

(3) * * * The FmHA field offices will process the accelerated repayment agreement via the FmHA field office terminal system in accordance with Form FmHA 1965-11. * * *

(12) Section 1965.127 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 1965.127 Release from liability.

(b) * * *

(1) * * *

(ii) Form FmHA 1965-15, or other legal documents are processed via the field office terminal system indicating the transferor is released from liability.

Dated: January 4, 1991.

La Verne Ausman,
Administrator, Farmers Home
Administration.

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BILLING CODE 3410-07

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052-AB12

Organization; Reorganization Authorities for System Institutions

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts final regulations that amend 12 CFR part 611, that were published as proposed regulations on July 12, 1990, 55 FR 28639. These final regulations reflect amendments to the Farm Credit Act of 1971, as amended (Act) by the Agricultural Credit Act of 1987, Public Law 100-233 (1987 Act). The amendments made by the 1987 Act established a procedure under which a Farm Credit institution may terminate its Farm Credit charter by becoming chartered as a financial institution under other Federal or State authority. The Act imposes certain requirements on an institution that wishes to terminate its status as a Farm Credit institution and authorizes the FCA to impose by regulation such other conditions as the FCA considers appropriate. These regulations which are adopted as final are applicable to associations whose direct loan from the Farm Credit Bank from which it is a borrower does not constitute a significant proportion of the bank's total loans, or whose investment in the bank does not constitute a significant proportion of the bank's

capital. On August 15, 1990, the Board extended the original 30-day comment period for the proposed regulations to October 1, 1990 (55 FR 34024). As noted in the summary to the proposed regulations, proposed regulations governing the termination of Farm Credit status of other institutions will be published at a later date.

The effect of the final regulations is to provide procedures to implement new § 7.10 of the Act, which provides that a Farm Credit institution may terminate its Farm Credit status if it satisfies certain enumerated statutory requirements. The final regulations also implement §§ 7.11 and 7.9 of the Act as they apply to terminations. Section 7.11 provides for FCA Board approval of the plan of termination for submission to stockholders, and § 7.9 provides stockholders the opportunity to petition for a reconsideration vote following a stockholder vote in favor of termination. **DATES:** These regulations shall become effective on the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On December 18, 1989, the FCA published an Advance Notice of Proposed Rulemaking (ANPRM) (54 FR 51763) requesting comments on the manner and process for implementing the new procedures under the Act. Based on the comments received in response to the ANPRM and all other relevant factors, the FCA determined to promulgate separate regulations for banks, associations whose capital or assets constitute a significant proportion of the capital or assets of the bank of which they are borrowers, and other associations. On July 12, 1990, the FCA published for public comment (55 FR 28639) proposed amendments to 12 CFR part 611 relating to the termination of Farm Credit status of small Farm Credit associations. The proposed amendments implement § 7.10 of the Act, which was added by the 1987 Act and which provides that a Farm Credit institution may terminate its status as a Farm

Credit institution if it satisfies certain enumerated requirements. The FCA noted in the preamble to the proposed regulations that it had determined to promulgate separate regulations for the termination of associations whose assets or capital constitutes a significant proportion of the assets or capital of the bank from which it is a borrower. The proposed regulations published in the *Federal Register* on July 12, 1990 pertain to the termination of associations whose assets or capital constitutes less than 25 percent of the assets or capital of the bank from which it is a borrower. The comment period, which originally expired on August 13, 1990, was extended to October 1, 1990 by action of the Board on August 15, 1990 (55 FR 34024).

The FCA received comments from two members of the U.S. Senate, three members of the U.S. House of Representatives, the Farm Credit Council (FCC) on behalf of its member institutions, two Farm Credit Banks (FCBs), four Farm Credit associations, one law firm on behalf of seven Farm Credit associations, and a trade association primarily representing community banks. The comments were reviewed and considered in the development of these final regulations.

The following discussion summarizes the comments received on proposed regulations adopted as final regulations and the FCA's response to the comments. The discussion is presented in the numerical order of the sections of the regulation with explanations of the proposed regulations, followed by an explanation of the revisions made in the final regulations. In addition to the revisions to the proposed regulations in response to the comments that are discussed below, technical and clarifying changes to language of the proposed regulations have been made in the final regulations.

Part 611—Organization

Subpart P—Termination of Farm Credit Status—Associations

Section 611.1200—General— Applicability

Section 611.1200 of the proposed regulations provides that these regulations set forth the requirements applicable to the termination of Farm Credit status of an association that seeks a new charter as a national or State bank, savings and loan association, or other type of financial institution. Paragraph (c) of this section further provides that these regulations do not apply to those associations whose capital or assets constitute 25

percent or more of the capital or assets of the bank from which it is a borrower. The FCC commented that the 25 percent test should be clarified to indicate the date of the calculation and the type of capital and assets to be measured. In the final regulation, the 25 percent test has been retained, but the measurement has been changed to a measurement of either the terminating association's investment in the bank as a proportion of the bank's capital, or the terminating association's direct loan from the bank as a proportion of the total loans of the bank. The change was made to provide a simpler means test to determine whether an association is subject to these regulations.

In the final regulation, the FCA has added a provision in paragraph (a) to permit the FCA Board to waive any requirement of the subpart for good cause shown. This waiver provision was added to respond to concerns expressed by some commenters that the proposed regulations do not contemplate or provide for all the possible corporate forms which the successor institution could take and all the possible methods of capitalization which could be utilized. This waiver provision will permit the FCA to waive requirements, especially with respect to information required to be disclosed in the information statement, which are duplicative or which are not relevant to a particular transaction and for which the terminating association can show good cause that the requirement should be waived. The FCA expects that such waivers limited primarily to procedural matters; any waivers of substantive requirements would be considered only in rare circumstances where there is a clear showing by the terminating association that compliance with a requirement would be unduly burdensome to the association or of no material value to the agency or any concerned parties. Of course, statutory requirements that are reiterated in these regulations would not be permitted to be waived under any circumstances.

Section 611.1205—Definitions

Section 611.1205 of the proposed regulations defines terms that are used throughout this subpart. The FCC noted that there are also definitions in § 611.1240(a) and commented that any of those terms that are also used outside of § 611.1240 should be defined in § 611.1205. It was the FCA's intention to provide definitions in § 611.1240(a) that are applicable only in § 611.1240. This has been clarified by revising the language of § 611.1240(a) to indicate that such definitions apply for purposes of that section only.

The FCC objected to the final sentence of the definition of "generally accepted accounting principles (GAAP)" in § 611.1205(b) as permitting the FCA to dictate and define generally accepted accounting principles. This provision in the proposed regulation was intended to allow the FCA to determine, for the purpose of these regulations, which interpretation of GAAP would apply in situations where more than one interpretation of an event is possible under GAAP. GAAP financial statements are required unless otherwise prescribed by the regulation. In situations where the FCA believes it is necessary to deal with a specific accounting issue not fully covered by GAAP, or in order to ensure that consistent practices are being followed by Farm Credit institutions, the FCA reserves the right to specify which interpretation of GAAP shall apply. The last sentence in the definition has been revised in the final regulation to clarify this position. No other revisions have been made to this section in the final regulation.

Section 611.1210—Advance Notification

Section 611.1210 of the proposed regulations provides that the board of directors of an association that seeks to terminate its status must commence the termination process by passing a board resolution and submitting a certified copy of the resolution to the FCA. Following the passage of the resolution, the association must provide appropriate disclosure of the proposed transaction to prospective borrowers, current equity holders and any persons who may purchase or retire association equity. During the time period between the commencement resolution and the effective date of termination, the association would be permitted to sell special classes of common stock and participation certificates that are identical to the classes of common stock (including voting stock) and participation certificates currently being issued, except that they would not entitle the holder to share in the excess of the adjusted book value of such equities over par in the event of termination. However, such stock and participation certificates could be sold only if the association's stockholders had previously approved, prior to the passage of the commencement resolution, a bylaw providing for the issuance of such equities. In addition, the proposed regulations provide that the association must compute and submit an estimated exit fee to the FCA within 15 days of the date upon which the commencement resolution is submitted. Under the proposed

regulation, the FCA would have 45 days following receipt of the estimated exit fee to notify the association of its agreement or disagreement with the association's estimated exit fee and, should there be a disagreement, of any revisions which the association must make to the computation. The association would have the opportunity to request the FCA to reconsider its decision, in which case the FCA would then have 15 days to confirm or revise its computation.

The FCA received a variety of comments on this section. Some commenters objected to what they described as a "slowing down" of the termination process by requiring that the estimated exit fee be submitted to the FCA prior to the time the termination plan is submitted to the FCA for preliminary approval. One commenter further objected to the requirement that the commencement resolution, the announcement to present and prospective stockholders, and the estimated exit fee be submitted to the FCA prior to the time the termination plan and disclosure materials are submitted to the FCA for approval. Another commenter suggested that the 45-day period during which the FCA would determine whether to require any revisions to the terminating association's estimate of its exit fee be reduced to 30 days.

In response to these comments, the FCA has revised proposed § 611.1212, which pertains to the filing date, to eliminate the provision that a termination application could not be accepted for filing until the FCA and the terminating association reach agreement on the amount of the exit fee. Failure to reach agreement with the FCA on the exit fee could then become a basis for the FCA's disapproval of the application. With the elimination of that provision, the FCA believes that the requirements in this section pertaining to the advance notification and the estimated exit fee will not appreciably delay the termination process, if indeed there is any delay at all; furthermore, any delay that may occur is considered reasonable and necessary in light of the interests protected.

First, stockholders must be informed of association actions that may affect their investment or borrowing decisions. As soon as the association begins the termination process, the nature of an equity holder's investment in the association changes because there is a real possibility that the holder's equity interest could become an interest in another equity of a type wholly unanticipated by the holder. Moreover,

common stockholders and participation certificate holders who continue to hold an interest in the terminating association could be in a position to share in any excess of the adjusted book value over par of the terminating association, an opportunity provided only in the event of termination or liquidation. One of the primary reasons for requiring advance notification is to ensure that these current and prospective equity holders are provided with adequate information regarding the future prospects of the association, so that they will be able to make informed decisions with respect to their investments in the association. If notice of the transaction were not given to stockholders until the association submitted its application to the FCA, the current and prospective stockholders would be making investment and borrowing decisions with incomplete information, and this could expose the association to a suit by stockholders who bought or sold stock during this period.

Secondly, there are several reasons why the FCA needs to be notified of the association's intention to terminate at an early stage. The FCA will commence a search for a replacement association during this period to take over the service territory of the terminating association. The FCA believes the continuation of Farm Credit service to the territory to be of prime importance in fulfilling the objective of the Act to provide an adequate and flexible flow of credit to farmers and farm-related businesses. In addition, because the successor institution will likely be in direct competition with other Farm Credit associations, the FCA may wish to monitor carefully the activities of the terminating association to ensure that it does not take actions adverse to the interests of other Farm Credit institutions, including any institution that may replace the terminating association, and to ensure that the interests of borrowers and other stockholders are adequately protected. Also, the terminating association may not have been examined on-site by FCA examiners for 6 months or more, and the FCA may deem it prudent to perform an examination or other investigation prior to the time an exit fee is agreed upon. Consequently, because of this and numerous other matters that must be considered in the calculation of the exit fee, the FCA does not see any merit in reducing the 45-day period allowed for reviewing the terminating association's estimate of the exit fee, particularly since the FCA does not believe any

delay in the submission of the termination application will result.

Thirdly, it is in the terminating association's best interest to know at the earliest possible date the estimated amount of the exit fee, not only for the purpose of preparing the information statement, but also to enable the association to engage in future planning with a relatively accurate count of the capital that will transfer to the successor institution. The Act does not ensure that an association can retain whatever amount of capital is required by the new chartering authority to capitalize the successor institution; the Act merely states that the total capital in excess of 6 percent of "assets" is to be paid to the Farm Credit Assistance Fund or the Farm Credit Insurance Fund. Adjustments to the "assets" required by § 611.1240, whether they are additions (including any earnings of the association subsequent to the computation date) or subtractions, could result in an increase or decrease in the dollar amount of the capital that will transfer to the successor institution. Consequently, the association may find it necessary to raise additional capital by means of a stock offering or other financial arrangement, and knowledge of the estimated exit fee at an early state in the process would eliminate much of the guesswork and allow the association to fix the amount of additional capital needed.

Finally, FCA's experience with other corporate applications suggests that the lapse of time between the point at which the association begins to take action to terminate its Farm Credit status and the point at which the termination application is actually submitted to the FCA will be considerably longer than the 60 days provided in this regulation. For example, an FCA staff survey of five district banks has revealed that, on average, a minimum of 4.2 months lapsed between an association's decision to pursue reorganization and the actual submission of the reorganization application to the FCA. A termination process is likely to require an even longer preparation period because of the variety of actions that need to be taken and matters that need to be resolved. Matters such as arranging financing for the successor institution, which may include a public stock offering, arranging with other Farm Credit institutions for the payment of debt obligations and retirement of equities, and obtaining a charter from the new chartering authority are likely to require more than 60 days.

Several commenters suggested that the requirement contained in

§ 611.1210(e) to permit stockholders to amend the capital-related bylaws to permit the institution to issue special classes of common stock and participation certificates in the event of termination was unnecessary because the board of directors could amend the bylaws without having to consult the stockholders on matters that would not materially affect their interest. While these commenters are stating positions which are in accord with general corporate law principles, they do not correctly construe section 4.3A(b) of the Act, which mandates that capital bylaws authorizing the issuance of equities be approved by the stockholders. *See also* 12 CFR 615.5220. Accordingly, this requirement is unchanged in the final regulation.

One commenter suggested that § 611.1210(d)(2) and (e), which pertain to an equity holder's rights to obtain stock in the successor institution, be eliminated or modified to allow for the possibility of capitalization methods other than an exchange of stock for stock in the successor institution. The FCA does not believe these sections should be eliminated because, no matter what method is used to capitalize the successor institution, the equity holders will have a right to receive something in exchange for their ownership interests in the terminating association. Therefore, the FCA has determined to retain these provisions in the final regulation. However, it has revised the references to "stock" in the successor institution by substituting the broader term "interest" in the successor institution. The FCA has also changed the references to "voting stock" in § 611.1210(e) to read "common stock" to include holders of non-voting common stock, who would—along with voting common stockholders—otherwise be entitled to an amount equal to the adjusted book value of the holder's equity in the terminating association. In addition, the FCA has revised paragraph (e)(1) to indicate that holders of these special classes of stock or participation certificates would, in the event of termination, receive an interest in the successor institution equal to the lesser of either the price paid for the stock or participation certificate or the adjusted book value of such interest. This means that the holders of the special stock or certificates could receive less for their interests than they paid in the event that holders of regular common stock or participation certificates also receive less than the par or face value of their interest.

Section 611.1210(e)(1) has also been revised to require that a holder of a

special class of voting stock who is eligible to vote must vote against the termination in order to qualify to receive dissenters' rights—i.e., the right to receive cash instead of an interest in the successor institution. This revision was made to make this paragraph consistent with requirements for eligible voting stockholders in the final regulations which differ from those in the proposed regulations (as explained more fully below). Holders of a special class of stock or participation certificates who are not eligible to vote may exercise dissenters' rights pursuant to the procedures set forth in § 611.1260.

Finally, in a general comment on this section, one respondent stated an opinion that the FCA's role in the termination process was limited solely to the assurance of full and fair disclosure of information to the stockholders. The respondent offered no support for this assertion in the language of the statute, in the legislative history, or otherwise, and the FCA has found none. On the contrary, at least three provisions of the Act indicate a much broader role. Section 7.10(a)(2) states that "the termination is [to be] approved by the [FCA] Board." The meaning of the word "termination" in this clause could not reasonably be interpreted to be limited to "adequacy of the disclosure materials submitted to stockholders." In addition, section 7.10(a)(7) broadly permits the FCA Board to add conditions to the termination as it "by regulation considers appropriate" in addition to those conditions specified in the statute. Since full and fair disclosure of the plan of termination is already implicitly required by section 7.11(a) of the statute, one can only conclude that the conditions which may be added by the FCA were intended to extend to matters beyond the adequacy of the disclosure materials. With such broad discretion to add other conditions of termination, it is unreasonable to assume that the scope of the FCA's review of the transaction is any less broad. Moreover, just as with any other action it takes, the FCA must be mindful of its responsibilities as the safety and soundness regulator of individual Farm Credit institutions and the Farm Credit System as a whole, and as the protector of the public interest as it relates to the System.

Section 611.1211—Filing of Termination Application

Section 611.1211 of the proposed regulations sets forth a list of the required contents of the termination application. The FCA received two comments on this section. The first comment was a suggestion that there be

a provision that updated information not available at the time of filing may be submitted to stockholders. The FCA believes that applicants are already under an obligation to provide updated information that becomes available during the pendency of the termination application, particularly when it involves a material change to the information provided in the plan of termination. Otherwise, the stockholder and regulatory approvals of the termination may not be valid if the information disclosed to the stockholders and the FCA no longer accurately states the material facts concerning the transaction. However, to clarify this for applicants, the FCA has added paragraph (c) to the final regulations, which requires the submission to the FCA of any such updated material which becomes available between the time the application is submitted for filing and the time the termination becomes final.

A second comment was a suggestion that any additional information the FCA requests from the terminating association be required to be requested prior to the expiration of the 45-day period during which the FCA will review the association's estimated exit fee. The reason posited by the respondent for such a provision is that, if the association is not informed of the FCA's request prior to the time it submits the termination application, the application might be deemed incomplete when it is submitted. The FCA has considered this comment and determined not to make the suggested change. Since the FCA will not know what information is in the termination application until such time as it receives the application, it cannot determine what other information it may request until it has reviewed the application.

Section 611.1212—Filing Date of Termination Application

Section 611.1212(a) of the proposed regulations required that, upon receipt of the application, the FCA would have examined the contents to determine whether any of the required information had been omitted which would prevent the FCA from proceeding with a thorough review of the application. The FCA would have notified the applicant within 10 business days of the receipt of an application as to whether the application was substantially complete and therefore accepted for filing. If the application were not accepted for filing at that time, the applicant would have been notified of any deficiencies that had been identified, and the application would not have received a filing date until all deficiencies were addressed.

During the time the FCA was awaiting a response to its notice of deficiencies from the terminating association, the FCA would have continued to review the application for other deficiencies and would have notified the association of any deficiencies found. Once the deficiencies were corrected and the application received a filing date, the statutory 30-day review period would have begun.

Paragraph (b) of the proposed regulation provided that a "substantially complete application" would consist of the information required to be submitted under § 611.1211.

Paragraph (c) of proposed regulation § 611.1212 provided that, in the case of an association which is the exclusive provider of the type of Farm Credit services it offers to all or a part of its service territory, there would be a period of at least 60 days between the date of receipt by the FCA of the commencement resolution and the filing date. Paragraph (d) of the proposed regulation provided that a termination application would not be accepted for filing until the FCA and the terminating association have agreed upon the amount of the exit fee.

The FCA received a number of comments regarding this proposed regulation. Several respondents objected to the 10-day review period for substantial completeness set forth in paragraph (a); one respondent asserted that the review for substantial completeness would add 10 days to the 30-day statutory review period provided in section 7.11(a)(2), while another respondent asserted that the FCA's continuing to review for completeness so long as there are deficiencies that have not been corrected could delay the statutory review period for an indefinite time.

The FCA believes that a short review period to determine whether an application is complete is warranted and appropriate because it is important for the FCA Board to have a complete record on which to make a decision. The FCA has found no support either in the language of section 7.11 of the Act or in that section's legislative history that would bar the provision of a period of 10 or more days to ensure that the application is complete before a substantive review of the application is performed. The FCA further believes that a prompt response regarding deficiencies within the first 10 business days of receipt of the termination application would expedite, rather than delay, the review process. However, in order to respond to commenters' concerns about what they perceive to be

a limitless review period by the agency, the FCA has revised the proposed regulation.

In the final regulation, the review for substantial completeness and the procedure for requesting additional information have been deleted. Instead, upon receipt of the application the FCA will have 10 business days to perform a preliminary review for technical completeness. The purpose of this review is to determine whether the application contains information pertaining to all items that are required to be submitted under § 611.1211. This review is not to determine whether the information submitted is substantively sufficient; rather, it is merely to determine facial compliance with the requirements of the regulation. If the FCA determines within the 10-day period that the application is technically complete, it will assign a filing date to the application and proceed with the 30-day substantive review as required by the statute. If the FCA determines that the application lacks information required to be submitted, the FCA will return the application to the terminating association as incomplete. If the application is returned for technical incompleteness, any resubmission of the application will re-commence the review process from the beginning of the review period. Thus, the FCA would again have 10 business days to review for technical completeness. If the FCA fails either to give the application a filing date or to return the application before the end of the 10-day period, the application will automatically be deemed to be technically complete, the filing date will be deemed to be the last day of the 10-day period, and the statutory review period will commence.

Once an application has received a filing date, the FCA Board will have 30 days to act on the application, and such action could include, but is not limited to, a disapproval on the ground of substantive insufficiency of the information submitted or a failure of the terminating association to agree with the FCA on the amount of the exit fee. Once an application is disapproved, any re-submission by the terminating association would be treated as an entirely new submission and would re-commence the review periods, beginning with the 10-day review period for technical completeness and, if the application receives a filing date, 30 days for a substantive review by the FCA.

The FCA believes that the revisions in the final regulations will respond to commenter's concerns regarding an indefinite delay in the review period and

will provide more certainty as to the time during which the FCA will have the application under review. The time period for the entire termination process will depend upon when the terminating association submits an application that contains all of the information that is necessary for the FCA Board to make a decision to approve or disapprove the application.

The revisions that are adopted in the final regulations are similar to regulations adopted in 1984 by the Federal Reserve Board (FRB) which set forth the procedures to apply for approval of acquisitions of bank securities and assets. See 49 FR 805 (January 5, 1984). As noted in the Supplementary Information to those regulations, the FRB's intent was to prevent unjustifiable delay in processing time for review of the application, while at the same time assuring that the FRB have a complete record on which to make its decision. The FCA believes that its final regulations will serve the same purposes and will result in a significant benefit to associations.

Several respondents commented on the 60-day period provided in paragraph (c) of the proposed regulation for the FCA to seek a replacement association for the territory of the terminating association. The FCC registered its strong support for finding another association to serve that territory, while several other respondents commented that the FCA was attempting to expand the 30-day statutory review period to a 90-day period. Yet another respondent commented that there is no reason to delay the commencement of the statutory review period if a replacement association is located prior to the expiration of the 60 days provided in proposed § 611.1212(c). The FCA has considered all these comments and has determined not to eliminate the 60-day period because the location of a replacement institution is of prime importance in achieving the Act's purpose of ensuring the availability of an adequate and flexible flow of money into rural areas. However, the FCA agrees that, if a replacement association is found before the expiration of 60 days from the FCA's receipt of the commencement resolution, the filing date for the application need not be further delayed. Accordingly, paragraph (c) of the proposed regulation has been redesignated as paragraph (b) in the final regulation and has been amended to provide that the FCA may in its discretion waive any or all of the 60-day period. This will allow the FCA to set a filing date before the end of such period if an agreement acceptable to the FCA

for a new service provider has been reached before that time.

Section 611.1215—Farm Credit Administration Review and Approval

Section 611.1215 of the proposed regulations set forth the statutory time constraints for FCA Board review and enumerated the conditions that must be fulfilled in order to obtain final approval of the termination and revocation of the Farm Credit charter.

Several respondents commented on the use of the term "preliminary approval" in paragraphs (a) and (b), noting that the term is not found in the statute. One respondent further asserted that the approvals required by sections 7.10(a)(2) and 7.11(a)(2) were one and the same. The FCA Board believes that it is clear from the face of the statute that two separate approvals are referred to in the two sections of the statute and that the approval in section 7.10 is a necessary condition of termination, whereas the section 7.11 approval is not required if the Board takes no action before the end of the 30-day review period. The FCA Board chose the term "preliminary approval" to refer to the approval that is provided in section 7.11(a)(1) of the Act, which is the approval of the plan of termination for submission to the stockholders, in order to distinguish this approval from the approval of the termination itself which is required by section 7.10(a)(2) of the Act. Receipt of preliminary approval means only that the plan may be submitted to the stockholders, and if the FCA Board fails to act within 30 days after the filing date, the vote may take place without preliminary approval. Following a stockholder vote in favor of the termination, the section 7.10(a)(2) approval must still be obtained from the FCA Board. This final approval will be granted only after the occurrence of the events listed in paragraph (e) of this regulation. In order to distinguish the two separate approvals provided for in the Act, paragraphs (a), (b), and (e) of the final regulation have been revised to indicate that preliminary approval is the approval required by section 7.11(a)(2) of the Act, and final approval is the approval required by section 7.10(a)(2) of the Act.

Several comments were received regarding the conditions for final approval listed in paragraph (e). One respondent suggested that the submission of satisfactory evidence of the terminating association's adequate provision for payment of debts and retirement of equities, which is required by paragraph (e)(3), would be more appropriately dealt with in the

application process. The FCA Board believes that this respondent has misconstrued the intent of this provision. A plan for the payment of debts and retirement of equities must be included in the termination application. As a condition of final approval, the terminating association must provide evidence that the plan has actually been, or is actually being, carried out. Such evidence could include, for example, a signed and executed agreement to pay off the direct loan to the FCB over a 3-year period, or a copy of a proposed notice to be sent to all creditors stating that the obligations of the association will be assumed by the successor institution.

Some commenters objected to paragraph (e)(6) of the proposed regulations, which conditions final approval upon the "fulfillment of any other condition of termination imposed by the [FCA] Board." The substance of the comments was that this provision would give the Board "unbridled authority" to impose "additional, ad hoc" conditions on the termination.

The FCA Board disagrees with the implication in these comments that this provision would authorize it to impose conditions in an arbitrary, improper manner. The import of this provision is rather that the FCA Board would have the flexibility to adapt its condition of termination to the particular circumstances of each individual case. The Board has tried to address in these regulations all of the concerns that may arise in connection with a termination but recognizes that it cannot foresee and provide for every eventuality, especially in light of the diverse ways in which a termination could be structured and the variety of possible entities that could result. The FCA is particularly concerned that the application of these regulations should not have the unintended effect of treating parties to the transaction inequitably. For this reason, as noted above § 611.1200(a) of the final regulations provides that the FCA Board may in its sole discretion waive any regulatory requirement of this subpart for good cause shown; it is believed that a corresponding provision allowing the Board to require the fulfillment of other conditions is appropriate. Therefore, the FCA Board has decided to retain the provision in the final regulations. However, in response to the concerns of the commenters, the language has been revised to state more clearly the FCA's intention in proposing the provision. The final regulations allow the FCA to impose any additional conditions as necessary or appropriate to provide for

the equitable treatment of the parties affected by the termination.

One respondent objected to the 90-day notice referred to in paragraph (f)(2) as an unjustifiable delay in the termination process. The FCA Board notes that the 90-day notice is a requirement of section 7.10(a)(1) of the Act and therefore cannot be eliminated in the regulation.

Finally, one commenter stated that the FCA has only "limited authority" to disapprove a plan for submission to a vote of the stockholders. The FCA Board believes that there is no support for this position, either on the face of the statute or in the legislative history. On the contrary, section 7.10(a)(7) of the statute empowers the FCA Board to place additional conditions on the termination as the Board by regulation deems appropriate. Such a broad grant of authority is entirely inconsistent with the commenter's assertion that the Board has only limited approval authority.

Section 611.1220—Voting Record Date and Stockholder Approval

Section 611.1220 establishes the procedures by which the stockholders of the terminating association shall vote on and approve the proposal to terminate Farm Credit status. The FCA received one comment from the FCC suggesting that paragraph (e), which pertains to notification to stockholders of the results of the stockholder vote, contain a cross-reference to § 611.1260(f), which describes what information must be provided to the stockholders in such notification. The FCA has incorporated this suggestion in the final regulations. Otherwise, the regulation is adopted as proposed.

Section 611.1225—Requirements for Information Statement

Section 611.1225 of the proposed regulations specifies the types of disclosures that must be provided in an information statement prior to a stockholder vote on the termination.

The language of paragraph (f) has been revised to clarify that the summary of organizational documents should indicate both whether a borrower must hold stock in the successor institution as a condition of receiving a loan and whether a stockholder must be a borrower as a condition for purchasing stock.

The FCC recommended additions to paragraph (h), which requires the terminating association to include information pertaining to whether borrower rights would be continued and how a borrower may proceed to seek to have a loan transferred to the new

service provider. The FCC suggested that the information statement also give the telephone number of the new service provider, together with a statement that the new service provider has the option to accept or reject any loan which a borrower may request to transfer. The FCA believes that the suggested additions provide useful information to the stockholders and has incorporated them in the final regulations. The language of this paragraph has also been revised to clarify that a "transfer" of the borrower's loan to another Farm Credit institution authorized to make or purchase such loan would involve a sale to or refinancing of the loan by that institution, and further that a borrower is free to seek refinancing with lending institutions that are not Farm Credit institutions.

The references to "stock" in paragraph (i) have been revised to include other types of equity or consideration which equity holders may receive in exchange for their interests at termination. This change is in accord with the changes made in the final regulations to proposed § 611.1210 (d)(2) and (e).

Paragraph (s) of the proposed regulation has been revised in the final regulation to reflect the changes made to the dissenters' rights provisions in § 611.1260 in the final regulations.

Another recommendation of the FCC was that the statement signed by the chief executive officer and all directors required in paragraph (t)(3)(i) be a statement made to the best of the knowledge of management of the association as well as to the best of the knowledge of the board of directors. The FCA concurs that the chief executive officer, who is not a member of the board of directors, should make a representation as to the best of his knowledge, not that of the board. Therefore, the language has been revised in the final regulation to state that each person signing is representing that the information is fairly and accurately presented to the best of his or her own knowledge.

An association observed that some terminations may be structured so that stockholders of the terminating association who do not dissent from the termination would receive consideration other than stock in the successor institution in exchange for their shares. The FCA has made minor changes to the language of paragraphs (g) and (i) in order to provide for such circumstances.

The final regulation contains no other revisions from the proposed regulation.

Section 611.1226—Prohibited Acts

Section 611.1226 prohibits the making of untrue or misleading statements of fact, omissions of material facts, or representations concerning the proposed termination and FCA approvals of the termination. In the final regulation, the phrase "in order to influence the outcome of the vote on the proposed termination" was deleted from paragraph (a) of the proposed regulations. The FCA believes that the making of any untrue or misleading statement of a material fact, or the failure to disclose any material fact, should be prohibited under all circumstances, irrespective of the purpose of such statement or omission. The FCA received no comments on this section of the proposed regulations and adopts it as a final regulation with no other changes.

Section 611.1230—Plan of Termination

The FCA received no comments on this section of the proposed regulations and adopts it as a final regulation without change.

Section 611.1235—Stockholder Reconsideration

Section 611.1235 provides stockholders with the right to reconsider their approval of the termination in accordance with section 7.9 of the Act. In the final regulation, the word "immediately" was added to the first sentence of paragraph (f) to indicate that the terminating association must furnish a list of eligible voting stockholders without delay to any petitioning stockholders. Since the stockholders have a very limited time in which to petition for such reconsideration, time is of the essence, and the association should not prevent or make more difficult the petitioners' undertaking by its own actions. The FCA received no comments on this section of the proposed regulations and adopts it as a final regulation without any other changes.

Section 611.1240—Exit Fee

Section 611.1240 sets forth the procedure for computing the exit fee.

The proposed regulations provided that the exit fee was to be computed as of the quarter end preceding the filing date (computation date) and that the computation was to be based upon the average daily balance of assets and capital for the 12 months preceding the computation date. The proposed regulations further permitted the FCA to make adjustments to the average daily balance of capital and assets and recompute the exit fee in light of items

such as the following: (1) Certain transactions or activities of the association unrelated to its core business such as additions to assets, excessive dividend or patronage distributions, or changes in the capitalization plan; (2) contingent liabilities, such as loss-sharing agreements, that can be reasonably quantified; (3) unrecorded or undervalued assets; (4) capital owned by other Farm Credit institutions or the Financial Assistance Corporation (FAC); and (5) expenses incurred in connection with the termination.

The comments received by the FCA on the exit fee provisions ranged from full support to outright rejection of the proposed computation. The FCA notes that no specific objections were received regarding the use of the average daily balance of assets to correct significant seasonal fluctuations in the level of assets throughout the year. Nor were there objections regarding adjustments made for the purpose of more accurately reflecting the value of an asset, such as requiring an appraisal for undervalued or overvalued assets on the association's books, or adjustments to reverse the impact of transactions that were undertaken to assure or improve the financial health of the association but that have the unintended effect of increasing the exit fee.

The substance of the comments objecting to the calculation was that Congress intended for a terminating association to be able to retain enough capital to be a viable institution upon termination and to meet the minimum bank capital standards. The commenters claimed, therefore, that Congress intended that the terminating association be able, irrespective of any special circumstances, to transfer an amount of capital equal to 6 percent of its assets to the successor institution on the termination date. These commenters contended that the exit fee as proposed by the FCA improperly operates as a penalty and that the adjustments make it impossible to terminate Farm Credit status. In particular, they have asserted that a terminating association would be "penalized" for taking legally permissible actions for which there may be "sound business reasons" but which also result in a lower exit fee.

The FCA disagrees with the commenters' general assertion that Congress intended to give a terminating association the absolute right to capitalize the successor institution with 6 percent of its assets computed on the termination date. The Act does not by its terms ensure that an association can retain 6 percent or whatever amount of

capital is required by the new chartering authority; it merely states that the total capital in excess of 6 percent of "assets" is to be paid to the Farm Credit Assistance Fund or the Farm Credit Insurance Fund. Nor do these regulations ensure that an association will transfer exactly 6 percent of its assets to its successor. Rather, the amount transferred could vary according to timing and circumstances. A computation made as of the termination date, a date selected by the terminating association, without using an average daily balance of assets and without adjustments for discretionary actions unrelated to the core business or for capital retirement outside the ordinary course of business could encourage the association to engage in manipulative activities with respect to both the timing of termination and capital of the association that are not in the best long-term interests of either the terminating association or its successor. By the same token, such a computation could also encourage an association to refrain from taking beneficial actions if such actions were to result in a higher exit fee. The FCA does not believe that the Act must or should be interpreted to encourage or permit such outcomes and has, accordingly, framed its regulations to neutralize the effect of timing decisions and discretionary actions that increase, decrease or eliminate the exit fee. In this way, the association will be neither "penalized" for taking actions in its best interest, nor rewarded for engaging in manipulative actions to lower the exit fee.

The respondents asserting a general position that an association have 6 percent of capital on the day it terminates have also raised specific objections to two types of adjustments: expenses incurred in connection with the termination, and adjustments that the respondents assume would increase the exit fee and would result from discretionary actions taken by the terminating association that are unrelated to its core business. These two specific categories of adjustments are discussed separately below.

1. Termination Expenses. Termination expenses would include accounting and legal fees, printing and mailing costs, and other expenses to organize the successor institution and prepare for termination of Farm Credit status; they would also include any tax liability incurred as a result of the retirement of the stock which the association holds in the FCB. Tax liability would be incurred on the stock distributed to the association in years past in lieu of the payment of dividends.

After consideration of the comments on these matters, the FCA Board has determined not to make any revisions to the proposed regulation in the final regulation. The FCA believes that the expenses of termination, which should be viewed as organizational expenses of the successor institution and which would not have been incurred but for the termination, are properly the responsibility of the successor institution that will receive the benefits. These expenses are entirely discretionary and within the control of the terminating association. If these expenses were not added back to the association's capital for the purpose of computing the exit fee, they would in effect be paid out of the exit fee and not out of the assets which the association may retain upon termination. Consequently, if the termination expenses did not come out of the successor institution's "pocket," the terminating association would have no incentive whatsoever to keep the expenses within reasonable bounds, to the detriment of the remaining institutions in the Farm Credit System. Therefore, under the final regulation termination expenses will be added back to assets for the purpose of computing the exit fee.

2. Adjustments for Discretionary Actions of the Terminating Association. As explained at length in the Supplementary Information to the proposed regulations, there are a number of legally permissible discretionary actions that a terminating association could take outside of its ordinary course of business that would result in a lower exit fee for the association. The association could, for example, inflate its balance sheet by purchasing assets, for the purpose of retaining a greater amount of capital. It could also legally reduce its permanent capital to the 7 percent minimum (or less during the phase-in period) by paying extraordinary dividends or patronage refunds, or by retiring stock. In fact, with this variety of legal means to reduce an association's capital, especially by returning it to stockholders, it is unlikely that any association would ever submit an application to terminate its Farm Credit status with capital any greater than the 7 percent minimum amount of permanent capital unless adjustments to the exit fee were made for discretionary actions. Moreover, the cash distributed to stockholders in patronage refunds or dividends could then be used by the stockholders to purchase stock in the successor institution, effectively transferring money from the terminating

association to the successor institution without having to pay the assessment contemplated by the statute.

The FCA notes that the legislative history of the termination provisions in § 7.10 of the Act supports an interpretation that the assessment represented by the exit fee is to deter Farm Credit institutions who may contemplate leaving the System. See S. Rep. No. 230, 100th Cong., 1st Sess. 67 (1987) (assessments on institutions leaving the System would be a "further deterrent" to an "exodus" from the System). If a terminating association were permitted to take all legal actions to reduce its capital or to otherwise minimize or eliminate its exit fee, the deterrent effect would be vitiated. Furthermore, if the association ultimately does not terminate its Farm Credit status because of a stockholder vote against the termination, disapproval of the FCA, or for any other reason, the association could be in a much weaker capital position than it was before the extraordinary actions it may have taken to attempt to reduce its fee. For these reasons, the FCA believes that its provisions for adjustments for discretionary actions are necessary in order to ensure that terminating associations are not rewarded for engaging in activities that weaken their capital position in order to diminish or eliminate the exit fee.

It should be emphasized that there will be no adjustments to the exit fee for the ordinary and customary activities of the terminating association that relate to its core business, or for dividends or patronage distributions that are in line with payments traditionally made to the stockholders. These activities should constitute the great bulk, if not all, of the activities of the association. Moreover, the impact of actions taken outside the ordinary course of business for sound business reasons that have the effect of increasing the exit fee may also be reversed. Examples of such actions include an increase in the amount of the stock purchase required to obtain a loan, which would strengthen capital but also increase assets, or a decrease in the liabilities due to the sale of certain assets or the reduction of certain liabilities. Because it is in the best interest of the terminating association as well as the successor institution to take steps to maintain or improve the financial health of the institution, the FCA believes that the regulations should present no impediment to such actions. For the same reasons, the successor institution will be allowed to retain all profits of the terminating association that are earned in the ordinary course of

business between the computation date and the date of termination, but if ordinary losses are sustained in that period, the exit fee will not be reduced. The FCA believes that giving the management of the terminating association an incentive to operate the association prudently during this period will be beneficial to the terminating association, the successor institution, and the System.

Several respondents objected to the inclusion of any type of borrower stock in the definition of "total capital," opining that only surplus and unallocated retained earnings should be included in capital. Another commenter did not object to the inclusion of at-risk stock in total capital but did object to the inclusion of eligible borrower stock—that is, stock protected under § 4.9A of the Act. Eligible borrower stock generally comprises all borrower stock outstanding on January 6, 1988, the date of the enactment of the 1987 amendments to the Act at which time the termination provisions of § 7.10 were also added, and borrower stock issued up to 9 months following that date, unless it has subsequently been converted to at-risk stock.

The FCA disagrees with the interpretation of the statutory term "total capital" to exclude any borrower stock, whether it is at risk or protected. Unallocated retained earnings and surplus are indeed a component of capital, but capital also includes outstanding stock and other equities. The FCA believes that a reasonable interpretation of the term "total capital" in § 7.10(a)(4) of the Act must include more than the components of "permanent capital" which are set forth in § 4.3A(a)(1) of the Act, a provision enacted at the same time as the enactment of § 7.10(a)(4). "Permanent capital" is defined in § 4.3A(a) to include "current year retained earnings, allocated and unallocated earnings, all surplus (less allowances for losses), and stock issued by a System institution, except stock that (A) may be retired by the holder thereof on repayment of the holder's loan, or otherwise at the option or request of the holder; or (B) is protected under § 4.9A or is otherwise not at risk." The FCA interprets "total capital" to be a broader category than "permanent capital" and believes that logic dictates that it would include the eligible borrower stock and stock retirable at the option of the holders, which would be a part of "permanent capital" but for the express statutory exclusion. The appropriateness of the inclusion of eligible borrower stock is clear in light of the fact that, at the time

the termination provisions were enacted and for a period of time thereafter, the only borrower stock outstanding was eligible borrower stock. "Total capital" must therefore be understood to include such stock.

Several respondents concurred with the 3-year "look-back" period set forth in paragraph (e) of the proposed regulations to enable the FCA to review the transactions of the terminating association in order to make adjustments for extraordinary transactions that increase or decrease the exit fee. Other respondents questioned the necessity of providing a 3-year period and opined that a 1-year "look back" would suffice. The FCA Board has carefully considered these comments and has decided to adopt the 3-year time period originally proposed. Each calendar year, Farm Credit institutions are required, pursuant to §§ 615.5200(b) and 618.8440 of FCA's regulations, to adopt an operational and strategic business plan, including a formal written capital adequacy plan, for at least the succeeding 3 years. Consequently, a 3-year plan to strengthen or deplete capital would be properly considered in deciding whether to require adjustments to decrease the exit fee where the association has built up capital or to increase the fee where the association has purposefully reduced the capital. The FCA further believes that a shorter review period, such as 1 year, would not be sufficient to prevent a prospective termination from influencing an association's decisions regarding its capital adequacy program.

The FCA has made several technical and clarifying changes to proposed § 611.1240 in the final regulations. The definition of "assets" in paragraph (a)(1) of the proposed regulations has been revised in the final regulation to clarify that assets must be determined according to GAAP except where other provisions of this section require a different treatment. The reference in paragraph (c) of the proposed regulation has been revised in the final regulation to refer to a "qualified public accountant," a term which is defined in § 621.2(a)(21). A "qualified public accountant" includes any public accounting firm or individual that is properly certified, validly licensed, in good standing, and independent of the audited institution. The revision was made to ensure that the terminating association's auditors meet the same qualifications and standards of independence that are generally required for audits of Farm Credit

institutions. In addition, the language in paragraph (e) has been revised in the final regulation to reflect more accurately the categories of activities of the association for which the FCA may consider making adjustments to the exit fee.

Section 611.1250—Repayment of Debts

The proposed § 611.1250 required that all of the obligations of the terminating institution be met. Obligations to other Farm Credit institutions could be met through converting to an OFI relationship and continuing the obligations or by paying off the obligations including the direct loan within a 3-year period. The FCC posed questions concerning paragraphs (b), (c) and (d). The FCC asked that paragraph (b) be clarified to indicate that the terminating association must satisfy all OFI eligibility requirements, noting that the proposed language could be interpreted to permit the OFI relationship at the option of the terminating association without satisfaction of the requirements. The final regulation was amended to clarify that the establishment of an OFI relationship is subject to all applicable requirements of part 614, subpart P of the regulations.

With respect to paragraph (c), the FCC asked that the FCA clarify that a terminating association that does not establish an OFI relationship must have the approval of the district FCB in order to pay off the direct loan over a 3-year period. The FCA notes that the successor institution could be a type of institution that is authorized to engage in high-risk activities and/or may not be subject to adequate supervision, and the bank should have the right to refuse to continue to extend funds for that period of time. The final regulation requires the concurrence of the FCB.

With respect to paragraph (d), the FCC asked that the FCA explicitly include all projected financial assistance liabilities and also clarify that all existing interest and principal payments be made. Issues related to the liabilities that have accrued and will accrue due to existing FAC obligations are presently under review by FCA, and the FCA has determined that the changes suggested by the FCC are not appropriate at this time. The termination regulations provide that all obligations must be paid or that provision for payment must be made. Once the obligations are recognized under GAAP,

all terminating institutions must address the liability.

Section 611.1255—Retirement of Equities Owned

Section 611.1255 of the proposed regulations sets forth the requirements for the retirement of equities that would normally occur as a result of a termination of an institution. The FCC and a FCB were the only commenters on this section. The FCC suggested that the retirement of equities in a FCB should be subject to the review of the Assistance Board if the FCB has outstanding stock held by the FAC. The FCA believes that any approvals by the Assistance Board should be covered in the agreement between the bank and the Assistance Board rather than in the FCA regulations. Accordingly, it has not added the suggested provisions.

The FCC noted that the regulation permits a FCB to enter into a 3-year agreement with the association to retire the association's investment in the FCB and assumed that the capital obligated to be retired over the 3-year period would not be considered permanent capital for the purpose of § 615.5240, which sets forth the requirements on stock if it is to be counted as permanent capital. The FCA concurs that the condition imposed on the capital to be retired during the period of up to 3 years would not permit the counting of such capital as permanent capital. Accordingly, a new paragraph (f) has been added in the final regulation to clarify that the capital to be retired under the agreement is not permanent capital of the FCB for the purpose of § 615.5240.

Section 611.1260—Dissenters' Rights

Proposed § 611.1260 addresses the rights of equity holders who dissent from the termination and requires that dissenters receive cash or a combination of cash and subordinated debt in the successor institution in exchange for their interests in the terminating association. A dissenting common stockholder or participation certificate holder would be entitled to the adjusted book value of his interest as determined in accordance with the priorities set forth in the liquidation bylaws of the terminating association. The proposed regulation defined a dissenting equity holder as a stockholder who did not vote in favor of the termination, whether or not eligible to vote, or a participation certificate holder.

The FCA received several comments on this section, ranging from full support to objection to offering dissenters' rights

at all. Several respondents argued that no dissenters' rights should be provided because such rights are not provided in any other type of reorganization of a Farm Credit institution and because requiring the association to make a cash payment would "undermine" the association's ability to capitalize itself. Another respondent stated that dissenters should be entitled to no more than the par value of the stock—in other words, the amount originally charged to the holder for the stock—and that anything received in excess of that would be a "windfall" to the holder. Several others responded that dissenting stockholders should be limited to those stockholders that vote against the termination, stating that "mere indifference" to a termination proposal should not, by itself, entitle one to dissenters' rights.

For the reasons set forth in the Supplementary Information to the proposed regulations, the FCA has determined that the circumstances of a termination require that an equity holder be given a choice either to continue as an equity holder in a new institution outside of the Farm Credit System or to withdraw his ownership interest in the terminating association and receive a return in cash of the amount paid for the stock or participation certificate plus an amount of subordinated debt equal to the holder's portion of the adjusted book value in excess of par value for each share of the institution. The FCA believes that, in the context of a termination as with a liquidation, the value of the institution belongs to all the equity holders. A provision that would deprive dissenters of their share in the value of the association would result in a "windfall" to the remaining equity holders and other owners of the successor institution.

The final regulations retain the proposed provisions granting rights to dissenting stockholders in the final regulations. However, after consideration of the comments, the FCA has revised the definition of dissenting stockholder in the proposed regulation to limit dissenters' rights to participation certificate holders, nonvoting stockholders, and voting stockholders who voted against the termination in person or by proxy at the stockholders' meeting. In other words, the stockholders eligible to vote must vote against the termination in order to preserve their right to obtain dissenter's rights, and any eligible voting stockholder who does not cast a vote or who votes in favor of the termination would be unable to obtain dissenters' rights. The FCA believes that a voting

stockholder, unlike a non-voting equity holder, is alone in a position to help to determine the future course of the terminating association, and as such he should be required to make an affirmative decision between continuing as a stockholder of a terminating association or becoming an owner of a different institution. The FCA further believes that this revision will encourage voting stockholders to participate in the association's important decision whether to leave the Farm Credit System, especially in light of the fact that termination would change not only their status as stockholders but also their rights as borrowers. Consequently, the chances of an institution's fate being decided by a few individuals will be reduced.

The FCA notes that the requirement of an affirmative action on the part of a voting stockholder to preserve dissenters' rights at the time of the stockholder vote would not be inconsistent with provisions of general corporate statutes of many States and the Model Business Corporation Act (MBCA). Although general corporate law and the MBCA permit a voting stockholder who has merely abstained from voting to exercise dissenters' rights, such stockholder must already have taken the affirmative action of notifying the corporation of his intention to dissent prior to the vote. MBCA, 3d Ed., vol. 3 Section 13.21 (1984); *Fletcher's Cyc. Corp.*, vol. 12B Section 5906.7. Since these regulations do not require that a voting stockholder notify the terminating association prior to the vote, the FCA believes that an affirmative action at the time of the vote is a reasonable requirement. The final regulations reflect this revision.

The second sentence in paragraph (b) of the proposed regulation required that, in the event the terminating association had no bylaw governing the distribution of assets upon liquidation, the payments to dissenting stockholders would be made according to the association's capitalization bylaws. This sentence has been deleted in the final regulation because all Farm Credit institutions are required to provide for the distribution of assets in their bylaws.

Paragraph (c)(1) of the proposed regulation has been revised in the final regulation to clarify that the payment to the dissenting stockholders is the adjusted book value of their equity interest, which is defined in the regulation as the book value adjusted to reflect any increase or decrease in asset value resulting from the appraisals required in computation of the exit fee

and to reflect a deduction for the amount of the exit fee.

Finally, the FCA sought specific comments on the issue of whether to make payments to dissenting stockholders entirely in cash rather than a combination of cash and subordinated debt as proposed. The FCA received no comments on this issue and has adopted this provision as a final regulation without change.

Section 611.1266—Loan Refinancing by Borrowers

Section 611.1266 of the proposed regulations set forth a procedure for borrowers who may seek to have their loans transferred from the terminating association to another Farm Credit institution. The procedure included a requirement that the terminating association identify the new service provider in the information statement mailed to borrowers or would furnish a list of its borrowers to the new Farm Credit service provider if the identity of the new provider was not known at the time of the mailing of the information statement. Several commenters objected to the requirement that a list of borrowers be provided on the ground that the successor institution may be in direct competition with the new service provider and should not be required to furnish such information at no charge. In response to these comments, the FCA has revised this provision to require that if the identity of the new Farm Credit service provider is not known by the terminating association prior to its mailing of the information statement, the statement must provide the name, address, and telephone number of the FCB in the district and must state that borrowers who are interested in continuing a borrowing relationship with another Farm Credit institution may contact the FCB for information on the new service provider. The final regulation continues to require that if the terminating association has been given information on the new service provider before the mailing of the information statement, such information must be included in the statement.

Paragraph (a) of the proposed regulation, which stated that borrowers of the terminating association may seek to have their loans refinanced by another Farm Credit institution, has been restated in the final regulation. The final regulation clarifies that the options of a borrower who does not wish his loan to be transferred to the successor institution are not limited to seeking refinancing by another Farm Credit institution. The borrower is free to pay off his loan or seek refinancing with any

other institution, whether or not such institution is a Farm Credit institution. The FCA notes that this subpart P does not create any obligation on the part of any Farm Credit institution to purchase or refinance the loan of a borrower who does not wish his loan to be transferred to the successor institution. Thus, if a borrower is unable to obtain financing elsewhere, and if the terminating association is unable or unwilling to sell his loan to another institution, the borrower's loan will automatically be transferred to the successor institution.

One commenter noted that participation loans were not addressed in the proposed regulation. The commenter noted that the Farm Credit association chartered or assigned to take over the territory of the terminating association may have lower capital levels. This would limit the borrower's opportunity to refinance his loan with a System institution and may also reduce existing participation arrangements. Further, when associations participate with an association that chooses to terminate, the arrangement may no longer be desirable.

If the new Farm Credit service provider is smaller than the terminating association, the new provider will have the option to participate loans with other Farm Credit institutions, thus providing similar service to borrowers as the former association. The level of capital of any one association should not hinder the participation of larger loans as these can be participated between districts to permit the spreading of risk if need be.

The FCA notes that participation loans would be subject to the terms of the participation agreement. Once these contractual conditions are satisfied, the terminating association could choose to stop participating with Farm Credit institutions or vice versa. The FCA does not believe that imposing conditions by regulation that would alter an existing contract between one Farm Credit institution and another that chooses to terminate would be appropriate. The FCA recommends that participation contracts incorporate whatever language the parties deem appropriate should a participant choose to terminate.

Section 611.1270—Continuation of Borrower Rights

Section 611.1270 of the proposed regulations prohibits a terminating association from requiring that any contractual borrower rights that are a part of the loan agreement between a borrower and the association be waived as a condition of continued financing through the successor institution.

Statutory borrower rights under the Act would continue to apply only if they are incorporated into the loan contract or if the successor institution becomes an OFI. One respondent commented that the FCA should not intervene in matters involving the contract between the lender and the borrower, and that the benefits of both stock ownership and borrower rights should be removed when the lender is no longer a Farm Credit institution.

The FCA has considered this comment and disagrees on the ground that a terminating association should not be able to use the circumstance of termination to force the borrower to accept changes to the terms of his loan agreement which are not related to the stock ownership terms. Therefore, the FCA Board has decided to make no change to this section in the final regulations.

Lists of Subjects in 12 CFR Part 611

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

For the reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as set forth below and all other authority citations throughout part 611 are removed.

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.0, 5.9, 5.10, 5.17, 7.0-7.13, 8.5(e); 12 U.S.C. 2011, 2021, 2071, 2096, 2121, 2142, 2183, 2203, 2221, 2243, 2244, 2252, 2279a-2279f-1, 2279aa-5(e); secs. 411 and 412 of Public Law 100-233.

2. Part 611 is amended by adding a new subpart P to read as follows:

Subpart P—Termination of Farm Credit Status—Associations

Sec.
611.1200 General—Applicability.
611.1205 Definitions.
611.1210 Advance notification.
611.1211 Filing of termination application.
611.1212 Filing date of termination application.
611.1215 Farm Credit Administration review and approval.
611.1220 Voting record date and stockholder approval.
611.1225 Requirements for information statement.
611.1226 Prohibited acts.
611.1230 Plan of termination.
611.1235 Stockholder reconsideration.
611.1240 Exit fee.
611.1250 Repayment of debts.
611.1255 Retirement of equities owned.
611.1260 Dissenters' rights.

Sec.
611.1266 Loan refinancing by borrowers.
611.1270 Continuation of borrower rights.

Subpart P—Termination of Farm Credit Status—Associations

§ 611.1200 General—Applicability.

(a) Each association is authorized, in accordance with sections 7.10 and 7.11 of the Act, to terminate the status of the association as a Farm Credit institution. The regulations in this subpart set forth the procedural, disclosure, voting and approval requirements applicable to such termination. The Farm Credit Administration may in its sole discretion grant a waiver in writing from any requirement of this subpart for good cause shown.

(b) Except as provided in paragraph (c) of this section, these regulations are applicable to an association that seeks to terminate its status as a Farm Credit institution and to charter the institution as a bank, savings and loan association, or other type of financial institution. In the event that a receiver or conservator is appointed by the Farm Credit Administration in the case of a voluntary or involuntary liquidation of the association, the provisions of subpart L of part 611 apply, and the provisions of this subpart shall not apply.

(c) These regulations are not applicable to the termination of an association whose investment in the Farm Credit Bank of which it is a member is in excess of 25 percent of the bank's capital as computed according to GAAP, or whose indebtedness to the Farm Credit Bank of which it is a member is in excess of 25 percent of the total loans of the bank as of the quarter end preceding the adoption of the commencement resolution.

§ 611.1205 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Commencement resolution* means the resolution adopted pursuant to § 611.1210(a) to indicate the commencement of the termination process.

(b) *GAAP* means generally accepted accounting principles, which is that body of conventions, rules and procedures necessary to define accepted accounting practice at a particular time, as promulgated by the Financial Accounting Standards Board and other authoritative sources recognized as setting standards for the accounting profession in the United States. GAAP shall include not only broad guidelines of general application but also detailed practices and procedures that constitute

standards against which financial presentations are evaluated. When the Farm Credit Administration's interpretation of how GAAP should be applied to a specific event or transaction differs from an association's interpretation, the interpretation of the Farm Credit Administration shall prevail.

(c) *OFI* means other financing institutions, as that term is defined in § 614.4540(e).

(d) *Reconsideration vote* means the vote at which the voting stockholders reconsider whether to terminate the terminating association's Farm Credit status.

(e) *Successor institution* means the institution to which the terminating association will convert when its Farm Credit charter is revoked.

(f) *Terminating association* means an association seeking to terminate its status as a Farm Credit institution and to charter the institution as a bank, savings and loan association, or other type of financial institution.

(g) *Terminating resolution* means the resolution adopted pursuant to § 611.1211(a) approving the applications for termination and a new charter and providing for submission of the termination proposal to a stockholder vote.

(h) *Termination vote* means the stockholder vote at which the termination proposal is first submitted to the voting stockholders for their approval or disapproval.

§ 611.1210 Advance notification.

(a) An association's board of directors shall commence the process of termination by adopting a commencement resolution indicating the association's intention to terminate its Farm Credit status.

(b) Within 5 days of the adoption of the commencement resolution by the board of directors, the terminating association shall:

(1) Submit a certified copy of the commencement resolution to the Farm Credit Administration; and

(2) Mail a brief announcement to all holders of equity in the association which states that the board is taking steps to terminate its Farm Credit status and which describes the process of termination, the anticipated effect of termination on current holders of equity, and the type of institution the successor institution will be. If bylaws are adopted in accordance with paragraph (e) of this section, the announcement shall also state that, during the time period from the passage of the commencement resolution until the effective date of termination new common stock and

participation certificates either purchased from the association in connection with a loan or sold to the association prior to the termination will not entitle the holder to receive a share in the adjusted book value in excess of par of the association.

(c)(1) Within 15 days after submission of the commencement resolution pursuant to paragraph (b)(1) of this section, the terminating association shall submit to the Farm Credit Administration a statement of its estimation of the exit fee together with an explanation of the computation of the exit fee pursuant to the requirements of § 611.1240. For purposes of this estimate of the exit fee, the computation date set forth in § 611.1240(c) shall be the quarter end preceding the date of the commencement resolution.

(2) Within 45 days of its receipt of the terminating association's estimated exit fee, the Farm Credit Administration shall either confirm the association's estimation of the exit fee or notify the association of any required revisions to the computation.

(3) In the event that the Farm Credit Administration requires adjustments to the estimated exit fee pursuant to paragraph (c)(2) of this section, the terminating association may request reconsideration of any revisions. Such request shall be in writing and shall set forth specific reasons why the revisions should not be made. The Farm Credit Administration shall reconsider the revisions and shall inform the terminating association of its determination within 15 days of the receipt of the reconsideration request.

(d) During the time period after the board of directors' adoption of the commencement resolution pursuant to paragraph (a) of this section and prior to the effective date of termination, the following conditions shall apply to the terminating association's conduct of business:

(1) Each prospective new borrower shall be informed of the effect of the proposed termination upon the borrower's loan and shall be specifically informed whether the borrower will continue to have any of the borrower rights provided under the Act and regulations promulgated thereunder;

(2) Any common stockholders or participation certificate holders who seek to have such equity interest retired before termination shall be informed that the retirement would extinguish the holder's right to an interest in the successor institution if the termination is completed or to dissent from the termination and receive an amount equal to the adjusted book value of the

holder's equity in the terminating association.

(e) Notwithstanding any provisions of § 615.5230(b) to the contrary, an association may adopt bylaws which provide for the issuance of a special class of common stock and participation certificates in connection with loans granted during the time period subsequent to the adoption of the commencement resolution and prior to the termination. Such common stock or participation certificates, which shall be issued in accordance with section 4.3A of the Act, shall have characteristics identical to shares of the existing classes of common stock or participation certificates issued as a condition of the extension of a loan, except for the following:

(1) In the event of termination, the holder shall be entitled to receive the following:

(i) If the holder is eligible to vote and does not vote against the termination, an interest in the successor institution in an amount equal to the adjusted book value or the purchase price of the stock, whichever is less;

(ii) If the holder is not eligible to vote or is eligible to vote and votes against the termination, either an interest in the successor institution as set forth in paragraph (e)(1)(i) of this section, or, if such holder dissents pursuant to § 611.1260, cash in the amount of the purchase price or the adjusted book value of the stock or participation certificate, whichever is less.

(2) In the event that the termination does not occur, the special classes of stock or participation certificates shall automatically convert into shares of the otherwise identical classes of stock or participation certificates issued prior to the adoption of the commencement resolution.

§ 611.1211 Filing of termination application.

(a) The board of directors of an association that seeks to terminate its status shall adopt an appropriate termination resolution approving an application for such termination, approving an application for a new charter for the successor institution, and providing for the submission of such termination proposal to its stockholders for a vote.

(b) An original and three copies of a termination application consisting of the following materials shall be submitted by the terminating association to the Farm Credit Administration for review and preliminary approval:

(1) A certified copy of the termination resolution adopted pursuant to paragraph (a) of this section;

(2) A copy of the plan of termination as required under § 611.1230;

(3) An information statement that complies with the requirements of § 611.1225;

(4) All other information that is to be submitted to the stockholders and other equity holders in connection with the contemplated action; and

(5) Any additional information the board of directors wishes to submit to the Farm Credit Administration in support of the request or that the Farm Credit Administration requests.

(c) The terminating association shall provide the Farm Credit Administration with any material revisions to information in the plan of termination, including updated financial information, that becomes available during the pendency of the termination application and prior to termination.

§ 611.1212 Filing date of termination application.

(a) Except as provided in paragraph (c) of this section, the termination application will be given a filing date which shall be the date on which it is determined to be technically complete. Within 10 business days after the Farm Credit Administration receives the termination application, the Farm Credit Administration shall determine that the application is technically complete and give it a filing date, or return the application to the terminating association if it is incomplete. If the Farm Credit Administration fails to make a determination or to return the application before the end of the 10-day review period, the application shall be deemed to be technically complete and shall receive a filing date which is the last day of the 10-day review period.

(b) A termination application is considered to be technically complete when it is determined upon preliminary review to contain responses to all items required to be submitted to the Farm Credit Administration under § 611.1211.

(c) In the event the advance notification required in § 611.1210 is not received by the Farm Credit Administration at least 60 days prior to the filing date which would otherwise be assigned to the termination application in accordance with paragraph (a) of this section, the filing date shall be the date that is 60 days following the date on which the terminating association first informs the Farm Credit Administration of the association's intention to terminate its Farm Credit status. During this 60-day period, the Farm Credit Administration shall contact other

associations to determine their willingness to provide service to the territory of the terminating association or to determine if there are persons who wish to charter a new association to serve the territory. An inability of the Farm Credit Administration to arrange for a new service provider for the territory shall not be grounds for an extension of the 60-day period. However, the Farm Credit Administration may in its sole discretion reduce the required 60-day period in the event that a new service provider to serve the territory is determined. This paragraph shall not apply if the entire chartered territory of the terminating association is already included in the charter of one or more associations that are chartered to offer credit services of the same type as the terminating association.

§ 611.1215 Farm Credit Administration review and approval.

(a) When the termination application has received a filing date, the Farm Credit Administration shall review the application and either disapprove or give its preliminary approval pursuant to section 7.11(a)(2) of the Act.

(b) The Farm Credit Administration Board shall have 30 days from the filing date, as defined in § 611.1212, to approve or disapprove the termination application. If the Farm Credit Administration Board does not act within such 30-day period, the plan of termination may be submitted to the stockholders pursuant to section 7.11(a)(2) of the Act.

(c) If the application is disapproved, written notice specifying the reasons for disapproval shall be transmitted to the chief executive officer of the association, who shall promptly notify the association's board of directors. If the application is disapproved, it shall not be submitted to the stockholders for a vote.

(d) Upon stockholder approval of the proposed termination as provided in § 611.1220, the secretary of the terminating association shall forward to the Farm Credit Administration a certified record of the results of the stockholder vote and shall notify its stockholders and other equity holders of the result of the vote as provided in § 611.1220(e).

(e) Final approval by the Farm Credit Administration Board pursuant to section 7.10(a)(2) shall be conditioned upon the following:

(1) A termination vote in favor of termination and, if a reconsideration vote is held, a reconsideration vote in favor of termination;

(2) Receipt by the Farm Credit Administration of conformed executed copies of all contracts and agreements submitted pursuant to § 611.1230;

(3) Satisfactory evidence of the terminating association's adequate provision for payment of debts and retirement of equities;

(4) Evidence of the grant of a new charter for the successor institution by the appropriate Federal or State chartering authority;

(5) Payment of the exit fee by certified check or other means agreed upon by the Farm Credit Administration and the terminating association; and

(6) The fulfillment of any other condition of termination imposed by the Farm Credit Administration Board which is necessary and appropriate to provide for the equitable treatment of the parties affected by the termination.

(f) If the Farm Credit Administration grants final approval, the terminating association's charter shall be revoked, and the termination shall be effective on the last to occur of—

(1) The proposed termination date of the terminating association;

(2) Ninety (90) days after receipt by the Farm Credit Administration of the notice required to be submitted pursuant to paragraph (d) of this section; and

(3) Receipt of final payment of the exit fee.

§ 611.1220 Voting record date and stockholder approval.

(a) Upon receipt of preliminary approval of the termination application by the Farm Credit Administration Board, or if the Board takes no action prior to the end of the 30-day review period, the association shall call a meeting of its voting stockholders. The stockholders meeting shall be held within 60 days of the last day of the 30-day review period. All holders of equity in the terminating association shall be permitted to attend the meeting. The stockholders eligible to vote shall be the stockholders who are eligible to vote on the voting record date as determined by the association's bylaws if such date is not more than 70 days prior to the stockholder vote, or on a date fixed by the board of directors which shall be not more than 70 days prior to the date of the stockholder vote. The association shall notify each stockholder that the resolution has been filed and that a meeting will be held in accordance with the association's bylaws.

(b) The notice of meeting to consider and act upon the board of directors' resolutions shall be accompanied by an information statement that complies with the requirements of § 611.1225.

(c)(1) The terminating association shall establish voting security procedures that comply with the procedures for the election of directors in § 611.330, as applicable. Specifically, the terminating association shall ensure that all information regarding how or whether individual stockholders have voted and all materials such as ballots, proxy ballots, election records, and other relevant documentation related to the votes of stockholders is held in strict confidence.

(2) The terminating association may adopt procedures that require the stockholders to sign or otherwise verify their eligibility to vote on an envelope which contains a marked ballot in a sealed envelope. The terminating association may also use signed proxies or eligibility certificates that will accompany a ballot or instructions on how to vote the proxy in a separate sealed envelope.

(3) The terminating association shall use a form of identity code on the ballot enabling it to determine which stockholders are eligible to exercise dissenters' rights and shall require that the votes be tabulated by an independent party who is not a stockholder, director, or officer of the terminating association or the successor institution. When the terminating association receives notification pursuant to § 611.1260 that a stockholder intends to exercise dissenters' rights, the association will verify with the independent party that the stockholder voted against the termination. The terminating association shall be informed of the vote of a stockholder only in the event that stockholder exercises the right to retire stock in the association in accordance with § 611.1260.

(d) The proposal shall be approved by the stockholders if agreed to by a majority of the eligible voting stockholders of the association voting in person or by proxy at the stockholders' meeting.

(e) Upon approval of a proposed termination by the stockholders of the terminating association, a certified statement showing the results of the stockholder vote shall be forwarded to the Farm Credit Administration within 10 days following the stockholders' meeting. The terminating association shall notify its stockholders and other holders of equity interests of the results of the vote not later than 30 days after the final vote. If the stockholder vote is in favor of termination, stockholders who voted against the termination and other equity holders shall be informed of their right to dissent as provided in § 611.1260(f). In addition, the terminating

association shall further notify stockholders of their right to file a petition for reconsideration in accordance with § 611.1235 and that any petition for reconsideration must be filed on or before a date certain, which shall be 35 days after the date the terminating association mails notice to the stockholders of the results of the stockholder vote.

§ 611.1225 Requirements for information statement.

Notice of the meeting to consider and act upon a proposed termination shall be sent to all stockholders and other holders of equity interests and shall be accompanied by an information statement that contains the information and materials set forth in this regulation as follows:

(a) A statement on either the first page of the material or the notice of the stockholders' meeting, in capital letters and boldface 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.

(b) A statement on the first page of the material entitled "Executive Summary" and consisting of a concise description of the material changes in rights of the borrowers, stockholders, and holders of other equity interests to occur as a result of the termination, the effect of such changes, and the potential benefits and disadvantages to them of the termination.

(c) A description of the plan of termination as required in § 611.1230.

(d) A statement by the board of directors of the terminating association enumerating the potential benefits and disadvantages of the termination together with the basis for the board's recommendation for termination.

(e) A list of the initial board of directors and senior officers of the successor institution, together with a brief description of the business experience of each such person, including principal occupation and employment, during the past 5 years.

(f) A summary of the provisions of the organizational documents of the successor institution, including the articles of incorporation and bylaws, that differ materially from the charter and bylaws of the terminating association. The summary shall indicate both whether the maintenance of a borrowing relationship with the successor institution will be required as a condition for maintaining a

stockholder's interest, and whether the maintenance of a stockholder's interest will be required as a condition for maintaining a borrowing relationship.

(g) An explanation of any changes in the nature of the stockholders' and other equity holders' investment in the association, including but not limited to any changes in dividends, patronage refunds, voting rights, preferences, retirement of equities, and priority upon liquidation. If any eligible borrower stock is outstanding, such explanation shall include a statement that the guaranty afforded to eligible borrower stock by section 4.9A of the Act shall be extinguished at termination and that any stock of the successor institution received in exchange for eligible borrower stock shall not be protected under section 4.9A of the Act.

(h) An explanation of the effect of termination on the rights that borrowers are afforded under the Act; the expiration date of those rights, if applicable, under the provisions of the plan of termination; a statement that borrowers may seek to have their loans sold to or refinanced with another lending institution, including the association(s) that will be chartered to serve the terminating association's territory or any other associations that already serve the territory, provided that any such Farm Credit institution is authorized to make such a loan in accordance with part 614 of this chapter; and an explanation of the procedure for a borrower to apply for the sale or refinancing of his loan to the association(s) that will be chartered to serve the terminating association's territory, if such designations have been made. The disclosure shall include the name, address and telephone number of such association(s), together with a statement that any such association is not obligated to accept any loans of the terminating association.

(i) An explanation of the formula and process by which equity of the terminating association will be exchanged for equity in the successor institution or other consideration.

(j) A description of any agreement or arrangement with any person, including any officers or directors of the terminating association, relating to employment or termination of employment with the terminating association or employment with the successor institution.

(k) An explanation of the computation of the exist fee and the estimated amount of the exit fee.

(l) A statement detailing the nature and type of financial institution that the successor institution will become at

termination and the conditions of approval, if any, placed on the successor institution by the State or Federal financial regulator that will charter the successor institution.

(m) A summary of the differences, if any, between the terminating association and the successor institution with respect to interest rates, interest rate policies, collection policies, services provided, service fees, and any other item of interest that would affect a borrower's lending relationship with the successor institution including whether stockholders will be restricted in any way in their ability to borrow from the successor institution.

(n) A discussion of the expected capital requirements of the successor institution, and the amount and method of capitalization for the successor institution.

(o) An explanation of the sources and manner of funding the operations of the successor institution.

(p) An explanation of the existence of any continuing contingent liability that will not be paid immediately upon termination and the manner in which this liability will be addressed by the successor institution.

(q) A summary of the differences in tax status of the terminating association and the successor institution, and an explanation of the effect of such changes on both the successor institution and the stockholders.

(r) A brief description of the regulatory environment for the successor institution and a summary of the differences from the current regulatory environment that affect the cost of doing business of the value of equity and that are not addressed elsewhere in the information statement.

(s) A statement describing those stockholders and other holders of equity that are entitled to dissenters' rights and an explanation of those rights as set forth in § 611.1260, including the estimated value of the stock upon distribution, procedures for the exercise of dissenters' rights, and the time period during which such rights may be exercised, and a statement that eligible voting stockholders who do not vote against the termination will not receive dissenters' rights.

(t)(1) A presentation of the following financial data:

(i) A balance sheet and income statement for the terminating institution for each of the 2 preceding fiscal years;

(ii) A balance sheet for the terminating institution as of a date within 90 days of the date the termination application 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 prior fiscal year;

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

(v) A pro forma summary of earnings for the successor institution presented as if the termination has been effective at the beginning of the interim period between the end of the last fiscal year and the date of the balance sheet presented pursuant to paragraph (t)(1)(iv) of this section.

(2) The format for the balance sheet and income statement shall be the same as is contained in the institution's annual report to stockholders and shall contain appropriate footnote disclosures, including data relating to nonperforming loans and related assets and allowance for losses.

(3) The financial statements shall include either of the following:

(i) A statement signed by the chief executive officer and each member of the board of directors of the terminating association that the various financial statements are unaudited, but have been prepared in all material respects in accordance with GAAP (except as otherwise disclosed therein) and are, to the best of each signer's knowledge, 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 other such audit procedures as were considered necessary in the circumstances, and, as of the date of the statements, present fairly the financial position of the terminating association in accordance with GAAP applied on a consistent basis, except as otherwise disclosed therein.

(u) A description of any event subsequent to the date of the financial statements, but prior to the date upon which the termination application is submitted to the Farm Credit Administration, that would have a material impact on the financial condition of the terminating association or the successor institution.

(v) A description of any event subsequent to the submission of the

termination application to the Farm Credit Administration that would have a material impact on any information in the termination application.

(w) A statement of any other material fact or circumstance that a stockholder would need to know in order to make an informed decision on the proposed plan of termination, or that is necessary to make the required disclosures not misleading.

(x) A proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholder.

(y) A certification signed by the entire board of directors of the terminating association as to the truth, accuracy, and completeness of the information contained in the information statement. If any director refuses to sign the certification, the director shall inform the Farm Credit Administration of the reasons for such refusal.

§ 611.1226 Prohibited acts.

(a) No terminating association or director, officer, employee or agent thereof, shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact concerning the proposed plan of termination to a stockholder of the association.

(b) No director, officer, employee, or agent of a terminating 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's plan of termination constitutes, directly or indirectly, either a recommendation on the merits of the proposal or an assurance concerning the adequacy or accuracy of any information provided to the association's stockholders and other equity holders in connection therewith.

§ 611.1230 Plan of termination.

The plan of termination shall include the following information:

(a) Copies of all contracts, agreements and other documents pertaining to the proposed termination and organization of the successor institution.

(b) A statement of the means by which the assets of the terminating association will be transferred to, and its liabilities assumed by, the successor institution.

(c) The terminating association's plan to retire, and the successor institution's plan to issue, equities held by holders of stock, participation certificates, and allocated equities, if any.

(d) A copy of the charter application filed with the appropriate Federal or State chartering authority, together with

any exhibits or other supporting information that is submitted to such authority.

(e) A statement whether the successor institution will continue to have a credit relationship with the Farm Credit bank and the effect such status will have on the provision for payment of the terminating association's debts. The plan of termination shall include evidence of the agreement and plan for satisfaction of outstanding debts, whether contained in a general financing agreement or otherwise.

(f) The proposed effective date of the termination.

§ 611.1235 Stockholder reconsideration.

(a) Eligible voting stockholders have the right to reconsider the approval of the termination provided that—

(1) A petition signed by 15 percent of the eligible voting stockholders of the association is filed with the association, and a copy of such petition is filed with the Farm Credit Administration, within 35 days after the date of mailing of the notification to stockholders of the final results of the stockholder vote required under § 611.1215; and

(2) Such petition is certified by the terminating association as provided in paragraph (b) of this section.

(b) Each petition shall include the signature, printed name and full address of each voting stockholder signing the petition. Within 5 days of its receipt of a timely filed stockholder petition, the association shall certify whether the signatures on the petition are the signatures of persons who were eligible voting stockholders of the terminating association on the voting record date, and the association shall notify the Farm Credit Administration of such certification.

(c) The petition shall include the name and address of a person who shall serve as petitioners' representative and who shall represent the interests of the petitioners in the reconsideration vote process.

(d) If the terminating association certifies that at least 15 percent of eligible voting stockholders have signed the petition, a special stockholders' meeting shall be called by the association to vote on the reconsideration. Such meeting shall be held within 60 days after the date on which the stockholders were notified of the final result of the termination vote. If a majority of stockholders of the association voting in person or by written proxy vote against the termination, the termination is not approved. If a majority of stockholders of the association voting in person or by written proxy do not vote against the

termination, the termination shall be effective pursuant to the provisions of § 611.1215(f), but not less than 15 days after the reconsideration vote.

(e) The petitioners, through the petitioners' representative, and board of directors of the terminating association shall each have the opportunity to present to the stockholders and other equity holders a written statement of their views regarding the reasons for calling a reconsideration vote. Such statements shall be reasonable in length and shall be mailed to stockholders and other equity holders along with the notice of stockholders' meeting for the reconsideration vote.

(f) The terminating association shall, at its expense, immediately provide the stockholders initiating the petition with a list of the names and addresses of all of the eligible voting stockholders of the association. All other expenses for the petition shall be borne by the petitioners. Reasonable expenses for the reconsideration vote shall be borne by the terminating association.

§ 611.1240 Exit fee.

(a) For the purposes of this section, the following definitions apply:

(1) *Assets* means all assets less appropriate valuation reserves as determined in accordance with GAAP except where otherwise noted in this section.

(2) *Contingent liabilities* means those liabilities that, in accordance with GAAP, will materialize if certain events occur.

(3) *Total capital* means all capital stock, surplus and undivided profits accounts as determined in accordance with GAAP, except where otherwise noted in this section, and as adjusted pursuant to the requirements of § 611.1240.

(b) A terminating association shall pay an exit fee equal to the amount by which the total capital of the association exceeds 6 percent of its assets. The exit fee shall be paid to the Farm Credit Assistance Fund if the effective date of termination is prior to January 1, 1992 or to the Farm Credit Insurance Fund if the effective date is after that date.

(c) The computation date for the exit fee shall be the quarter end preceding the filing date. A certified audit of the terminating association shall be performed by a qualified public accountant, as defined in § 621.2(a)(21), as of the computation date. The Farm Credit Administration may, in its complete discretion, waive this requirement if such an audit was performed as of a date within the 6 months preceding the computation date.

(d) The method of computation shall be as follows:

(1) The average daily balance of assets and total capital for the past 12 months preceding the computation date will be computed as a basis for determining the exit fee; and

(2) Account balances shall be computed in accordance with GAAP and adjusted in accordance with paragraphs (e), (f), (g), and (h) of this section.

(e) For purposes of determining the amount of the exit fee, the Farm Credit Administration will review the terminating association's transactions over a 3-year period prior to the date of the adoption of the termination resolution. If this review determines that the terminating association's account balances do not accurately reflect the value of its assets and liabilities, or that the association has retired capital outside the ordinary course of business, or that the association has taken any other actions unrelated to its core business that have the effect of increasing or decreasing the amount of the exit fee, the Farm Credit Administration may make adjustments to the association's assets, liabilities, or capital and recompute the exit fee based on these adjustments. The review by the Farm Credit Administration shall include, but not be limited to:

(1) Additions to or subtractions from the allowance for loan losses;

(2) Additions to assets from transactions that are outside the terminating association's ordinary course of business;

(3) Dividends or patronage refunds exceeding the terminating association's usual practices;

(4) Changes in the terminating association's capitalization plan or implementation of that plan that increased or decreased the level of borrower investment;

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

(6) Assets that may be overvalued, undervalued or not recorded on the books of the association.

(f) Capital of the terminating association owned by another Farm Credit institution or by the Financial Assistance Corporation shall not be included in capital for the purpose of determining the exit fee.

(g) In the event that GAAP requires that a liability be recorded on the balance sheet that will be offset by an unrecorded asset, the transaction recording the liability shall be reversed.

(h) In the event the terminating association has recorded expenses that

would not have been recorded but for the termination, such transactions shall be reversed.

(i) The exit fee shall be paid by certified check, or other means agreed upon by the Farm Credit Administration and the terminating association.

§ 611.1250 Repayment of debts.

(a) The terminating association shall provide for the payment or assumption by the successor institution of all outstanding debt obligations.

(b) The terminating association may establish and maintain an OFI relationship with the Farm Credit Bank, subject to all applicable requirements of part 614, subpart P, of this chapter. The general financing agreement establishing the OFI relationship shall provide for the assumption by the successor institution of any direct loan or other obligation that a production credit association is authorized to incur and that is not repaid at the time of termination. Any part of the direct loan or other obligation that is not linked to a loan covered by the general financing agreement shall be repaid as provided in paragraph (c) of this section.

(c) A terminating association that will not become an OFI shall either repay its direct loan and any other obligations to the Farm Credit Bank upon termination or shall arrange with the Farm Credit Bank to repay the loan or obligation. The terminating association may, with the concurrence of the Farm Credit Bank, repay the loan or obligation over a period that shall not exceed 3 years following termination.

(d) The terminating association shall pay or make provision for payment of obligations to any other Farm Credit institutions under any loss-sharing agreement or other agreement.

§ 611.1255 Retirement of equities owned.

(a) The Farm Credit Bank may retire all equities of the Farm Credit Bank that are owned by the terminating association on the termination date or may enter into an agreement with the terminating association that would provide for a phased retirement of the equities. Any such plan for phased retirement shall provide for such retirement to be completed by the earlier to occur on the date on which the terminating association repays all indebtedness to the bank or the date which is 3 years from the termination date, provided that no retirement shall occur during that period if any such retirement would result in the Farm Credit Bank's failure to meet minimum capital requirements.

(b) If the Farm Credit Bank and the terminating association are unable to reach agreement regarding the retirement of Farm Credit Bank equities, either institution may send the most recent proposals to the Farm Credit Administration along with an explanation of the points of disagreement. The Farm Credit Administration may require the bank to retire terminating association equities under such conditions as the Farm Credit Administration may require.

(c) No retirement shall occur if the Farm Credit Administration determines that the retirement of equities of the Farm Credit Bank would threaten the viability of the Farm Credit Bank.

(d) The amount to be paid to a terminating association in the retirement of equities owned in the Farm Credit Bank shall be equal to the amount of the allocated equities owned by the terminating association in the Farm Credit Bank, less any impairment, at the date the request for retirement is made by the terminating association. If the Financial Assistance Corporation owns any preferred stock in the Farm Credit Bank, any impairment of bank capital shall be applied first against the value of association-owned equities for determining the value of stock to be retired.

(e) If the terminating association has outstanding stock issued to another Farm Credit institution or outstanding preferred stock issued to the Financial Assistance Corporation, the association shall retire all such investment prior to termination.

(f) A Farm Credit Bank's equities obligated to be retired under any agreement between the terminating association and the Farm Credit Bank shall not be considered as part of the permanent capital of the Farm Credit Bank for purposes of § 615.5240.

§ 611.1260 Dissenters' rights.

(a) Dissenting stockholders, at their discretion, may, but are not required to, have their stock or participation certificates in the terminating association retired as provided in paragraph (b) of this section. To be eligible to be a dissenting stockholder a person must be the owner, other than a Farm Credit institution, of voting or non-voting stock or other equities of the terminating association who was either—

(1) Not eligible to vote on the termination resolution; or

(2) Eligible to vote on the termination resolution and voted, in person or by proxy, against such resolution.

(b) The terminating association shall pay dissenting stockholders in

accordance with the priorities in liquidation set forth in the bylaws of the terminating association.

Notwithstanding any provision of paragraph (c) to the contrary, dissenting stockholders who hold eligible borrower stock shall receive not less than par value for their stock.

(c)(1) Except as provided in paragraph (d) of this section, the price paid to dissenting stockholders who own common stock or participation certificates shall be the adjusted book value, which is the book value on the computation date adjusted to reflect—

(i) Any increase or decrease in asset value resulting from the appraisals required in § 611.1240; and

(ii) Deduction of the amount of the exit fee.

(2) Payments made to dissenting stockholders who own common stock or participation certificates referred to in paragraph (c)(1) of this section shall be made on the following basis. If the adjusted book value of the common stock is less than or equal to the par or stated value of the stock, the full amount of the payment shall be in cash. If the adjusted book value of the common stock is greater than its par or stated value, the association:

(i) Shall pay in cash an amount equal to the par or stated value of the stock or participation certificate; and

(ii) Shall cause or otherwise provide for the successor institution to issue on the date of termination subordinated debt to the stockholder in an amount equal to the amount by which the book value exceeds the par or stated value of the stock or participation certificate. Such subordinated notes shall have a maturity date not in excess of 7 years after the date of issuance, shall have a priority on liquidation ahead of all equity shares but shall be subordinated to the claims of all other creditors, and shall carry a rate of interest that shall be not less than the rate for debt of comparable maturity issued by the Treasury of the United States plus 1 percent.

(d) If the association has adopted bylaws in accordance with § 611.1210(e), dissenting stockholders who own common stock or participation certificates issued in accordance with such bylaws shall be paid in cash an amount equal to the lesser of the par or adjusted book value of such stock or certificates.

(e) For the purposes of this section, common stock consists of voting stock, non-voting stock that was formerly voting stock, and stock that has no

priority of payment over any other class upon liquidation.

(f) The notice to stockholders and other holders of equity interests required in § 611.1220(e) shall include the following information:

(1) A statement of the rights of dissenting stockholders as specified in paragraph (a) of this section;

(2) The current book and par value per share, and the expected book and market value of the stockholder's pro rata interest in the successor institution; and

(3) An explanation of the procedure by which stockholders may exercise dissenters' rights and the form they shall return to the terminating association informing it of their intent to exercise such rights. The notification form by which stockholders may exercise dissenters' rights shall include the date by which the form must be returned to the terminating association, as specified in paragraph (b) of this section, and a place for stockholders to mark or indicate that they intend to exercise dissenters' rights. The notification form shall be a convenient method for the stockholders to notify the association and may consist of, but is not limited to, a postcard or pre-printed return envelope.

(g) An explanation that dissenting stockholders shall have until 30 days following notification of their dissenters' rights to request retirement of their stock or participation certificates. The stockholders' election to retire stock shall be rescinded in a petition for reconsideration is successful.

(h) An explanation that maintenance of a borrowing relationship with the successor institution shall not be required as a condition for owing stock in the successor institution, unless otherwise directed by the bylaws of the successor institution.

§ 611.1266 Loan refinancing by borrowers.

(a) All loans and loan assets of the terminating association shall become assets of the successor institution unless they have been sold by the terminating association to another lending institution or refinanced by the borrower.

(b) If an association has been designated to serve the territory of the terminating association prior to the mailing of the information statement, or if an association that offers credit services of the same type as the terminating association is already chartered to serve the territory, such association shall be identified in the information statement. In addition, such

association shall provide the terminating association with the following information:

(1) The name and address of the association office that the borrower may contact;

(2) An explanation of the procedures to apply for financing with the association and the procedures by which the loan may be transferred to the association;

(3) An explanation of the stock purchase requirements of the new association; and

(4) Any other information the association wishes to include or routinely provides to new borrowers.

(c) If the terminating association receives the information required in paragraph (b) of this section prior to the mailing of the information statement to borrowers, the terminating association shall include such information in the information statement. If an association has not been designated to serve the territory or if the terminating association does not receive the information required in paragraph (b) of this section prior to the mailing of the information statement, the terminating association shall furnish each borrower with the address and telephone number of the district Farm Credit Bank with instructions that the bank may be contacted in the future to determine the name and address of the association(s) that will serve the territory in the future.

(d) The terminating association shall provide credit and loan information to the association designated to serve the territory upon the borrower's request, in accordance with §§ 618.8300 through 618.8325, and take such other steps as are necessary to facilitate the transfer of the loan to the association.

§ 611.1270 Continuation of borrower rights.

Terminating associations which maintain an OFI relationship with the Farm Credit Bank shall comply with borrower rights provisions contained in part 614, subparts K, L, M and N of this chapter. The terminating association may not require a waiver of applicable borrower rights provisions as a condition of ownership interest in and continued financing by the successor institution.

Dated: January 23, 1991

Curtis M. Anderson,

Secretary, Farm Credit Administration Board
[FR Doc. 91-2030 Filed 1-29-91; 8:45 am]

BILLING CODE 6705-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1061, 1604, and 1704

Application for Exemption from Preemption

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is removing 16 CFR part 1604, regarding applications for exemption from preemption under the Flammable Fabric Act, and part 1704, dealing with applications for exemption from preemption under the Poison Prevention Packaging Act. The Commission is adding a new part 1061, concerning applications for exemption from preemption under four of the statutes administered by the Commission: the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and Poison Prevention Packaging Act.

DATES: This rule will become effective on March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia Pollitzer, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone 301-492-6980.

SUPPLEMENTARY INFORMATION:

A. Background

Four of the acts administered by the Consumer Product Safety Commission contain specific preemption provisions. These are the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051 *et seq.*, the Federal Hazardous Substances Act ("FHSA") 15 U.S.C. 1261 *et seq.*, the Flammable Fabrics Act ("FFA"), 15 U.S.C. 1191 *et seq.*, and the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1471 *et seq.*

Although these provisions are not completely identical, each generally provides that when there is a product safety requirement in effect under one of these four acts that concerns a risk of injury from a product covered by one of the acts, no State or local government may, except as may apply to such products obtained for the government's own use, enforce a non-identical State or local statute or regulation designed to protect against the same risk or injury as that of a Commission requirement. Thus, in such situations, a federal requirement preempts State or local requirements not identical to a Commission requirement.

Each of the four acts also contains provisions that authorize the

Commission, upon application by the State or local government, to issue a regulation exempting a State or local statute or regulation from the preemptive effect of a Commission statute, standard, or regulation. To grant such an exemption, the Commission must find that the State or local statute or regulation provides a significantly higher degree of protection and does not unduly burden interstate commerce.

In 1976 the Commission published interim regulations concerning applications for exemption from preemption under the FFA (41 FR 31569, July 29, 1976, 16 CFR part 1604), and the PPPA (41 FR 37126, September 2, 1976, 16 CFR part 1704). On December 28, 1988, the Commission proposed to remove those interim regulations and replace them with a new part 1061 regarding applications for exemption from preemption under all four statutes. 53 FR 52428, December 28, 1988.

B. Explanation of Rule

1. Threshold for an Application For an Exemption

Section 1061.4 provides that applications for exemption from preemption will be considered on their merits where the applicant demonstrates that the State or local requirement for which exemption is sought has been enacted or issued in final form by an authorized body, where the application is made by that authorized body, and where the State or local requirement is actually preempted by a Commission statute, standard or regulation.

2. Form and Content of an Application for Exemption

Sections 1061.5 through 1061.10 specify the required form and content of an application for exemption. Section 1061.5 requires that an application identify the specific State or local requirement for which exemption is sought, the specific Commission statute, standard, or regulation that preempts the State or local requirement, and the authorized State or local contact person. Section 1061.6 provides that applicants should submit the most complete information possible to support the necessary findings, and the section requires applicants to explain the absence of otherwise required information. Section 1061.7 requires that an application include a copy of the State or local requirement, any available legislative history or other background materials concerning the requirement, and an explanation of why compliance would not cause the product to be in violation of applicable Commission

requirements. Section 1061.8 requires applicants to provide various kinds of information on the risk of injury the local requirement is intended to address and to demonstrate that the State or local requirement provides a significantly higher degree of protection than the Commission statute, standard, or regulation. Section 1061.9 requires applicants to provide various kinds of information to demonstrate the effect of the State or local requirement on interstate commerce. Section 1061.10 requires applicants to provide a statement which identifies potentially affected individuals or groups.

3. Incomplete Applications

Section 1061.11 specifies how the Commission will handle incomplete applications.

4. Grant of Denial of an Application for Exemption

Section 1061.12 describes the procedures the Commission will follow in considering an application for exemption on its merits. In general, if the Commission proposes to grant an exemption it will publish a proposed regulation in the **Federal Register** and provide an opportunity for written and oral comments. If, after considering any comments received, it grants an application, the Commission will publish a final exemption regulation, which will include its findings. If it rejects an application, before or after soliciting public comments, the Commission will publish its reasons in the **Federal Register**.

C. Commission Response to Comments

The Commission received four comments in response to the proposed rule. All of the comments favored the rule, but had some suggestions for minor changes. Summaries of the comments and the Commission's responses are set forth below.

Section 1061.2(f): Definitions

Springs Industries, Inc. suggested expanding the definition of "State or local requirement" contained in § 1061.2(f) to include standards or requirements applied as common or statutory law by a State or local court or a federal court exercising diversity jurisdiction. The commenter asserts that in litigation concerning the FFA, courts are applying a "reasonableness" standard that is inconsistent with Congressional intent to provide a nationwide standard. The American Textile Manufacturers Institute, Inc. expressed its support for Springs Industries' comment.

The Commission does not believe that "standards" applied by courts should be included in the definition of "State or local requirement." Generally, courts do not establish prospective standards or regulations applicable to a category of persons, but instead deal with the specific parties before them. It is the Commission's view that the statutory preemption provisions were intended to address the legislative type of standard or regulation. Moreover, these procedures for application for exemption will be operative only once a State or local government recognizes that preemption may exist and, therefore, wishes to seek an exemption. It remains the role of the courts to determine whether a particular State or local standard or requirement is preempted.

Who May Apply for Exemption

The Chemical Specialists Manufacturers Association ("CSMA"), noting concerns with labeling requirements imposed by State and local legislation and regulations like California's Proposition 65, welcomed the Commission's proposed rule. CSMA recommended expanding the proposal to allow interested parties other than State and local governments to apply to the Commission for a "preemption determination." CSMA asserts that this would allow the Commission an opportunity to address preemption questions when State or local governments are unwilling to request a determination, and would allow the Commission to establish a consistent body of decisions on preemption.

After considering this suggestion, the Commission declines to make such a change. The four statutes themselves specifically provide for applications by "a State or political subdivision of a State." Thus, it does not appear that Congress contemplated exemption applications from other parties. To the extent that CSMA is asking for the Commission to provide an opportunity for others to seek the Commission's views on whether a particular State or local requirement would be preempted, the stated procedure for exemption would not affect such an effort. Interested persons have been, and continue to be, free to request an advisory opinion from the Office of the General Counsel concerning a specific preemption question. See 16 CFR 1000.7. More importantly, an interested person who believes that a requirement may be preempted can file suit to resolve the question, as courts are the final arbiters of such preemption questions.

Section 1061.9: Information Concerning Interstate Commerce

The Gas Manufacturers Association ("GAMA") made several comments concerning the information to be submitted on interstate commerce (§ 1061.9). GAMA approved of § 1061.9(e) requiring information concerning specific local conditions that make the State or local requirement necessary to protect public health and safety. GAMA also noted with approval that the proposal appeared to recognize that the determination of "undue burden on interstate commerce" involves a weighing of costs and benefits. However, GAMA recommended the following three changes to the proposal: (1) Addition of a requirement that an applicant show the degree to which specified local conditions are substantially different than elsewhere; (2) deletion of § 1061.9(d) requesting information concerning the probability that other State or local governments would apply for similar exemptions; and (3) publication in the Federal Register of applications that meet threshold requirements so that manufacturers, distributors, and dealers would have an opportunity to comment before the Commission makes a determination on an application.

After considering these comments, the Commission has decided to retain § 1061.9 as proposed without any changes. (1) It is the Commission's view that information concerning the degree to which local conditions vary from one place to another will be included in the information provided under § 1061.9(e) requiring information about the specified local conditions necessitating an exemption. Therefore, no additional requirement is necessary. (2) The Commission's four statutes at issue specifically provide that the Commission consider and make findings concerning the probability that other State or local governments will seek exemptions for similar requirements. Thus, the Commission must consider such information in making a determination on an application for exemption from preemption. (3) The Commission believes that the Rulemaking procedure that the statutory preemption provisions require will provide adequate opportunity for interested persons to comment on any request for exemption. Providing an additional step would considerably increase the time necessary for the application procedure.

D. Regulatory Flexibility Act

As explained in the proposed rule, the Commission expects that this rule will

have only minimal effect on small government bodies. Thus, the Commission certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation establishes procedures for the Commission to evaluate and decide applications from State and local governmental entities for exemptions from the preemptive effect of Commission statutes, standards, and regulations. Although states and larger counties and municipalities may have the capabilities to provide the required information, smaller government entities may have difficulty doing so. However, because local governments rarely have product specific safety regulations (with the exception of fireworks), they generally would not need to submit applications for exemption from preemption. Therefore these small governmental organizations would ordinarily remain unaffected by the rule the Commission is issuing. In the event that a small governmental organization is affected by the rule, the Commission staff is willing to assist those entities with preparation of the documents necessary to support an application.

List of Subjects in 16 CFR Part 1061

Administrative practice and procedure, Consumer protection, Intergovernmental relations.

For the reasons set forth in the preamble, the Consumer Product Safety Commission is amending title 16, chapter II, as follows:

PART 1604—[REMOVED]

1. Part 1604 is removed.

PART 1704—[REMOVED]

2. Part 1704 is removed.

3. Part 1061 is added to read as follows:

PART 1061—APPLICATIONS FOR EXEMPTION FROM PREEMPTION

- Sec.
- 1061.1 Scope and purpose.
 - 1061.2 Definitions.
 - 1061.3 Statutory considerations.
 - 1061.4 Threshold requirements for applications for exemption.
 - 1061.5 Form of applications for exemption.
 - 1061.6 Contents of applications for exemption.
 - 1061.7 Documentation of the state or local requirement.
 - 1061.8 Information on the heightened degree of protection afforded.
 - 1061.9 Information about the effect on interstate commerce.
 - 1061.10 Information on affected parties.
 - 1061.11 Incomplete or insufficient applications.

Sec.
1061.12 Commission consideration on merits.

Authority: 15 U.S.C. 2075; 15 U.S.C. 1261n; 15 U.S.C. 1203; 15 U.S.C. 1476.

§ 1061.1 Scope and purpose.

(a) This part applies to the submission and consideration of applications by State and local governments for exemption from preemption by statutes, standards, and regulations of the Consumer Product Safety Commission.

(b) This part implements section 26 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2075), section 18 of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261n), section 16 of the Flammable Fabrics Act (FFA) (15 U.S.C. 1203), and section 7 of the Poison Prevention Packaging Act (PPPA) (15 U.S.C. 1476), all as amended.

§ 1061.2 Definitions.

For the purposes of this part:

(a) *Commission* means the Consumer Product Safety Commission.

(b) *Commission's statutory preemption provisions* and *statutory preemption provisions* means section 26 of the CPSA (15 U.S.C. 2075), section 18 of the FHSA (15 U.S.C. 1261n), section 16 of the FFA (15 U.S.C. 1203) and section 7 of the PPPA (15 U.S.C. 1476).

(c) *Commission statute, standard, or regulation* means a statute, standard, regulation, or requirement that is designated as having a preemptive effect by the Commission's statutory preemption provisions.

(d) *State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands.

(e) *Local government* means any political subdivision of a State having the authority to establish or continue in effect any standard, regulation, or requirement that has the force of law and is applicable to a consumer product.

(f) *State or local requirement* means any statute, standard, regulation, ordinance, or other requirement that applies to a product regulated by the Commission, that is issued by a State or local government, and that is intended to have the force of law when in effect.

§ 1061.3 Statutory considerations.

(a) The Commission's statutory preemption provisions provide, generally, that whenever consumer products are subject to certain Commission statutes, standards, or regulations, a State or local requirement applicable to the same product is

preempted, i.e., superseded and made unenforceable, if both are designed to protect against the same risk of injury or illness, unless the State or local requirement is identical to the Commission's statutory requirement, standard, or regulation. A State or local requirement is not preempted if the product it is applicable to is for the State or local government's own use and the requirement provides a higher degree of protection than the Commission's statutory requirement, standard, or regulation.

(b) The Commission's statutory preemption provisions provide, generally, that if a State or local government wants to enforce its own requirement that is preempted, the State or local government must seek an exemption from the Commission before any such enforcement. The Commission may, by regulation, exempt a State or local requirement from preemption if it finds that the State or local requirement affords a significantly higher degree of protection than the Commission's statute, standard, or regulation, and that it does not unduly burden interstate commerce. Such findings must be included in any exemption regulation.

§ 1061.4 Threshold requirements for applications for exemption.

(a) The Commission will consider an application for preemption on its merits, only if the application demonstrates all of the following:

(1) The State or local requirement has been enacted or issued in final form by an authorized official or instrumentality of the State or local government. For purposes of this section, a State or local requirement may be considered to have been enacted or issued in final form even though it is preempted by a Commission standard or regulation.

(2) The applicant is an official or instrumentality of a State or local government having authority to act for, or on behalf of, that government in applying for an exemption from preemption for the safety requirement referred to in the application.

(3) The State or local requirement is preempted under a Commission statutory preemption provision by a Commission statute, standard, or regulation. A State or local requirement is preempted if the following tests are met:

(i) There is a Commission statute, standard, or regulation in effect that is applicable to the product covered by the State or local requirement.

(ii) The Commission statute, standard, or regulation is designated as having a preemptive effect under a statutory preemption provision.

(iii) The State or local requirement is designed to protect against the same risk of injury or illness as that addressed by the Commission statute, standard, or regulation.

(iv) The State or local requirement is not identical to the Commission statute, standard, or regulation.

(b) State and local governments may contact the Commission's Office of the General Counsel to obtain informal advice on whether a State or local requirement meets the threshold requirements of paragraph (a) of this section.

§ 1061.5 Form of applications for exemption.

An application for exemption shall:

(a) Be written in the English language.

(b) Clearly indicate that it is an application for an exemption from preemption by a Commission statute, standard, or regulation.

(c) Identify the State or local requirement that is the subject of the application and give the date it was enacted or issued in final form.

(d) Identify the specific Commission statute, standard, or regulation that is believed to preempt the State or local requirement.

(e) Contain the name and address of the person, branch, department, agency, or other instrumentality of the State or local government that should be notified of the Commission's actions concerning the application.

(f) Document the applicant's authority to act for, or on behalf of, the State or local government in applying for an exemption from preemption for the particular safety requirement in question.

(g) Be signed by an individual having authority to apply for the exemption from federal preemption on behalf of the applicant.

(h) Be submitted, in five copies, to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

§ 1061.6 Contents of applications for exemption.

Applications for exemption shall include the information specified in §§ 1061.7 through 1061.10. More generally, a State or local government seeking an exemption should provide the Commission with the most complete information possible in support of the findings the Commission is required to make in issuing an exemption regulation. If any of the specified information is omitted because it is unavailable or not relevant, such omission should be explained in the application.

§ 1061.7 Documentation of the State or local requirement.

An application for an exemption from preemption shall contain the following information:

(a) A copy of the State or local requirement that is the subject of the application. Where available, the application shall also include copies of any legislative history or background materials used in issuing the requirement, including hearing reports or studies concerning the development or consideration of the requirement.

(b) A written explanation of why compliance with the State or local requirement would not cause the product to be in violation of the applicable Commission statute, standard, or regulation.

§ 1061.8 Information on the heightened degree of protection afforded.

An application for an exemption from preemption shall also contain information demonstrating that the State or local requirement provides a significantly higher degree of protection from the risk of injury or illness than the preempting Commission statute, standard, or regulation. More specifically, an application shall contain:

(a) A description of the risk of injury or illness addressed by the State or local requirement.

(b) A detailed explanation of the State or local requirement and its rationale.

(c) An analysis of differences between the State or local requirement and the Commission statute, standard, or regulation.

(d) A detailed explanation of the State or local test method and its rationale.

(e) Information comparing available test results for the Commission statute, standard, or regulation and the State or local requirement.

(f) Information to show hazard reduction as a result of the State or local requirement, including injury data and results of accident simulation.

(g) Any other information that is relevant to applicant's contention that the State or local requirement provides a significantly higher degree of protection than does the Commission statute, standard, or regulation.

(h) Information regarding enforcement of the State or local requirement and sanctions that could be imposed for noncompliance.

§ 1061.9 Information about the effect on interstate commerce.

An application for exemption from preemption shall provide information on the effect on interstate commerce a

granting of the requested exemption would be expected to cause, including the extent of the burden and the benefit to public health and safety that would be provided by the State or local requirement. More specifically, applications for exemption shall include, where available, information showing:

(a) That it is technologically feasible to comply with the State or local requirement. Evidence of technological feasibility could take the form of:

(1) Statements by affected persons indicating ability to comply with the State or local government requirement.

(2) Statements indicating that other jurisdictions have established similar requirements that have been, or could be, met by persons affected by the requirement that is the subject of the application.

(3) Information as to technological product or process modifications necessary to achieve compliance with the State or local requirement.

(4) Any other information indicating the technological feasibility of compliance with the State or local requirement.

(b) That it is economically feasible to comply with the State or local requirement, i.e., that there would not be significant adverse effects on the production and distribution of the regulated products. Evidence of economic feasibility could take the form of:

(1) Information showing that the State or local requirement would not result in the unavailability (or result in a significant decline in the availability) of the product, either in the interstate market or within the geographic boundary of the State or local government imposing the requirement.

(2) Statements from persons likely to be affected by the State or local requirement concerning the anticipated effect of the requirement on the availability or continued marketing of the product.

(3) Any other information indicating the economic impact of compliance with the State or local requirement, such as projections of the anticipated effect of the State or local requirement on the sales and prices of the product, both in interstate commerce and within the geographic area of the State or local government.

(c) The present geographic distribution of the product to which the State or local requirement would apply, and projections of future geographic distribution. Evidence of the geographic distribution could take the form of governmental or private information or data (including statements from manufacturers, distributors, or retailers

of the product) showing advertising in the interstate market, interstate retailing, or interstate distribution.

(d) The probability of other States or local governments applying for an exemption for a similar requirement. Evidence of the probability that other States or local governments would apply for an exemption could take the form of statements from other States or local governments indicating their intentions.

(e) That specified local conditions require the State or local government to apply with the exemption in order to adequately protect the public health or safety of the State or local area.

§ 1061.10 Information on affected parties.

An application for an exemption from preemption shall include a statement which identifies in general terms, parties potentially affected by the State or local requirement, especially small businesses, including manufacturers, distributors, retailers, consumers, and consumer groups.

§ 1061.11 Incomplete or insufficient applications.

(a) If an application fails to meet the threshold requirements of § 1061.4(a) of this part, the Office of General Counsel will inform the applicant and return the application without prejudice to its being resubmitted.

(b) If an application fails to provide all the information specified in §§ 1061.5 through 1061.10 of this part, and fails to fully explain why it has not been provided, the Office of General Counsel will either:

(1) Return it to the applicant without prejudice to its being resubmitted,

(2) Notify the applicant and allow it to provide the missing information, or

(3) If the deficiencies are minor and the applicant concurs, forward it to the Commission for consideration on its merits.

(c) If the Commission or the Commission staff believes that additional information is necessary or useful for a proper evaluation of the application, the Commission or Commission staff will promptly request the applicant to furnish such additional information.

(d) If an application is not returned under paragraphs (a) or (b) of this section, the Commission will consider it on its merits.

§ 1061.12 Commission consideration on merits.

(a) If the Commission proposes to grant an application for exemption it will, in accordance with 5 U.S.C. 553, publish a notice of that fact in the *Federal Register*, including a proposed

exemption regulation, and provide an opportunity for written and oral comments on the proposed exemption by any interested party.

(b) The Commission will evaluate all timely written and oral submissions received from interested parties, as well as any other available and relevant information on the proposal.

(c) The Commission's evaluation will focus on:

(1) Whether the State or local requirement provides a significantly higher degree of protection than the Commission statute or regulation from the risk of injury or illness that they both address.

(2) Whether the State or local requirement would unduly burden interstate commerce if the grant of the exemption from preemption allows it to go into effect. The Commission will evaluate these factors in accordance with the Commission's statutory preemption provisions and their legislative history.

(3) Whether compliance with the State or local requirements would not cause the product to be in violation of the applicable Commission statute, standard, or regulation.

(d) If, after evaluating the record, the Commission determines to grant an exemption, it will publish a final exemption regulation, including the findings required by the statutory preemption provisions, in the *Federal Register*.

(e) If the Commission denies an application, whether or not published for comment, it will publish its reasons for doing so in the *Federal Register*.

Dated: January 22, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-1947 Filed 1-29-91; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8323]

RIN 1545-AL06

Information Reporting on Real Estate Transactions; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D.

8323), which were published Thursday, December 13, 1990, (55 FR 51282). The regulations related to the information reporting requirements for real estate transactions contained in section 6045(e).

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur E. Davis (202) 377-9581 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections, supersede § 1.6045-3T on the effective date and affect persons required to make returns of information under section 6045(e). Section 6045(e) was added to the Code by section 1521 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2746). Section 6045(e) was amended by section 1015(e) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, 102 Stat. 3342).

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8323), which were the subject of FR Doc. 90-29239, is corrected as follows:

§ 1.6045-4 [Corrected]

Par. 1. On page 51289, in the second column, in § 1.6045-4, paragraph (m)(1), in the indented paragraph preceding the flush language, line four of the indented paragraph, the word "will" is corrected to read "may".

Par. 2. on page 51290, in the first column, in § 1.6045-4, paragraph (r) (Example 2), line sixteen, the letter "J" at the end of the line is corrected to read "C".

Par. 3. On page 51290, in the first column, in § 1.6045-4, paragraph (r) (Example 4) (i), line 4, the figure "\$20,000" is corrected to read "\$10,000".

Par. 4. on page 51290, in the first column, in § 1.6045-4, paragraph (r) (Example 4) (i), line six, the phrase "market value of \$120,000", is corrected to read "market value of \$120,000 and is encumbered by a \$10,000 liability (which is assumed by G)".

Par. 5. On page 51290, in the first column, in § 1.6045-4, paragraph (r) (Example 4) (i), beginning in line six, the sentence "No liabilities will be assumed in the transaction and neither property is subject to any liabilities." is corrected to read "No other liabilities are involved in the transaction."

Par. 6. On page 51290, in the second column, in § 1.6045-4, paragraph (r) (Example 4) (iii), line three, the phrase "proceeds of \$20,000 (the cash received by H)" is corrected to read "proceeds of \$20,000 (the amount received by H consisting of cash (\$10,000) and consideration treated as cash (\$10,000) under paragraph (i) of this section)."

Dale D. Goode,

*Federal Register Liaison Officer Assistant
Chief Counsel (Corporate).*

[FR Doc. 91-2089 Filed 1-29-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RiN 1024-AB86

**Voyageurs National Park, MN;
Snowmobile Regulations**

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking amends 36 CFR 7.33 by adding paragraph (b) which specifically designates routes, portages and water surfaces open to snowmobile use. This amendment is necessary to authorize snowmobile use within Voyageurs National park. The intended effects are to provide for safe snowmobile use, to protect park resources, and to provide appropriate enjoyment to park users.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ben Clary, Superintendent, Voyageurs National Park, HCR 9, Box 600, International Falls, MN 56649.

SUPPLEMENTARY INFORMATION:

Background

Title 36, Code of Federal Regulations (36 CFR), § 2.18(c) requires the promulgation of special regulations to authorize snowmobile use within areas of the National Park System.

These regulations allow snowmobiling on designated lakes, land trails and safety portages within Voyageurs National Park. They reflect the legislative history and planning and public participation process summarized below.

Voyageurs National Park was authorized in 1971 and established in 1975. The park consists of approximately 219,128 acres of which 85,506 acres or 39 percent are water.

The water portions of the park have long served as primary transportation routes, and motorized travel on the

major lakes (Rainy, Kabetogama, Namakan and Sand Point) precedes the park's establishment. Today motorboats and snowmobiles are used both for recreation and to provide year-round access to homes and vacation cabins in the adjacent region.

Overland snowmobile travel is also long established. The most popular overland snowmobile route existing today is the Chain of Lakes Trail located on the western half of the Kabetogama Peninsula. This twelve-mile trail connects five interior lakes with Kabetogama Lake by a series of portages and abandoned logging roads.

"NPS Management Policies" and 36 CFR 2.18 state that snowmobiling will be limited to designated routes and frozen lake surfaces used by motorized vehicles during other seasons or as otherwise provided by Federal statute.

The legislation authorizing Voyageurs National Park (Pub. L. 91-661, as codified at 16 U.S.C. 160 *et seq.*) includes such a provision. Section 303 of the Act, 16 U.S.C. 160h, states: "the Secretary [of the Interior] may, when planning for development of the park, include appropriate provisions for winter sports, including the use of snowmobiles."

The park's 1980 "Master Plan" followed this direction by providing for the use of snowmobiles on lakes and traditionally used land routes.

In 1983 the park's initial wilderness study was completed and the resulting draft "Wilderness Recommendation" and accompanying "Environmental Impact Statement" (EIS) were submitted to the Department of Interior's Legislative Counsel on June 8, 1983. A second recommendation superseding the June 8, 1983, recommendation was transmitted on November 17, 1983. Neither the first or the second recommendation were transmitted to the President or to the Congress.

An update of the wilderness study is scheduled to commence in the fall of 1990.

In April, 1989 the park's "Trail Plan and Environmental Assessment" was completed. This document proposed the development of certain overland snowmobile trails with the understanding that these trails would not preclude further wilderness study and potential wilderness designation.

A "Special Regulations For Lake Surface Snowmobiling Environmental Assessment" was completed in 1990 and supported the "Master Plan" recommendation to allow snowmobiling on Rainy, Kabetogama, Namakan and Sand Point Lakes.

This regulation implements the above recommendations by authorizing

snowmobile use on the frozen lake surfaces of the four major lakes, on the Chain of Lakes Trail, across associated safety portages, and on several short spur routes.

In order to mitigate snowmobile impacts on critical wildlife habitat within the park, temporary closures of the lake surfaces could occur under the authority of § 1.5 of 36 CFR. Other mitigation measures to reduce the potential impacts of snowmobiles on the park's resources will also be implemented. These actions include continued monitoring and analysis by the resource management and research staffs of resource conditions and trends, and visitor use and behavior. Non-regulatory measures will be adopted, including marking and grooming of trails on the lake surfaces to route snowmobiles away from areas frequented by wolves and other wildlife.

Summary of Public Comments

On October 29, 1990, the National Park Service, Department of the Interior, published in the *Federal Register* (55 FR 43382) a proposed rule to allow snowmobile use on designated lakes, land trails and safety portages within Voyageurs National Park. This proposal was made available for public review and comment for a period of thirty (30) days following publication in the *Federal Register*, and ending on November 28, 1990. The Superintendent, Voyageurs National Park, received a total of five written comments during this period. Of these, four were from organizations, and one was from a private individual.

Analysis of Public Comments

Three of the organizations offered no specific comments other than favoring the regulation.

The fourth organization provided ten specific comments opposing the regulation.

The private individual expressed three specific comments opposing snowmobile use on the Chain of Lakes Trail.

The areas of concern expressed by the organization opposing the regulations and the private individual were similar and have been combined into the following categories: (1) Compliance with Federal laws and National Park Service policies, (2) Wilderness designation, (3) Opportunity to comment, (4) Unlimited major lake access vs. established trails, (5) Snowmobile bias, and (6) Impacts to resources.

The Service's responses to the comments are as follows:

(1) Compliance with Federal Laws and National Park Service Policies

Both the organization and the private individual felt the proposed regulation violated Federal laws and National Park Service policies.

The National Park disagrees. "NPS Management Policies" and 36 CFR 2.18 state that snowmobiling may be allowed on designated routes and frozen lake surfaces used by motorized vehicles and motorboats during other seasons or as otherwise provided by Federal statute. The water surfaces designated for snowmobile use by this regulation are used by motorboats during other seasons. The legislation authorizing Voyageurs National Park (Public Law 91-661, as codified at 16 U.S.C. sections 160 *et seq.*) includes a provision for the use of snowmobiles.

(2) Wilderness Designation

The organization and the private individual commented that snowmobiling should not be allowed until a final wilderness proposal is submitted to Congress.

The National Park Service believes there is no conflict between this regulation and any future wilderness designation. Snowmobile use under this regulation will not diminish the suitability of any potential wilderness identified during the re-initiated wilderness study process. As stated in the "Background" section, this regulation will be amended as appropriate to reflect the recommendations of the re-initiated wilderness study.

(3) Opportunity To Comment

The organization and the private individual felt the public had not been given sufficient opportunity to comment on the Chain of Lakes Trail.

The decision to allow snowmobile use on this traditional snowmobile route has been public knowledge since Voyageurs National Park issued a press release in September, 1989 identifying it as an interim on-land route until the Kabetogama Peninsula Trail outlined in the "trail Plan" could be constructed. The thirty (30) day comment period provided for in the proposed regulation fully complies with both the statutory provisions of 5 U.S.C. 553, and the policy requirements of the Department of Interior (Part 318, Department of the Interior Manual, Chapter 6.4D).

Additional opportunities for the public to react to snowmobiling within the park will occur as part of the re-initiated wilderness study process.

(4) Unlimited Major Lake Access vs. Established Trails

The organization was concerned that the proposed regulation allowed unlimited snowmobile travel on the major lakes, rather than limiting this activity to designated trails.

Both the 1980 "Master Plan" and the 1990 "Special Regulations for Lake Surface Snowmobiling Environmental Assessment" recommended snowmobile use be allowed on the entire frozen surfaces of the major lakes.

Use of the frozen lake surfaces will be managed by non-regulatory measures, including the marking and grooming of trails to route snowmobiles away from areas frequented by wolves and other wildlife.

(5) Snowmobile Bias

Another concern expressed was that the National Park Service is manifesting a biased intent favoring snowmobiling over other recreational activities.

The 1990 "Trail Plan", the recommendations of which served as the foundation for this regulation, in fact addressed all types of trails. This regulation is not intended for the benefit of one type of user to the exclusion of others, but rather reflects the legislation authorizing the Park (Pub. L. 91-661). This legislation recognized snowmobiling as an appropriate use.

(6) Impacts to Resources

Comments in this final category addressed concerns that snowmobile use allowed by this regulation will impact wildlife and habitat.

As stated in the "Background" section, mitigation measures to reduce the potential impacts of snowmobiles on the park's resources will be implemented. Monitoring and analysis of resource conditions and visitor use trends by the resource management and research staff will continue. Temporary closures will occur as appropriate, and non-regulatory measures will be adopted, including marking and grooming of trails on the lake surfaces to route snowmobiles away from areas frequented by wolves and other wildlife.

After reviewing all comments, the National Park Service has determined that the regulation as previously published represents a reasonable balance of use and resource protection accurately reflecting the park's legislative history and planning and public participation process. Therefore, the regulation is published as a final rule without change.

Drafting Information

The primary author of this regulation is Hugh Dougher, Park Ranger, Voyageurs National Park.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

Pursuant to the National Environmental Policy Act, 42 U.S.C. 4332, the Service prepared a Draft Trail Plan and Environmental Assessment. The environmental assessment led to a Finding of No Significant Impact.

Public input was prepared during a series of public hearings. Extensive public comment, both oral and written, was received regarding the matter of snowmobile use.

The NPS has determined that this rulemaking is not a "major rule" within the meaning of E.O. 12291 ((46 FR 13193); Feb. 19, 1981). In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which became effective January 1, 1981, the Service has determined that the regulations proposed in the rulemaking will not have a significant economic effect on a substantial number of small entities, nor does it require a preparation of a regulatory analysis.

The Service has reviewed this rule as directed by Executive Order 12360, "Government Actions and Interference with Constitutionally Protected Property Rights," to determine if this rule has "policies that have taking implications." The Service has determined that this rule does not have takings implications because it allows an activity previously prohibited by Service regulations. This will allow winter access to private lands within and adjacent to the park which is otherwise prohibited.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8-137 (1981) and DC Code 40-721 (1981).

2. Section 7.33 is amended by adding paragraph (b) to read as follows:

§ 7.33 Voyageurs National Park.

(b) *Snowmobiles.* (1) The following lakes and trails within Voyageurs National Park are open to snowmobile use:

(i) The frozen waters of Rainy, Kabetogama, Namakan, Mukooda, Little Trout and Sand Point Lakes.

(ii) The Moose River Railroad Grade from the park boundary north to Ash River, and then east to Moose Bay, Namakan Lake.

(iii) The portage trail between Grassy Bay and Little Trout Lake.

(iv) The Chain of Lakes Trail from its intersection with the Black Bay to Moose Bay portage, across Locator, War Club, Quill, Loiten, and Shoepack Lakes, to Kabetogama Lake.

(2) Snowmobile use is allowed across the following marked safety portages: Black Bay to Moose Bay, Lost Bay to Saginaw Bay, Laurins Bay to Kettle Falls, Squirrel Narrows, Squaw Narrows, Grassy Bay, Namakan Narrows, Swansons Bay, Mukooda Lake to Sand Point Lake (north), Mukooda Lake to Sand Point Lake (south), Mukooda Lake to Crane Lake, Tar Point, Kohler Bay, and Sullivan Bay to Kabetogama Lake.

(3) The Superintendent may determine yearly opening and closing dates for snowmobile use, and temporarily close trails or lake surfaces, taking into consideration public safety, wildlife management, weather, and park management objectives.

(4) Maps showing the designated routes are available at park headquarters and at ranger stations.

(5) Snowmobile use outside open designated routes and lake surfaces is prohibited.

Dated: January 5, 1991.

Scott Sewell,

Acting Assistant Secretary for Fish, Wildlife and Parks.

[FR Doc. 91-2178 Filed 1-29-91; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 17****Medical; Amendment To Incorporate Technical Changes**

AGENCY: Department of Veterans Affairs.

ACTION: Final technical amendments.

SUMMARY: The Department of Veterans Affairs (VA) is making technical amendments to correct editorial type errors contained in 38 CFR part 17 that

were inadvertently not changed when the amendments were published.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT:

Paul C. Tryhus, Chief, Policies and Procedures Division (161B), Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2143.

SUPPLEMENTARY INFORMATION: This amendment simply corrects editorial type errors contained in VA regulations at 38 CFR 17.56(a), 17.80(a)(4) and 17.99. Sections 17.56(a) and 17.80(a)(4) are being amended to correct paragraph citations. Section 17.99 is being amended to correct an authority citation and to delete an improper reference, i.e., "subject to the limitations in § 17.53;" which has no impact on the authority to procure fee basis services, community hospital or nursing home care and individually authorized services.

VA finds that good cause exists for making these amendments final without previous publication of a notice of proposed rulemaking. All of the changes contained in these regulations are technical ones designed to correct erroneous references and citations. There are no substantive changes. Public participation in this rulemaking is therefore unnecessary (38 CFR 1.12).

Since a notice of proposed rulemaking is unnecessary and will not be published, these final amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject to the requirements of the Act. These amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These final regulatory amendments do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The final regulatory amendments will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs and prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or foreign-based markets.

The Catalog of Federal Domestic Assistance numbers are 64.009 and 62.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant