St Germain act enables the Board to modify the conversion process to meet the needs of institutions whose financial conditions has so deteriorated that standard conversions are not feasible. In order to encourage the development of innovative proposals, the Board declined to promulgate detailed regulations on either the procedural or structural aspects of modified conversions. Subpart D primarily sets forth guidelines for satisfying the statutory requirement of severe financial conditions and provides minimum criteria regarding the structure of modified conversions. The substantive guidelines in 12 CFR 563b.37 generally apply the provisions of Subpart A unless clearly inapplicable, and specifically affirm the preemptive rights of members to purchase all the stock offered in the conversion. Section 563b.37, however, does indicate that modified conversions may be effected without the approval of members and may involve sales of conversion stock at an aggregate price not equal to the *pro forma* market value of the institution as determined by an independent appraiser. To ensure the efficacy of a modified conversion, the current rules require a capital infusion sufficient to bring the converting institution into net-worth compliance calculated by using GAAP rather than RAP.

## Proposed Revisions

In Resolution No. 84-655, the Board proposed several amendments to the modified-conversion regulations in order to increase the utility of the modified-conversion procedure. The proposals were primarily the result of discussions between the Board's staff and institutions attempting to structure modified conversions. The Board received thirteen letters in response to its request for comments. Commenters included four insured institutions, one savings and loan holding company, an industry trade group, and the Federal Deposit Insurance Corporation. Commenters uniformly supported the proposal.

### *1. Qualification Criteria*

Among the provisions of the regulations that had been suggested as impediments to using the Subpart D procedure were the current qualification guidelines. Section 563b.36(b) establishes criteria for determinig the existence of the statutory requirement of severe financial difficulties threatening the stability of the applicant. These criteria include: (1) Failure of the institution to meet its regulatory new-worth requirement; (2) a history of recent quarterly losses by the institution referenced to a sliding scale related to net worth; and (3) a demonstration that a standard conversion would not be feasible.

Attention has focused primarily on the initial guideline of failure of the institution to meet its regulatory net-worth requirement. The historic flexibility of the Board's net-worth rules has allowed a number of institutions to satisfy the regulatory net-worth requirements even though the financial prospects of these institutions are not favorable.

A primary cause of this discrepancy is the technique, permitted under RAP, of deferring losses on loans sold. *See* 12 CFR 563c. 14(a) (1985). By establishing a deferred loan-loss account rather than recognizing the loss in the year of sale, insured institutions are able to increase their new worth following a loan sale. Although an institution electing this treatment must demonstrate an intent to use the sale proceeds to improve its future profitability and/or to reduce interest-rate risk, the technique creates a non-earning asset that must be written off over time and does not of itself improve the institution's operating outlook. While the Board has recently restricted the availability of deferred loan-loss accounting to dispositions of assets acquired prior to October 28, 1984, deferred loan-losses remain a substantial component of the industry's net worth. *See Assets Qualifying for Deferral and Amortization of Grains and Losses,* Resolution No. 85–290, dated April 18, 1985.

In order to allow troubled insured institutions to take advantage of portfolio restructuring opportunities as well as the modified conversion procedure, the Board proposed to amend the qualifications guidelines to disregard deferred loan losses and appraised equity capital in determining whether an applicant's net-worth position supports a finding of severe financial difficulties. Commenters uniformly supported this change and the Board has determined to adopt it as proposed.

In Resolution No. 84–655, the Board additionally proposed to amend the guidelines relating to the amount of losses required to be shown by insured institutions seeking to convert on a modified basis. The current guideline specifies that an institution with more than two-percent net worth must show losses on a GAAP basis for the immediately preceding three quarters, institutions with between one-and two-percent net worth must have GAAP losses in two of the last three quarters, and institutions with less than one-percent net worth need only have one losing quarter in the last three. Because of concern that these guidelines were too rigid and may not provide an accurate indicator of an institution's financial health, the Board proposed to specify instead that an applicant need only show that its current and projected income from continuing operations would not enable it to achieve and maintain the regulatorily required level of net worth without a substantial capital infusion. The proposed formulation is intended to focus on the long-term prospects of the institution rather than its recent operating history. No objection to this proposal was raised by commenters and the Board has determined to adopt it without change.

The Federal Deposit Insurance Corporation ("FDIC") noted in its comment letter that the regulations are not clear on the eligibility of FDIC-insured federal savings banks for modified conversion under § 112 of the Garn-St Germain Act. 12 U.S.C. 1464(o) (1982). Moreover, Subpart D does not address the status of Net Worth Certificates issued by the FDIC in determining such eligibility. The Board has always regarded the Conversion Regulations as applicable to all institutions that meet the definition of an "insured institution" under its rules, which includes federal savings banks chartered under section 112 of the Garn-St Germain Act. 12 CFR 563b.2(a)(18) and 561.1 (1985). However, in response to the FDIC's concerns, the Board is amending § 563.34 to clarify that Subpart D is applicable to conversions under section 5(o) as well as section 5(p) of the Home Owners' Loan Act. The Board is also amending § 563.36(a) to provide that receipt of Net Worth Certifcates from the FDIC presumptively qualifies the institution for modified conversion. In addition, the Board is amending § 563b.36 to clarify that a modified conversion of a federal savings bank the accounts of which are insured by the FDIC may be undertaken when the FDIC certifies, in accordance with section 5(o)(2)(F) of the Home Owners' Loan Act, that severe financial conditions exist that threaten the stability of a savings bank insured by the FDIC and that conversion is likely to improve the financial condition of the savings bank. The Board may then concur in the findings and authorize the conversion if the conversion is in compliance with other applicable requirements of the Board's Conversion Regulations.

*2. Sufficiency of Capital Infusion*

Under § 563b.37(f), the capital infusion from a modified conversion must be sufficient to bring the converting institution into net-worth compliance calculated on a GAAP basis. As noted in the proposal, this requirement was intended to provide a "benchmark" assurance that the modified conversion would restore the institution to sound operation. Satisfaction of this requirement, however, has proven difficult for institutions that have structured their balance sheets in accordance with regulatory accounting principles. To alleviate this difficulty, the Board proposed to delete GAAP as a standard in favor of RAP net worth for determining the adequacy of the capital infusion. The proposal additionally would have required institutions that disregarded regulatory net-worth items in order to qualify for modified conversion to obtain sufficient capital in the conversion to attain regulatory net-worth levels without these items. Further assurance of the adequacy of the modified-conversion capital infusion would be provided by the requirement of § 563b.37(g) that the infusion be "reasonably sufficient to ensure the financial safety and soundness of the insured institution." 12 CFR 563b.37(g)(2) (1985).

Although this proposed change received no adverse comment, the Board has determined to modify it somewhat in the final rule. To provide a measure for modified-conversion stock sales that ensures that an appropriate amount of new capital is injected into the institution in the conversion, the Board has determined to amend § 563b.37(e) to additionally require that the proceeds from the modified-conversion stock sale exceed the estimated *pro forma* market value of the stock in the converting institution, based on an independent valuation, as provided in § 563b.7. Although such a requirement has not previously been explicitly stated, it has been a natural consequence of the requirement in § 563b.36 that a standard conversion prove impracticable. In the usual case, this has been demonstrated by the inadequacy of a standard conversion capital infusion. However, the Board is of the view that even when the impracticability of a standard conversion can be demonstrated by other means, the value of stock sold in a modified conversion should exceed the value requirement of stock sold in a standard conversion.

*3. Preemptive Subscription Rights*

Although commenters favorably viewed the proposal to permit restrictions on the preemptive subscription rights of account holders and other members, commenters also raised several issues in this area. Under the proposal, institutions undertaking modified conversions would be allowed to limit subscription rights on a sliding scale tied to the institution's net worth as a percentage of liabilities. For institutions with less than one-percent regulatory net worth, preemptive subscription rights could be limited to between 0 and 20 percent of the offering depending on the institution's actual net-worth position. If an applicant's regulatory net-worth position were between 1 and 2 percent, subscription rights could be limited to between 20 and 50 percent. Finally, for institutions with net worth of between 2 and 3 percent, the required subscription offering would cover between 50–100 percent of the shares offered. As discussed in the preamble to the proposed regulation, the proposal sought to balance the ownership interests of accountholders with the need of converting institutions to provide potential "standby" purchasers with assurance of some control following conversion.

Commenters noted that reference to regulatory net worth may be unclear in view of the modifications in calculating net worth permitted under § 563b.36(b). In addition, it was submitted if net worth for purposes of § 563b.37(g) included such items as deferred loan losses and appraised equity capital, many institutions qualifying for modified conversions would be unable to provide the control assurances to standby purchasers considered necessary for a successful modified conversion.

After further consideration of the matter, the Board has determined to allow insured institutions undertaking modified conversions to eliminate such items as deferred loan losses and appraised equity capital from net worth when calculating the degree to which subscription rights must be conferred. In this manner, the subscription rights of accountholders and other members would be tied to the financial factors that qualified the institution for modified conversion. The Board notes, however, that an election to recognize deferred loan losses that enables an institution to undertake a modified conversion may not be made on a partial basis, and that the recognition of such losses causes a corresponding increase in the total amount of capital that must be raised in the conversion.

Other commenters urged the Board to allow further limitations on the preemptive subscription rights of accountholders in a modified conversion. One commenter advocated the elimination of subscription rights if approved by the members. The commenter submitted that the management of mutual institutions would be in a position to bargain for a better price for the institution if they could guarantee the delivery of control.

The Board is not at this time prepared to amend the modified-conversion regulations to provide such an option, and remains concerned that preemptive subscription rights constitute a necessary attribute of account holders' equity interests. Moreover, the prospect of account-holder subscriptions provides a disincentive to under-valuation of the institution. Any proposal to eliminate preemptive subscription rights must also address these concerns.

The Board is modifying the final regulation to conform to recent changes in the Board's net-worth rules, *Net Worth Requirements of Insured Institutions*, 50 FR 6891 (Feb. 19, 1985). At the time of the proposal, the general net-north requirement was set at a minimum 3 percent of liabilities and the proposal used 3 percent as the maximum figure at which account holder subscription rights could be limited. Under the revised net-worth regulations, however, insured institutions are allowed to reserve against their marginal liability growth at a rate of less than 3 percent, and institutions exceeding their net-worth requirement could conceivably be permitted to limit subscription rights if the modified conversion amendments were adopted as proposed. To avoid such a result, the final version of the rule has been written to more closely tie the permissable limitations on subscription rights to the institution's actual net-worth requirement. As adopted, subscription rights may be limited to between 0 and 20 percent of the offering when the applicant's net worth stands between 0% of liabilities and one-third of the net-worth requirement, 20–50 percent when net worth is between one-third and two-thirds of the requirement, and 50–100 percent when net-worth is between two-thirds and satisfaction (100 percent) of the net-worth requirement.

*4. Application Procedures*

In addition to the foregoing substantive amendments, the Board proposed several revisions to the modified-conversion applications procedures in order to expedite processing. These proposed revisions included a clarification of the information necessary to obtain permission to file a modified-conversion application. Such materials would include a detailed discussion of the institution's qualification, an outline of the proposed plan of modified conversion, an estimate of proceeds, and a plan of operation following conversion.

Although these proposals received little comment, the Board has determined to make several changes in the final rule. The list of materials required to be filed has been expanded to include a reconciliation statement comparing the institution's net worth with and without deferred loan losses and appraised equity capital. The post-conversion plan of operation could be in summary form although a more detailed business plan would be needed to determine the adequacy of the capital infusion when the formal modified-conversion application is filed.

In addition, the Board is adopting a new provision, § 563b.39, which specifies that the materials required for a modified-conversion application need not include a preliminary offering circular or proxy statement. Instead, modified-conversion applications would include only a plan of conversion, a change-in-control notice or holding company application from any person or company whose projected ownership will exceed regulatory control thresholds, an appraisal report, a business plan, and audited financial statements for the most recent fiscal year. To further expedite processing, the Board is delegating to the General Counsel authority to approve applications for modified conversion by amending § 563b.36 to include a new paragraph (d) delegating to the General Counsel the Board's modified-conversion approval authority under paragraph (a) of that section. The Board is also adopting a new § 563b.40 prohibiting offers and sales of stock in a modified conversion until the Corporation has declared an offering circular effective and delegating that authority to the General Counsel or his designee.

The foregoing amendments will take effect 30 days following publication in the **Federal Register.** The Board has determined that the public notice and comment procedures of 5 U.S.C. 553(b) and 12 CFR 508.12 and 508.13 are unnecessary, impracticable, and contrary to the public interest with respect to: (1) the amendment to § 563b.37(g), since the amendment essentially codifies past policy and relieves a current restriction; and (2) the amendments to § 563b.38 and the adoption of § 563b.39, since these rules relate to internal agency procedures.

**Final Regulatory Flexibility Analysis**

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604 (1982), the Board is providing the following final regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the rules.* These elements have been discussed elsewhere in the supplementary information regarding the amendment.

2. *Small entities to which the rules would apply.* The rules would apply to all insured institutions.

3. *Impact of the rules on small institutions.* To the extent that the rules would affect small institutions, this impact has been discussed elsewhere in the amendment.

4. *Overlapping or conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the rules.

5. *Alternatives to the proposed rule.* Other alternatives, such as the present rules, tend to limit the utility of the modified conversion procedure. More liberal provisions raise questions of statutory authority.

**List of Subjects in 12 CFR Part 563b**

Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 563b of Subchapter D, Chapter V, Title 12 of the Code of Federal Regulations, as set forth below.

1. The authority for 12 CFR Part 563b continues to read:

**Authority:** Section 5 of the Home Owner's Loan Act, as amended, 12 U.S.C. 1464; sections 402, 403, and 407 of the National Housing Act, as amended, 12 U.S.C. 1725, 1726, 1730; Reorganization Plan No. 3 of 1947, 3 CFR 1071 (1943–48 Comp.).

## PART 563b—CONVERSION FROM MUTUAL TO STOCK FORM

### Subpart D—Guidelines for Modified Conversion

2. Revise § 563b.34 as follows:

**§ 563b.34 Scope of Subpart.**

(a) This subpart establishes guidelines for modified conversion from the mutual to stock form of insured institutions as authorized or ordered by the Board pursuant to Section 5(p) of the Home Owners' Loan Act, 12 U.S.C. §§ 1464 or of an FDIC-insured savings bank as concurred in by the Board pursuant to Section 5(o) of the Home Owners' Loan Act, 12 U.S.C. 1464(o).

(b) The provisions of this Subpart are not exclusive and may be waived by the Board.

3. Amend § 563b.36 by revising paragraph (a); redesignating paragraph (b) as paragraph (c); adding a new paragraph (b); and revising new paragraphs (c) (1) and (2) and adding a new paragraph (d), as follows:

**§ 563b.36 Guidelines for qualification.**

(a) The Board may, in its discretion, approve or order a modified conversion if it finds that the following conditions have been met: (1) the insured institution has contracted to receive assistance from the Corporation under section 406 of the National Housing Act or from the Federal Deposit Insurance Corporation under Section 13 of the Federal Deposit Insurance Act; or (2) the Board determines that: (i) Severe financial difficulties exist which threaten the stability of the insured institution, and (ii) the conversion to stock form is likely to improve the financial condition of the institution.

(b) The Board may, in its discretion, concur that an FDIC-insured mutual savings bank qualifies for a modified conversion to federally-chartered stock savings bank form if the Federal Deposit Insurance Corporation certifies to the Board in accordance with section 5(p)(2)(F)–(H) of the Home Owner's Loan Act that severe financial conditions exist that threaten the stability of the state-chartered savings bank and conversion to the federally-chartered stock savings bank form is likely to improve the financial condition of the savings bank.

(c) * * *

(1) The insured institution does not meet its regulatory net-worth requirement, *except* that, for purposes of determining compliance, the institution may: (i) disregard the effect of appraised equity capital by following the procedures of § 563b.32 of Subpart C of this part; and (ii) solely for purposes of this paragraph (c), recognize all its losses on sales or other dispositions of mortgage loans, redeemable ground-rent leases or other securities specified in § 563c.14 notwithstanding a prior election under § 563b.32(a) or the exemption under § 563.13(e) of this subchapter;

(2) Current and projected income from operations is not sufficient to restore and maintain the institution's regulatorily required net worth;

* * * * *

(d) *Delegation.* The Board delegates to the General Counsel or his designee its authority under paragraph (a).

4. Revise § 563b.37(e), (f) and (g), as follows:

**§ 563b.37 Substantive guidelines.**

* * * * *

(e) An insured institution converting under this Subpart D shall sell its stock at an aggregate price greater than the estimated *pro forma* market value of the institution, based on an independent valuation, as provided in § 563b.7 of this Part.

(f) The Board may, in its discretion, approve an application for conversion pursuant to this Subpart if it is demonstrated to the Board's satisfaction, through a submission prepared by an independent investment banking firm or other qualified person, that the net capital to be received from the sale by the converting insured institution of its capital stock pursuant to this Subpart, (1) would bring the insured institution into regulatory net-worth compliance in accordance with the requirements of § 563.13(b) of this Subchapter without including net-worth items excluded pursuant to § 563b.36(c)(1), and (2) would be reasonably sufficient to ensure the financial safety and soundness of the insured institution.

(g) The eligible account holders, the supplemental eligible account holders, and the voting members, if any, of the insured institution converting pursuant to this Subpart shall be granted subscription rights to purchase all of the stock proposed to be issued by the insured institution, in accordance with the rules and regulations of Subpart A of this Part, *except* that such subscription rights may be eliminated or reduced as follows: (1) If the regulatory net worth of the institution is between 0 percent of an institution's liabilities and one-third of its net-worth requirement under § 563.13, such subscription rights may be reduced to an amount between 0 percent and 20 percent of the total stock offered, such percentage between 0 percent and 20 percent to be determined on a sliding sale on the basis of the institution's regulatory net worth; (2) if the regulatory net worth of the institution is more than one-third but not in excess of two-thirds of its net worth requirement under § 563.13, subscription rights may be reduced to an amount between 20 percent and 50 percent of the total stock to be offered, such percentage between 20 percent and 50 percent to be determined on a sliding scale on the basis of the institution's regulatory net worth; and (3) if the regulatory net worth of the institution is more than two-thirds of its net-worth requirement but not in excess of the institution's net-worth requirement, subscription rights may be reduced to an amount between 50 percent and 100 percent to be determined on a sliding scale on the basis of the institution's regulatory net worth. In determining its regulatory net worth for purposes of this paragraph, an insured institution may exclude from consideration as net worth items that may be disregarded pursuant to § 563b.36(c)(i) and (ii) of this Subpart.

5. Revise § 563b.38 as follows:

**§ 563b.38 Permission to file applications under Subpart D.**

(a) *Requirement of prior approval.* No application may be filed under this Subpart D without the prior written approval of the Corporation.

(b) *Application.* Applications for permission to file an application for modified conversion shall be accompanied by a detailed discussion of the institution's qualification for modified conversion, a statement reconciling its net worth under generally accepted accounting principles to its net worth under regulatory accounting principles, an outline of the proposed plan of conversion, an estimate of the amount of capital expected to be raised, and a summary plan of operation of the institution following conversion.

(c) *Delegation.* The Board delegates to the General Counsel or his designee the authority of the Board under paragraph (a) of this section.

6. Add new §§ 563b.39 and 563b.40 as follows:

**§ 563b.39 Application for modified conversion.**

(a) An application for modified conversion shall include:

(1) A plan of modified conversion describing the method of stock sale, listing proposed purchasers, and specifying the provisions of Subpart A of this Part for which waiver is sought.

(2) A Change-in-Savings-and-Loan-Control-Act Notice or Savings and Loan Holding Company Act Application for any person or company proposing to acquire shares in excess of the level for which prior notice or approval is required under the regulations implementing those Acts;

(3) An independent valuation of the stock prepared in accordance with § 563b.7 of this part;

(4) A business plan which shall contain the proposed operating policies of the insured institution following conversion; and

(5) Financial statements for the most recent fiscal year prepared in accordance with generally accepted accounting principles.

**§ 563b.40 Sale of stock.**

(a) *General.* No offer to sell securities of an applicant pursuant to a plan of modified conversion may be made prior to approval by the Corporation of the application for conversion. No sale of securities may be made except by means of a final offering circular which has been declared effective by the Corporation.

(b) *Delegation.* The Board delegates to the General Counsel or his designee the authority of the Corporation to declare a final offering circular effective.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

*Assistant Secretary.*

[FR Doc. 85-11887 Filed 5-15-85; 8:45 am]

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## 12 CFR Part 563c

[No. 85-290]

## Assets Qualifying for the Deferral and Amortization of Gains and Losses

April 18, 1985.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Home Loan Bank Board is amending its regulations regarding the types of mortgage loans, mortgage-related securities and debt securities that qualify for deferral and amortization treatment under § 563c.14 of the Board's rules for insured institutions. The purpose of the amendment is to prohibit use of this treatment for certain transactions designed to inflate net worth or to avoid the recognition of credit losses while at the same time continuing to provide insured institutions with a means to improve their profitability and reduce their exposure to interest-rate risk. When this amendment was proposed on October 19, 1984, the Board notified the public that it was proposing to apply the amendment as of the publication date of the proposal. Accordingly, the effective date of this amendment is October 28, 1984.

**EFFECTIVE DATE:** October 28, 1984.

**FOR FURTHER INFORMATION CONTACT:** Douglas McEachern, Professional Accounting Fellow, Office of Examinations and Supervision, (202-377-6392) or James Underwood, Attorney, Corporate and Securities Division, Office of General Counsel, (202-377-6649), Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

**SUPPLEMENTARY INFORMATION:** On October 19, 1984, the Federal Home Loan Bank Board ("Board") as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), proposed an amendment to its regulations limiting the scope of assets that qualify for deferral and amortization of gains and losses (12 CFR 563c.14). The Board had found that, subsequent to the rule's adoption in 1981, certain of its provisions were being construed to allow insured institutions to engage in transactions solely to take advantage of the loss-deferral provisions without enhancing the underlying economic value of the institutions.

The Board continues to believe in the desirability of providing insured institutions with tools to allow them to restructure their operations and adjust to the deregulation of the thrift industry. While providing tools, such as the loss-deferral accounting technique, for these purposes, the Board is, however, particularly intent upon disallowing abusive transactions that either sacrifice the long-term health of the institution or create artificial earnings that have no economic substance. Therefore, after carefully reviewing the comments received and other available information, the Board has determined to adopt the amendments substantially as proposed, with the modification described below.

### Comments

The Board received a total of 12 comments on the proposal. Of these, nine were from insured institutions and three were from thrift industry trade groups. The three industry trade groups and two institutions supported the Board's proposal while the balance of the commenters generally expressed reservations about the Board's action or suggested revisions to the proposal.

Two commenters were concerned that the Board's proposed amendment would preclude the use of the loss-deferral regulations for the sale of participation certificates ("PCs") acquired in a swap transaction (with the Federal Home Loan Mortgage Corporation, for example) after October 28, 1984. These commenters noted that the loans collateralizing the PCs would have been purchased or originated prior to October 28, 1984, the proposed effective date of the amendment.

The Board has amended the regulation to clarify that PCs and similar securities obtained in exchange for assets acquired, purchased or committed to be acquired or purchased prior to October 28, 1984, qualify for treatment under § 563c.14.

Two commenters objected to the proposed elimination of loss deferral in the case of scheduled items. In response, the Board reminds these commenters that, as adopted and subsequently interpreted, the deferred-loss regulation was not intended to permit institutions to avoid recognition of losses that arise from credit risk; the regulation was designed to provide flexibility to institutions dealing with problems related to their portfolios of below-market-interest-rate assets, i.e. losses resulting from disruptive, nationwide interest-rate fluctuations.

Two commenters were concerned that the Board was attempting to retract or rescind the deferred-loss regulation. The proposal, however, was quite clear that the Board was merely proposing to restrict the use of the regulation for certain assets acquired after October 28, 1984, but proposed no retraction or rescission of the regulation for assets acquired before that date.

One commenter objected generally to the proposal and recommended that, rather than restricting management's flexibility, the Board should pursue those it believed were violating the existing regulation or were otherwise engaged in abusive practices. In response, the Board notes the difficulty in requiring corrective accounting if the regulation may be interpreted as permitting the transaction. In addition, the Board is not persuaded that it would be reasonable to continue to permit the use of this regulation for loans purchased or acquired after October 28, 1984. Institutions have now been provided with a number of tools to deal with old interest-rate losses and manage new interest-rate risks. Institutions that find themselves exposed to interest-rate losses on recently acquired assets should be required to recognize the effects of their actions; these problems were not caused by the rapid deregulation of interest rates.

A commenter recommended, as an alternative approach, that the Board provide for a case-by-case review of transactions involing the disposition of assets acquired after October 28, 1984. The Board has decided not to adopt this recommendation for the reason given above concerning the adequacy of interest-rate risk management tools for currently acquired assets, and for the futher reason that case-by-case review of such a tremendous volume of transactions would be extremely burdensome administratively.

Finally, a trade group suggested that the Board re-examine Memorandum T59-9 "Sale of Loan Servicing Rights," issued by the Board's Office of Examinations and Supervision. The substance of this document is outside the scope of this rulemaking proceeding.

### Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (Sept. 19, 1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the rules.* These elements have been discussed elsewhere in the supplementary information regarding the amendment.

2. *Small entities to which the rules would apply.* The rules would apply to all insured institutions.

3. *Impact of the rules on small institutions.* To the extent that the rules would affect small institutions, this has been discussed elsewhere in the amendment.

4. *Overlapping or conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the rules.

5. *Alternatives to the rule.* Other alternatives, such as rescinding entirely the loss-deferral accounting technique, would be more restrictive and could discourage institutions from prudent restructuring of their portfolios.

### List of Subjects in 12 CFR Part 563c

Federal Savings and Loan Insurance Corporation, Accounting, Savings and loan associations.

Accordingly, the Board hereby amends Part 563c, Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

## SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

## PART 563c—ACCOUNTING REQUIREMENTS

1. The authority for 12 CFR Part 563c continues to be:

**Authority:** Secs. 402, 403, 407 of the National Housing Act, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 1981, 3 CFR 1943-48 Comp., p. 1071.

2. Amend § 563c.14 by revising paragraph (a) thereof, as follows:

**§ 563c.14 Accounting for gains and losses on the sale or other dispostion of mortgage loans, redeemable ground-rent leases, and certain securities; matching the amortization of discounts and losses.**

(a) *General.* An insured institution, by resolution of its board of directors, may elect to defer and amortize all gains and losses (except for gains and losses related to disposition of scheduled items as defined by § 561.15 of this subchapter, including loans to facilitate sales of foreclosed property), net of related income taxes computed in accordance with generally accepted accounting principles, on any sale or other disposition, occurring in the fiscal year that the action to defer and amortize is taken, of mortgage loans, redeemable ground-rent leases, mortgage-related securities (as defined in § 563.17(a)(4) of this subchapter), preferred stock that at the time of issuance provides for redemption of a fixed date in a fixed dollar amount or for redemption pursuant to a fixed schedule of periodic payments and has a remaining term to maturity of at least five years, and debt securities that do not qualify as liquid assets under § 523.10(g) (except those qualifying under § 523.10(g)(11)) of this chapter because of their maturities or that have remaining terms to maturity of at least five years. Using the same procedure, an institution may revoke any prior election(s) to amortize gains and losses on the disposition of such assets. The election to defer gains and losses is restricted to the disposition of assets acquired, purchased, originated or committed to be acquired, purchased or originated prior to October 28, 1984. Participation certificates and similar securities obtained in exchange for assets acquired, purchased or committed to be acquired or purchased prior to October 28, 1984, qualify for treatment under this section.

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By the Federal Home Loan Bank Board.

John F. Ghizzoni,

*Assistant Secretary.*

[FR Doc. 85-11884 Filed 5-15-85; 8:45 am]

BILLING CODE 6720-01-M

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## FARM CREDIT ADMINISTRATION

## 12 CFR Part 611

## Organization

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA), by its Federal Farm Credit Board (Federal Board), adopts new regulations and amends existing regulations concerning amendments to Federal land bank association (FLBA) and production credit association (PCA) charters and procedures for effecting mergers or consolidations of such associations. These new regulations and amendments improve the procedures for amending association charters and effecting mergers and consolidations. In addition, the merger and consolidation procedures set forth the requirements for disclosure of information to voting stockholders to ensure that they are adequately informed regarding association merger or consolidation proposals.

**EFFECTIVE DATE:** Thirty days from this publication date, provided either or both Houses of Congress are in session. Notice of the effective date will be published.

**FOR FURTHER INFORMATION CONTACT:**

Rose M. Ferguson, Office of Examination and Supervision (703) 883-4430

or

Kenneth L. Peoples, Office of the General Counsel (703) 883-4024

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

**SUPPLEMENTARY INFORMATION:** In the July 20, 1984 **Federal Register** (49 FR 29404-29408), FCA published proposed revisions to its regulations concerning the procedures for amending FLBA and PCA charters and for effecting mergers or consolidations of associations operating under the same title of the Farm Credit Act of 1971, as amended (Act). The comment period closed on September 19, 1984. The FCA received a large number of comments and requests to extend the comment period to allow for more indepth review of the proposed rules. Due to those requests, the comment period was extended to November 5, 1984. Notification of this extension was published in the September 19, 1984 **Federal Register** (49 FR 36655). A detailed explanation of the proposed amended regulations, 12 CFR 611.1120–611.1125, may be found in the preamble to the proposed rulemaking in the July 20 **Federal Register** (49 FR 29404–29408). The Federal Board considered over 70 comments from Farm Credit System (System) institutions, commercial banks, members of Congress, private attorneys, agricultural organizations, and farmer/borrowers. The Federal Board considered each of the comments received, made changes to the proposed regulations where appropriate, and adopted final regulations at its February 4–6, 1985 meeting.

A large number of the commentators objected to the regulations covering charter amendments, particularly the proposed regulation § 611.1120 setting forth the Governor's authority to direct charter amendments on his own initiative. They alleged that the regulation usurped control of the association from the farmer/owners, violating the Act. Many of these commentators demanded public hearings on the regulations.

The Federal Board believes these commentators have incorrectly read the proposed regulation as authorizing the Governor to require merger or consolidation of associations through charter amendments. While the Act specifically authorizes the Governor to approve association charter amendments or to make charter amendments at his own initiative, 12 U.S.C. 2031, 2091, this authority does not include the power to merge or consolidate associations. Although certain charter amendments may be necessary to effect a merger or consolidation, a merger or consolidation is a form of corporate reorganization which goes beyond amendments to the charter, and which ordinarily requires shareholder approval. However, it should be noted that the Act specifically reserves authority to require merger or consolidation of associations to the Federal Board whenever it determines, with the concurrence of the district Farm Credit board, that an association has failed to meet its outstanding obligations or has failed to conduct its operations in accordance with the Act. The Federal Board believes that this misunderstanding of the purpose and effect of the proposed amendment has been resolved by restructuring and editing the proposed regulation.

The Federal Board does not believe public hearings on these regulations are warranted due to the extended comment period which has afforded active public participation. The FCA is not required to hold public hearings for this informal rulemaking undertaken pursuant to the Administrative Procedure Act. The large number of comments received indicates that an adequate opportunity has been afforded the public for participation in the rulemaking process.

One System institution commented that the approval of the association's supervising bank board should be necessary to approve a charter amendment request under § 611.1121. Another commentator stated that this section should provide for stockholder approval of charter amendments. The Federal Board declined to adopt either suggestion. Bank board approval is not necessary and should not be a prerequisite to Agency action. The Federal Board noted that the regulation does require that the supervising bank review an association's request for a charter amendment and forward it to the FCA with its recommendations. The Federal Board did not think it appropriate to require stockholder approval for charter amendments since the Act does not impose such a requirement.

A large number of commentators made suggestions for changes to proposed new § 611.1122. The regulation specifies the information required to be disclosed to association stockholders when stockholder approval of a merger or consolidation proposal is sought. One System bank suggested that the FCA delegate the responsibility for the merger and consolidation approval process, including the determination of the scope and method of financial disclosure, to the System banks. The Federal Board rejected the suggestion on the belief that approvals of corporate reorganizations and the uniform standards for disclosure of information to stockholders voting on such proposals are Agency actions of a regulatory nature that cannot be delegated. Disclosure standards for mergers and consolidations should follow a Systemwide standard established by FCA regulation.

Two System banks contended that association voting stock is not a security and therefore the disclosure required by the regulation is far too extensive. Alternatively, they suggested that no financial information be sent to stockholders but that the association develop the information and have it available for viewing by interesting members at the association. A representative of some FLBA stockholders went further to assert that the FCA does not have the statutory authority to require such financial disclosure. Other FLBAs argued that the regulations imposing financial disclosure on associations are unnecessary, time consuming, and expensive. A farm credit organization suggested that more financial disclosure to stockholders is needed and stated that FCA would withhold information from the farmer/owners by not requiring distribution of a copy of the merger agreement or bylaws to the stockholders.

The Federal Board did not agree with these positions. The FCA does not base the promulgation of the disclosure regulation on the assumption that voting stock of an FLBA or PCA is a security for purposes of Federal or State securities statutes. The importance of a merger or consolidation decision to stockholders' interests makes it imperative that farmer/borrowers have adequate information available to make informed decisions on the advisability of a proposal. Section 1.1(b) of the Act directs the FCA to encourage participation of the association members in the management, ownership, and control of the associations. Few corporate decisions are more important than a merger or consolidation. The Act authorizes voluntary association merger only with the affirmative vote of a majority of the voting stockholders present and voting or voting by proxy vote for the merger at a duly called meeting at which a quorum is present. The Federal Board believes that it will not have discharged its responsibility to the owners of the Farm Credit System if it does not require dissemination of the minimum information necessary to make an informed decision on a merger or consolidation proposal. The proposed disclosure requirements provide the type of information that any farmer or rancher would want to have in making a decision on whether to acquire a business. The Federal Board believes that stockholders who are asked to approve a transaction that significantly affects their interests should be furnished with the disclosure material along with the proxy solicitation and should not have the burden of obtaining information materials about the proposal.

The FCA's authority to require financial disclosure derives from its authority to approve mergers and consolidations pursuant to section

5.18(a) of the Act. Under that section, the FCA has the power and responsibility to approve mergers or consolidations of FLBAs and PCAs and the consolidation of territories they serve, and to prescribe rules and regulations necessary and appropriate for carrying out these actions. Requiring disclosure of financial information necessary for stockholders to make an informed decision on a merger or consolidation proposal is an important part of the FCA's responsibility to protect both the safety and soundness of System institutions and the rights of its owner/borrowers to information.

A farm credit organization stated that the proposed § 611.1122 has two deficiencies: (1) The FCA will not approve a merger or consolidation until after stockholder action; and (2) the section does not provide for dissenting stockholders' rights. The commentator believes that the FCA has a duty to advise the association members on merger proposals and to assure farmers that all factors of the proposed merger or consolidation meet with the FCA's approval. The commentator believes that the final decision should rest with the stockholder and not a Government agency, and that the stockholders should have the opportunity to present their views prior to the final meeting. The commentator also expressed concern that stockholders are not currently able to obtain stockholder lists to make such communications and do not have the financial or administrative capabilities to present dissenting views.

The Federal Board disagrees that the FCA has a duty to scrutinize a merger or consolidation proposal and evaluate it for borrowers. Associations are privately owned and operated institutions. Stockholders have the responsibility to make their own informed business judgment on whether to vote for a given proposal. The FCA's approval is based on its judgment that the merged entity, based on the information presented by the associations, will be financially viable and able to continue providing adequate agricultural credit and financial services to farmers in the territory. A preliminary FCA approval is given prior to the stockholder vote based on the information available at the time of application. Similarly, the Federal Board does not agree that a merger or consolidation proposal should be presented to stockholders only after the FCA has given it its final approval. Such a procedure would unnecessarily restrict the right of stockholders to alter a proposal as presented because it has already received final regulatory approval. Finally, it is not the responsibility of the FCA to evaluate the merits of a merger or consolidation proposal as it relates to each borrower, nor should the bank, association, or any director, officer, or employee represent that the FCA has passed on the merits of the merger or the effect on particular borrowers. The proposed regulation has been amended to reflect this.

The commentator's demand for dissenters' rights is misplaced. Under general corporate law, dissenters' rights are specifically set forth in the enabling corporate state and allow shareholders who disagree with a proposal for a merger to have the value of their stock determined by independent appraisal and redeemed in cash, rather than having it exchanged for the stock of the continuing association. The Act does not provide for dissenters' rights. Nor are the considerations that underlie such statutory rights present in mergers of solvent associations, since the stock in every System association is purchased and redeemed at the same par value. Where a majority of stockholders approve a merger and thereby bind all stockholders, an unsatisfied stockholder has the option of paying down his or her loan, requesting that the association retire the supporting stock, and seeking financing elsewhere. As for communicating with other stockholders, an association stockholder has the same rights as other stockholders of entities under general corporate law to communicate with fellow stockholders. The FCA has taken the position that an association stockholder has a right to obtain the stockholder list for a proper corporate purpose. However, the issue is not appropriate for a regulation setting forth procedures for effecting mergers or consolidations.

Several System banks suggested new language to permit the supervising bank to determine the list of documents and the type of disclosure required to be given to stockholders voting on a merger or consolidation proposal. The banks believe that this will enable the supervising bank to tailor disclosure to fit a particular proposal. The Federal Board rejected the suggestion on the belief that the FCA must set forth in regulations the minimum Systemwide standard for disclosure of financial information to stockholders in connection with a merger or consolidation vote. The type of required disclosure proposed is minimal. It is relevant in all cases, and should be made available to all stockholders in all mergers and consolidations. There may be cases where additional information must be disclosed to give stockholders a complete picture of the proposal. As a condition of its recommendation on the transaction, the supervising bank may require additional information when it believes that such a condition is present.

Special situations are presented when a proposed merger or consolidation will involve more than three associations. In such cases, the Federal Board believes the FCA should have the discretion to require the supplementation or allow the condensation of certain information to ensure that adequate information is provided to stockholders in a meaningful form, without requiring an unwieldy disclosure package. This is a particularly important point where a proposed merger or consolidation is designed to implement a partial or comprehensive reorganization of association territories within a district. A new paragraph has been added to afford the FCA related flexibility. The amount of information and the level of disclosure will vary depending upon the condition of the constitutent merging or consolidating associations.

Several System banks suggested that the required inclusion in the disclosure to stockholders of a statement that the FCA does not pass on the accuracy or adequacy of the disclosure information be deleted. They asserted that this is not true because the FCA approves the merger. On the other hand, one System bank suggested that an additional phrase be added to the disclaimer to the effect that no representation to the contrary shall be made and that a statement be added prohibiting the making of false or misleading statements. A farm credit organization expressed its view that the FCA's primary role is to audit an association's books to inform stockholders that the information presented on a proposed merger is accurate and adequate for making the decision. The commentator further stated that the FCA should perform an audit and not require the association to spend funds to have an outside party prepare financial statements.

The Federal Board believes that the disclaimer that the FCA has passed on neither the accuracy nor the adequacy of the disclosed information is accurate and appropriate, and should be retained. The responsibility for the accuracy and adequacy of the disclosure to stockholders rests squarely with association management and directors. In approving a merger or consolidation proposal and clearing the disclosure for distribution, the FCA does not guarantee the accuracy of data. That responsibility properly rests with the association which produces the data. The FCA's approval of a merger or consolidation proposal and the clearance of the disclosure material for distribution does not imply that the information is adequate. When the FCA reviews and approves a proposal, it scrutinizes the information made available by the association in the merger or consolidation application to determine whether the requirements of the regulation are met, whether the disclosure is internally consistent, and whether there is anything to suggest that the information is inaccurate. The proposed regulation set forth only the minimum requirements and are not intended to provide a format for every line item. There may be other facts or financial data that are necessary to state fully the financial condition of the association, and the association is charged with providing any additional information that may be necessary to ensure that the information is not misleading.

The Federal Board does not agree that the FCA should perform a special audit of associations for the stockholders prior to a merger or consolidation. Associations are owned and operated by their farmer borrower/owners. With that ownership goes the responsibility by both directors and stockholders to examine merger proposals closely. Association boards of directors are responsible for ensuring that the information is accurate, and the regulation requires a representation to that effect. The Federal Board does believe that if a board of directors is not comfortable in representing that the data is accurate, it should have the option of obtaining comfort through an opinion of independent accountants, as provided by an amendment to the regulation. However, ultimate responsibility for its accuracy remains with the board. The Federal Board has added a statement prohibiting false and misleading statements.

A spokesman for a family farm organization stated that when the merger of System associations takes place the stockholders should receive adequate equity for their shares, as in the case of a merger of private banks. The commentator stated that the regulations allow the FCA to bring about mergers with less concern for the farmer/owners' rights and equities. Many comments of individual farmer/borrowers stated their position that the regulations limited farmer input into the decision to merge or consolidate and suggested that the regulations be directed toward protecting the rights and interest of the farmer/owners.

The Federal Board does not agree with these commentators and believes that the proposed regulations reflect concern for stockholder equity. The proposed § 611.1123(a) requires that the merger or consolidation agreement set forth a formula for the exchange of equities. Association stock is not precisely equivalent to stock in a private bank in that as there is no reasonable expectation of appreciation, there is no secondary market in the stock, and the stock is transferable only to other eligible borrowers. Voting stock of a solvent association is both acquired and retired at par value. An association's stockholders may receive more than par value only in the unlikely event that the association is liquidated before its surplus has been depleted. The proposed disclosure regulations require that the stock exchange ratio be disclosed, and leave it to the stockholders to evaluate this information and vote on the proposal. The Federal Board believes that the regulations will assure that stockholders are provided with the information necessary to make informed decisions on merger or consolidation proposals, and that these requirements adequately reflect the concern for a stockholder's rights.

One System bank suggested that the phrase "generally accepted accounting practices" (GAAP) is proposed § 611.1122(c)(8) be replaced with "accounting guidelines prescribed by the Farm Credit Administration and the supervising bank" because the associations do not prepare financial statements in all respects in accordance with GAAP. Another System bank believes that the requirement to disclose separately all significant interest-earning assets and interest-bearing liabilities as well as interest and expense accruals in § 611.1122(c)(7) should be eliminated as redundant in view of the requirements in § 611.1122(c)(5), (6), and (8).

The Federal Board agrees that the financial statements of the associations are not prepared in all respects in accordance with GAAP. However, the proposed regulation only requires that the financial position be stated in accordance with GAAP, "except as otherwise qualified." The differences from GAAP must be fully explained in the notes to the financial statements. In addition, the Federal Board believes that the requirement for disclosing interest-earning assets and interest-bearing liabilities separate from other financial disclosure is not redundant, but emphasizes a very important aspect of an association's financial condition.

One bank suggested that the requirement in § 611.1122(c)(8) that the board of directors certify the financial statements of the association should also include a requirement that they be certified by the chief executive officer. Several System banks suggested that the requirement be deleted altogether. One System bank stated that it is the management that bears the responsibility for the financial statements and that any board member would be relying upon the professional staff or outside accountants. One farm credit organization stated that the association board of directors should not be required to make such representation because association directors do not generally have the technical expertise to make such an auditing statement and that the FCA should do an audit and provide the stockholders with an auditing statement and report.

The Federal Board does not agree that management alone bears responsibility for an associations financial statements. An association board of directors is charged with the responsibility of overseeing the management of the association, although day-to-day operations are generally conducted by the officers selected by the directors. Responsibility for the financial condition of the institution rests ultimately with the board. It is not the FCA's function to conduct a financial audit of an association every time the institution pursues a transaction such as a merger or a consolidation requiring an audit. FCA examinations are for the general regulatory and supervisory purpose of protecting the safety and soundness of System institutions, and not for purposes such as facilitating a merger or consolidation proposal. The Federal Board recognizes that many business organizations have outside accounting firms audit the company's financial condition, which provides a level of comfort that the entity's financial statements are accurate. For these reasons, the Federal Board has added an option to § 611.1122(c)(8) permitting an association board to obtain an opinion of an independent accounting firm in lieu of providing the representation of the association's financial condition. This, of course, does not relieve a board of its ultimate responsibility for the association's financial statements. The Federal Board has also adopted the suggestion that the chief executive officer of an association be required, consistent with management responsibilities, to certify the accuracy of the association's financial statements.

One System bank suggested that the requirement in § 611.1122(c)(9) requiring disclosure of information from the latest credit review of the association be replaced with the requirement to disclose nonperforming loans that must be reported to the FCA in accordance with FCA's letter of May 30, 1984. The Federal Board agrees with this comment and has amended the regulation accordingly.

One System bank commented that association information concerning the amount of chargeoffs taken in the previous 2 years in not meaningful to the association members voting on a merger. The institution also did not believe a borrower could obtain any meaningful information from interest rate comparisons of constituent associations, particularly given the power of the board to change interest rates. The Federal Board believes the information regarding the previous 2 years of chargeoff experience is essential to explain the financial statements of the association and to indicate its potential for continuing as a sound institution. In addition, the Federal Board believes that the interest rate comparisons required present a history of incremental changes in the past that may indicate a future trend. This information is valuable to stockholders, notwithstanding the association board's authority to change the interest rate.

A farm credit organization stated that a copy of the entire bylaws should be sent to stockholders in connection with a merger or consolidation proposal in § 611.1123. The Federal Board agrees that stockholders should be able to obtain a copy of the association's bylaws. However, the Federal Board considers this a general right of stockholders and not limited to mergers or consolidations and, therefore, should be the subject of a separate regulation. Accordingly, the Federal Board has developed § 611.1125 to address this issue.

A System institution stated that association directors or officers should not have a right to terminate a merger agreement or consolidation agreement after a stockholder vote for the proposal and that § 611.1123(g) should be amended to reflect this. The Federal Board disagrees with this suggestion. Merger or consolidation agreements for corporations typically give directors or designated officers the authority to terminate a merger or consolidation agreement in case some event occurs making the merger or consolidation less viable. Those reasons are no less applicable here. To prohibit such terminations would unnecessarily restrict the authority of managements and boards of directors and the ability of the associations to develop a favorable merger or consolidation plan.

One System institution suggested that stockholders involved in a territorial transfer as in § 611.1124 should be given the same information as stockholders involved in a merger or consolidation. The Federal Board agrees and has amended proposed § 611.1124 to indicate that stockholders and the holders of participation certificates involved in a territorial transfer have the right to receive the latest financial information relating to both associations. Another System bank believes that it was not intended to require all loans of borrowers to be transferred in a territorial transfer and that the regulation should be amended to reflect this. The Federal Board believes that associations should not be allowed to transfer territory without transferring all loans of borrowers in that territory to the transferee association (unless otherwise approved by the FCA), and the regulation has been amended accordingly.

There were many conditional comments that were technical and editorial in nature. The Federal Board considered each of the comments and adopted the suggestions where appropriate.

### List of Subjects in 12 CFR Part 611

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

## PART 611—ORGANIZATION

As stated in the preamble, it is proposed that Part 611 of Chapter IV, Title 12 of the Code of Federal Regulations, be revised as follows:

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

**Authority:** Secs. 1.13, 2.10, 4.12, 5.9, 5.12, 5.18, Pub. L. 92–181, 85 Stat. 619, 620, 621 (12 U.S.C. 2031, 2091, 2183, 2243, 2246 and 2252).

### § 611.1130 [Removed]

### § 611.1115 [Redesignated from § 611.1140]

2. Subpart F is amended by removing § 611.1130 and redesignating § 611.1140 as § 611.1115.

3. A new Subpart G is added, consisting of § 611.1120 which is revised and redesignated from subpart F to new subpart G, and §§ 611.21–611.25 to read as follows:

**Subpart G—Mergers, Consolidations, and Charter Amendments of Associations**



## Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

### § 611.1120 General authority.

(a) An amendment to an association charter may relate to any provision that is properly the subject of a charter, including, but not limited to, the name of the association, the location of its offices, or the territory served.

(b) the Farm Credit Administration may make changes in the charter of an association as may be requested by that association and approved by the Farm Credit Administration pursuant to § 611.1121.

(c) The Farm Credit Administration may, by order of the Governor and on its own initiative, make changes in the charter of a Federal land bank association or a production credit association where the Governor determines that the change is necessary for the accomplishment of the purposes of the Act.

### § 611.1121 Charter amendment procedures.

This section shall apply to any request by an association to amend its charter.

(a) An association which proposes to amend its charter shall submit a request to its supervising bank containing the following information:

(1) A statement of the provision(s) of the charter that the association proposes to amend and the proposed amendment(s);

(2) A statement of the reasons for the proposed amendment(s), the impact of the amendment(s) on the association and its stockholders, and the requested effective date of the amendment(s);

(3) A certified copy of the resolution of the board of directors of the association approving the amendment(s);

(4) Any additional information or documents that the association wishes to submit in support of the request or that may be requested by the supervising bank.

(b) Upon receipt of an amendment request from an association, the supervising bank shall review the materials submitted to determine whether they are responsive to these regulations and shall communicate with the association concerning any deficiency. The bank shall forward the request with attachments, to the Farm Credit Administration, together with the bank's recommendation on the request, the reasons for the recommendation, and any analysis the bank believes appropriate.

(c) Upon receipt of an association's request for a charter amendment forwarded by a supervising bank, the Farm Credit Administration shall review the materials submitted and either approve or disapprove the request. The Farm Credit Administration may require submission of any supplemental materials it deems appropriate.

(d) The Farm Credit Administration shall notify the supervising bank of its approval or disapproval of the amendment request, and the supervising bank shall notify the association. A notification of approval shall be accompanied by a copy of the charter, as amended.

**§611.1122 Requirements for mergers or consolidations.**

This section shall apply to any request for approval of a proposed merger or consolidation of associations. A merger involves the combination of one or more associations into a continuing constituent association, which retains its charter and bylaws (except as amended to effect the merger proposal). A consolidation involves the combination of two or more associations into a newly organized association having a new charter and bylaws.

(a) Where two or more associations plan to merge or consolidate, the constitutent associations shall jointly submit a request to their supervising bank containing the following:

(1) In the case of a merger, a copy of the charter of the continuing association reflecting any proposed amendments. In the case of consolidation, a copy of the proposed charter of the new association;

(2) A statement of the reasons for the proposed merger or consolidation, the impact of the proposed transaction on the associations and their stockholders, and the planned effective date of the merger or consolidation;

(3) A certified copy of the resolution of the board of directors of each association approving the merger or consolidation;

(4) A copy of the agreement of merger or consolidation;

(5) All of the information specified in paragraph (e) of this section; and

(6) Any additional information or documents each association wishes to submit in support of the request or that the supervising bank or the Farm Credit Administration requests.

(b) Upon receipt of a request for approval of an association merger or consolidation, the supervising bank shall review the materials submitted to determine whether they are responsive to these regulations and shall communicate with the associations concerning any deficiency. When the bank preliminarily approves the request to merge or consolidate, it shall forward the request with attachments to the Farm Credit Administration, together with:

(1) A statement of the reasons for the bank's approval and any analysis the bank believes appropriate; and

(2) Statistical data for each constituent association on credit quality and loan-related assets based on a credit review completed by the supervising bank no earlier than 180 days prior to the date the request for clearance is forwarded to the Farm Credit Administration. The data shall include, at a minimum, the percentage and amount of adversely classified loans. The Farm Credit Administration may waive the 180-day requirement if, in its judgment, the most recent credit review completed by the bank appropriately reflects the credit quality of the loan protfolio of each constituent association as of the date of the request for preliminary approval.

(c) Upon receipt of an association merger or consolidation request from a supervising bank, the Farm Credit Administration shall review the request and either deny or give its preliminary approval to the request. When a request is denied, written notice stating the reasons for the denial shall be transmitted to the bank, and thereafter by the bank to the constituent associations. When a request is preliminarily approved, written notice of the preliminary approval shall be given to the bank, and thereafter by the bank to the constituent associations. Preliminary approval by the bank or the Farm Credit Administration shall not constitute a definitive approval of the merger or consolidation. Final approval of a merger or consolidation shall be only pursuant to paragraph (g) of this section.

(d) Upon receipt of preliminary approval by the Farm Credit Administration of a merger or consolidation request, each constituent association shall call a meeting of its voting stockholders. The meeting shall be called on written notice to each stockholder entitled to vote on the transaction, and held in accordance with the terms of each association's bylaws. The affirmative vote of a majority of the voting stockholders of each association present and voting or voting by written proxy at a meeting at which a quorum is present shall be required for stockholder approval of a merger or consolidation proposal.

(e) One notice of the meeting to consider and act upon a proposed merger or consolidation of associations shall be accompanied by the following information covering each constituent association:

(1) A statement either on the first page of the materials or on the notice of the stockholders' meeting, in capital letters and bold face type, that:

**THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.**

(2) A description of the material provisions of the agreement of merger or consolidation and the effect of the proposed merger or consolidation on the associations, their stockholders, the new or continuing board of directors, and the territory to be served. In addition, a copy of the agreement must be furnished with the notice to stockholders.

(3) A summary of the provisions of the charter and bylaws of the continuing or new association that differ materially from the existing charter or bylaw provisions of the constituent associations.

(4) A brief statement by the boards of directors of the constituent associations of the basis for the recommendation that stockholders approve the merger or consolidation.

(5) A description of any agreement or arrangement between a constituent association and any of its officers relating to employment or termination of employment and arising from the merger or consolidation.

(6) A presentation of the following financial data:

(i) A balance sheet and income statement for each constituent association for each of the 2 preceding fiscal years.

(ii) A balance sheet for each constituent association as of a date within 90 days of the date the request for preliminary approval is forwarded to the Farm Credit Administration presented on a comparative basis with the corresponding period of the prior fiscal year.

(iii) An income statement for the interim period between the end of the last fiscal year and the date of the required balance sheet presented on a comparative basis with the corresponding period of the preceding fiscal year. The balance sheet and income statement format shall be that contained in the association's annual report to stockholders; shall contain any significant changes in accounting policies that differ from those in the latest association annual report to stockholders; and shall contain appropriate footnote disclosures, including data relating to nonperforming loans and related assets and allowance for loan losses, including net chargeoffs as required in paragraph (e)(10) of this section.

(7) The financial statements (balance sheet and income statement) shall be in sufficient detail to show separately all significant categories of interest-earning assets and interest-bearing liabilities and the income or expense accrued thereon.

(8) Attached to the financial statements for each constituent association, either:

(i) A statement signed by the chief executive officer and each member of the board of directors of the association that the various financial statements are unaudited, but have been prepared in all material respects in accordance with generally accepted accounting principles (except as otherwise disclosed therein) and are, to the best of the knowledge of the board, a fair and accurate presentation of the financial condition of the association; or

(ii) A signed opinion by an independent certified public accountant that the various financial statements have been examined in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances, and, as of the date of the statements, present fairly the financial position of the association in conformity with generally accepted accounting principles applied on a consistent basis, except as otherwise noted thereon.

(9) A presentation for each constituent association regarding its policy on accounting for nonperforming loans together with the number and dollar amount of loans in all nonperforming loan categories, including all nonaccrual, restructured or reduced rate loans, and other high risk loans.

(10) Information on each constituent association concerning the amount of loans changed off in each of the 2 fiscal years preceding the date of the balance sheet, the current year-to-date net chargeoff amount, and the balance in the allowance for loan losses account and a statement regarding whether, in the opinions of management, the allowance for loan losses is adequate to absorb the risk currently existing in the loan portfolio. This information may be appropriately included in the footnotes to the financial statements.

(11) A pro forma balance sheet of the continuing or consolidated association presented as if the merger or consolidation had occurred as of the date on the balance sheets required in paragraph (e)(6) of this section, as recommended to the stockholders. A pro forma summary of earnings for the continuing or consolidated association presented as if the merger or consolidation had been effective at the beginning of the interim period between the end of the last fiscal year and the date of the balance sheets.

(12) A description of the type and dollar amount of any financial assistance that has been provided during the past year or will be provided by the supervising bank or other party to assist the constituent or the continuing or new association(s), the conditions on which financial assistance has been or will be extended, the terms of repayment or retirement, if any, and the impact of the assistance on the subject association(s) or the stockholders.

(13) A presentation for each constituent association of interest rate comparisons for the last 2 fiscal years preceding the date of the balance sheet, together with a statement of the continuing or new association's proposed interest rate and fee programs, interest collection policies, capitalization rates, dividends or patronage refunds, and other factors that would affect a borrower's cost of doing business with the continuing or new association. Where agreement has not been reached on such matters, current related information shall be presented for each constituent association.

(14) A description for each constituent association of any event subsequent to the date of the financial statements, but prior to the merger or consolidation vote, that would have a material impact on the financial condition of the constituent or continuing or new association(s).

(15) A statement of any other material fact or circumstance that a stockholder would need in order to make an informed decision on the merger or consolidation proposal, or that is necessary to make the required disclosures not misleading.

(16) Where proxies are to be solicited, a form of written proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholder.

(f) No bank or association, or director, officer, or employee thereof, shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of any association in connection with an association merger or consolidation.

(g) Upon arrival of a proposed merger or consolidation by the stockholder of the constituent associations, a certified copy of the stockholders' resolution shall be forwarded to the supervising bank for transmittal to the Farm Credit Administration, together with the bank's final approval of the merger or consolidation. The merger or consolidation shall be effective when thereafter finally approved and on the date as specified by the Farm Credit Administration. Notice of final approval shall be transmitted to the supervising bank and thereafter by the bank to the constituent associations.

(h) No director, officer, or employee of a bank or an association shall make an oral or written representation to any person that a preliminary or final approval by the Farm Credit Administration of an association merger or consolidation constitutes, directly or indirectly, either a recommendation on the merits of the transaction or an assurance concerning the adequacy or accuracy of any information provided to any association's stockholders in connection therewith.

(i) The notice and accompanying information required under paragraph (e) of this section shall not be sent to stockholders until cleared by the Farm Credit Administration.

(j) Where a proposed merger or consolidation will involve more than three associations, the Farm Credit Administration may require the supplementation, or allow the condensation or omission of any information required under paragraph (e) of this section in furtherance of meaningful disclosure to stockholders. Any waiver sought under this paragraph shall be obtained before preparation of the financial statements and accompanying schedules required under paragraph (e) of this section.

**§ 611.1123 Merger or consolidation agreements.**

(a) Like associations operating under the same title of the Act may merge or consolidate voluntarily only pursuant to a written agreement. The agreement shall set forth all of the terms of the transaction, including, but not limited to, the following:

(1) The proposed effective date of the merger or consolidation.

(2) The proposed name and headquarters location of the continuing or consolidated association.

(3) The names of the persons nominated to serve as directors until the first regular annual meeting of the continuing or consolidated association to be held after the effective date of the merger or consolidation. Any director of a constituent association may be designated in the agreement to serve as a director of the continuing or consolidated association for a period not to exceed his or her current term, after which he or she must stand for reelection. However, the terms of the agreement must provide for the election of at least one director at each annual meeting subsequent to the effective date of the merger or consolidation. The bylaws of the continuing or consolidated association shall reflect the provisions of the merger or consolidation agreement regarding director terms.

(4) A statement of the formula to be used to exchange the stock of the constituent associations for the stock of the continuing or consolidated association. No fractional shares of stock shall be issued.

(5) A statement of any conditions which must be satisfied prior to the effective date of the proposed transaction, including but not limited to approval by stockholders, the supervising bank, and the Farm Credit Administration.

(6) A statement of the representations or warranties, if any, made or to be made by any association, or its officers, directors, or employees that is a party to the proposed transactions.

(7) A statement of the rights of the constituent associations to terminate the agreement before the effective date.

(8) A description of the legal opinions or rulings (including those related to tax matters), if any, that have been obtained or furnished by any party in connection with the proposed transaction. Also, refer to paragraph (a)(5) of this section.

(9) A statement of the authority of those persons designated to carry out the terms of the agreement, including the authority to waive provisions of the agreement and to execute any documents necessary to perfect title, on behalf of the constituent associations.

(b) As an attachment to the agreement, set forth those provisions of the charter and bylaws of the continuing or consolidated association which differ from the existing charter or bylaw provisions of the constituent associations.

**§ 611.1124 Territorial adjustments.**

Territorial adjustments are subject to the following requirements:

(a) All stockholders, participation certificate holders, and borrowers whose real estate or operations are located in adjusted territories shall be informed in writing of the territory adjustment, and the transfer of their loans to the transferee association. All loans of the transferor association which finance operations located in the transferred territory must be transferred to the transferee association unless otherwise approved by the Farm Credit Administration. Also, the stockholders, participation certificate holders, and borrowers shall be notified of the transfer of their loans and the exchange of related equities for equities of like kinds and amounts in the transferee association. If a like kind of equity is not available in the transferee association, similar equities shall be offered which will not affect adversely the interest of the owner. Each stockholder shall be informed that the latest financial and related information of the associations is available for stockholders' review upon written request.

(b) The Agreement of Transfer of Territory and the Notice of Territory Transfer shall give stockholders 60 days from the date of the notice to notify either association in writing of their decision to decline acceptance of the equities of the transferee association and to remain with the transferor association for normal servicing until the current loan is paid. Any application by the borrower for renewal or for additional credit shall be made to the transferee association, except for those applications permitted under § 614.4070 of this chapter.

(c) This section shall not apply to territorial transfers initiated by order of the Governor of the Farm Credit Administration or to territories transferred due to the liquidation of the transferor association.

**§ 611.1125 Association articles and bylays.**

Upon request by a stockholder, the association shall provide a copy of the Articles and bylaws of the association to the stockholder.

4. Sections 611.1150 and 611.1160 of Subpart F are redesignated as a new Subpart H and § 611.1160 is redesignated as § 611.1151, the table of contents to read as follows:

**Subpart H—Service Organizations**



Donald E. Wilkinson,
*Governor.*

[FR Doc. 85-11836 Filed 5-15-85; 8:45 am]
BILLING CODE 6705-01-M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 85-CE-5-AD; Amdt. 39-5064]**

## Airworthiness Directives; Cessna Models 206, P206, U206, 207 and 210 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to certain Cessna Models 206, P206, U206, 207 and 210 Airplanes, which require inspection, repair and/or modification of the engine induction airbox installation. Loss of engine power has resulted from pieces of the lower forward induction airbox separating from the bottom of the duct and being ingested by the engine. This action will preclude engine power loss caused by induction airbox failures.

**EFFECTIVE DATE:** June 20, 1985.

Compliance: As prescribed in the body of the AD.

**ADDRESSES:** Cessna Single-Engine Customer care Service Information Letter, SE84-20 dated November 2, 1984, applicable to this AD may be obtained from Cessna Aircraft Company, Piston Aircraft Marketing Division, Post Office Box 1521, Wichita, Kansas 67201. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul O. Pendleton, Aerospace Engineer, Aircraft Certification Office, ACE-140W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone 316-946-4427.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection, modification and/or replacement of the engine induction airbox installation in certain Cessna 200 airplanes was published in the **Federal Register** on February 28, 1985 (50 FR 8137). This proposal resulted from three