United States v. *Mendoza*, 464 U.S. 154 (1984). Indeed, the *Mendoza* Court encouraged agencies to seek reviews in other circuits if they disagree with one circuit's view of the law, since to allow ''only one final adjudication would deprive this Court of the benefit it receives from permitting several courts of appeals to explore a difficult question before this Court grants *certiorari*.'' *Id.* at 160 (citations omitted). Thus, Petitioner's assertion that the Commission's action in declining to follow one Circuit Court's decision nationwide is ''unprecedented'' is incorrect. Rather, it is the norm.

However, the primary reason for the Commission's decision not to open a rulemaking in response to this Petition is its continued belief that the definition of ''express advocacy'' found at 11 CFR 100.22(b) is constitutional. A communication that is ''unmistakable, unambiguous, and suggestive of only one meaning,'' where ''reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action'' can be read consistently with both *Buckley* v. *Valeo*, 424 U.S. 1 (1976), and *FEC* v. *Massachusetts Citizens for Life*, 238, 249 (1986) (''*MCFL*'').

While the *Buckley* Court gave specific examples of words it found to convey express advocacy, it made clear that the list was not exhaustive. *Buckley*, 424 U.S. at 44 n.52. Further, in discussing the reporting requirements triggered by independent expenditures made to fund ''express advocacy'' communications, the Court noted that this portion of the Federal Election Campaign Act, 2 U.S.C. 434(c), reaches ''only funds that expressly advocate the election or defeat of a clearly identified candidate,'' adding that ''[t]his reading is directed precisely to that spending that is unambiguously related to the campaign of a particular federal candidate.'' *Id.* at 80 (footnote omitted). In *MCFL*, the Court held that materials that were ''marginally less direct than 'Vote for Smith' '' were, nevertheless, express candidate advocacy, even though the materials themselves stated that they were not endorsing particular candidates. *MCFL*, 479 U.S. at 249. One commenter, who believes that *Furgatch* correctly held that a ''short list of words * * * does not exhaust the capacity of the English language'' to advocate the election or defeat of a candidate, 807 F.2d at 863, noted that, under the change proposed by the Petitioner, ''only those who lacked the minimal wherewithal to choose some words other than 'vote for' or the like would be subject to the regulation.''

In sum, both because it is well settled that a decision by one Circuit Court of Appeals is not binding in other circuits, and because the Commission believes the challenged regulation is constitutional, the Commission has decided not to open a rulemaking in response to this Petition.

Therefore, at its open meeting of February 12, 1998, the Commission voted not to initiate a rulemaking to revise the Commission's definition of express advocacy found at 11 CFR 100.22. Copies of the General Counsel's recommendation on which the Commission's decision is based are available for public inspection and copying in the Commission's Public Records Office, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–4140 or toll-free (800) 424–9530. Interested persons may also obtain a copy by dialing the Commission's FAXLINE service at (202) 501–3413 and following its instructions. Request document # 232.

Dated: February 13, 1998.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 98–4166 Filed 2–18–98; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 933

[No. 98–05]

RIN 3069–AA67

Membership Approval

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation on membership in the Federal Home Loan Banks (Banks) (Membership Regulation) to make certain technical and substantive revisions to the regulation that would improve the operation of the membership application process, as well as further streamline application processing for certain types of applicants for Bank membership.

DATES: Comments on this proposed rule must be received in writing on or before March 23, 1998.

ADDRESSES: Comments should be mailed to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Deputy Director, Compliance Assistance Division, Office of Policy, (202) 408–2848, or Sharon B. Like, Senior Attorney-Adviser, Office of General Counsel, (202) 408–2930, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Under the Federal Home Loan Bank Act (Act), the Finance Board is responsible for the supervision and regulation of the 12 Banks, which provide advances and other financial services to their member institutions. See 12 U.S.C. 1422a(a). Institutions may become members of a Bank if they meet certain membership eligibility and minimum stock purchase criteria set forth in the Act and the Finance Board's implementing Membership Regulation. See *id.* sections 1424, 1426, 1430(e)(3); 12 CFR part 933.

On August 16, 1996, the Finance Board published a final rule amending the Membership Regulation to authorize the 12 Banks, rather than the Finance Board, to approve or deny all applications for Bank membership, subject to certain criteria for determining compliance with the statutory eligibility requirements for Bank membership formerly contained in policy guidelines used by the Finance Board in approving membership applications. See 61 FR 42531 (Aug. 16, 1996) (codified at 12 CFR part 933); Federal Home Loan Bank System Membership Application Guidelines, Finance Board Res. No. 93–88 (Nov. 17, 1993) (Guidelines). The final rule also provided for streamlined application processing for certain types of membership applications. See 12 CFR part 933.

In the course of processing and approving membership applications under the Membership Regulation, the Banks have raised a number of technical and substantive issues with the Regulation whose resolution would improve operation of the membership application process and streamline membership application processing for certain types of institutions. These issues and proposed amendments for addressing these issues are discussed below in the **ANALYSIS OF PROPOSED RULE** section. The Finance Board requests comment on all aspects of the proposed amendments.

II. Analysis of Proposed Rule

A. Definitions Section 933.1

1. Definition of ''Primary Regulator''—Section 933.1(y)

Section 933.1(y) of the current Membership Regulation defines the term ''primary regulator'' as the chartering authority for federally-chartered applicants, the insuring authority for federally-insured applicants that are not federally-chartered, or the appropriate state regulator for all other applicants. See *id.* § 933.1(y). This definition does not include the Federal Reserve Board (FRB) for state-chartered applicants that are members of the Federal Reserve System (FRS). Under § 933.11(a)(3), a Bank is required to obtain as part of the membership application the applicant's most recent available regulatory examination report prepared by its primary regulator or appropriate state regulator. See *id.* § 933.11(a)(3). Section 933.11(b)(1) provides that an applicant must have received a composite regulatory examination rating from its primary regulator or appropriate state regulator within two years preceding the date the Bank receives the application for membership. See *id.* § 933.11(b)(1).

One Bank has identified a potential problem with meeting these financial condition requirements where the FRB and a state financial institution regulator alternate examinations of a state-chartered applicant that is an FRS member. When the state financial institution regulator performs the examination, it provides a copy of the regulatory examination report to the FRB. According to the Bank, certain state financial institution regulators in its district cannot or will not release to the Bank copies of the regulatory examination reports they have prepared, nor will the FRB release to the Bank copies of the state regulatory examination reports. Thus, regulatory examination reports prepared under such circumstances are not available in order for the Bank to obtain a regulatory examination rating for the applicant. Nor may the Bank obtain and rely on a copy of the regulatory examination report and rating of the FRB when the FRB has examined the applicant, because the definition of ''primary regulator'' in § 933.1(y) does not include the FRB. Thus, in such situations, the Bank may not be able to obtain any examination report and rating for the applicant and, therefore, the applicant cannot be deemed to satisfy the financial condition requirements of § § 933.11(a)(3) and (b)(1). The presumption of noncompliance with the financial condition requirements would have to be rebutted under § 933.17(d)(1) by preparing a written justification providing substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 933.6(a)(4), notwithstanding the lack of a regulatory examination rating. See *id.* § 933.17(d)(1).

The exclusion of the FRB from the definition of ''primary regulator'' in § 933.1(y) was an oversight. The Banks should be able to rely on regulatory examination reports and examination ratings from the FRB to determine an applicant's financial condition under § 933.11. An applicant should not have to go through the additional burden of establishing its satisfactory financial condition through the rebuttal process if an FRB regulatory examination report and rating are available. Accordingly, the proposed rule revises the definition of ''primary regulator'' in § 933.1(y), as further described below, to include the FRB.

Another limitation of the current definition of *primary regulator* in § 933.1(y) is that it requires a Bank to obtain the regulatory examination report and rating only from the ''primary'' regulator listed, even though a regulatory examination report and rating from an alternate regulator also may be available. For example, many potential members are examined by more than one regulator. However, under the regulation, the Bank is required to obtain the regulatory examination report and rating prepared by the Federal Deposit Insurance Corporation (FDIC) for a state-chartered, FDIC-insured institution, even though there may be a more recent state regulatory examination report and rating available for such institution. A Bank should not be limited to using only the ''primary'' regulator's regulatory examination report and rating when more current information is available.

Accordingly, the proposed rule amends § 933.1(y) by changing the term ''primary regulator'' to the broader term ''appropriate regulator,'' and defining it to mean a regulatory entity listed in § 933.8, as applicable. The regulatory entities listed in § 933.8 are: for depository institution applicants, the FDIC, FRB, National Credit Union Administration, Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), or other appropriate state regulator; and for insurance company applicants, an appropriate state regulator accredited by the National Association of Insurance Commissioners. See *id.* § 933.8. The proposed rule replaces the terms ''primary regulator'' and ''primary regulator or appropriate state regulator'' wherever they appear throughout the Membership Regulation with the term ''appropriate regulator.''

2. Nonperforming Assets Performance Trend Criterion; Definitions of ''Nonperforming Loans, Leases and Securities;'' ''Performing Loans, Leases and Securities''—Sections 933.11(b)(3)(i)(B); 933.1 (u), (x).

Section 933.11(b)(3)(i)(B) of the current Membership Regulation provides that if an applicant's most recent composite regulatory examination rating within the past two years was ''2'' or ''3,'' the applicant's nonperforming loans, leases and securities plus foreclosed and repossessed real estate may not have exceeded 10 percent of its performing loans, leases and securities plus foreclosed and repossessed real estate, in the most recent calendar quarter. See *id.* § 933.11(b)(3)(i)(B). This nonperforming assets performance trend criterion was intended to be the same criterion as that required in the former Finance Board Guidelines, but was described incorrectly in the Membership Regulation.

The proposed rule revises § 933.11(b)(3)(i)(B) to state the criterion correctly, as follows: the applicant's nonperforming loans and leases plus other real estate owned, did not exceed 10 percent of its total loans and leases plus other real estate owned, in the most recent calendar quarter. The proposed rule makes a conforming change to the definition of ''nonperforming loans, leases and securities'' in § 933.1(u) by deleting the references to securities. The proposed rule also makes a conforming change to § 933.1(x) by replacing the definition of ''performing loans, leases and securities'' with a new definition of ''other real estate owned.''

3. Definition of ''Consolidation''—Section 933.1(ee)

Sections 933.24 and 933.25 of the current Membership Regulation set forth certain requirements and procedures in the event of the ''consolidation'' of members with other members or members with nonmembers. See *id.* §§ 933.24, 933.25. Questions have been raised as to whether the term ''consolidation'' applies only to transactions falling within the narrow meaning of the term, *i.e.*, combinations where a new company is formed to acquire the net assets of the combining companies. The term ''consolidation'' was not intended to apply solely to such combinations of entities. Accordingly, the proposed rule clarifies this issue by

adding a new definition of ''consolidation'' in § 933.1(ee) to include a consolidation, a merger, or a purchase of all of the assets and assumption of all of the liabilities of an entity by another entity.

B. Action on Applications—Section 933.3(c)

Section 933.3(c) of the current Membership Regulation requires a Bank to notify an applicant when its application is deemed by the Bank to be complete. See *id*. § 933.3(c). Section 933.3(c) also requires a Bank to notify an applicant if the 60-day period for acting on a membership application is stopped, and when the period for acting on the application is resumed. See id. The proposed rule requires the Bank to provide such notices to the applicant in writing. This will ensure that there is a written record of the Banks' actions during the application processing period, which may be relevant in the event of an appeal of a Bank's denial of an application for membership.

C. Automatic Membership for Certain Consolidations—Section 933.4(d)

Sections 933.4 (a) and (b) of the current Membership Regulation provide for automatic Bank membership only for institutions required by law to become Bank members, and for institutions that have undergone certain charter conversions, respectively. See *id*. § § 933.4 (a), (b). Several Banks have suggested that the regulation also should allow for automatic Bank membership where a member consolidates with a nonmember, the nonmember is the surviving entity, and a significant percentage of the surviving entity's total assets are derived from the assets of the disappearing member. Where the surviving entity has substantially the same assets as the disappearing member, the surviving entity arguably should not have to go through the membership application process. The Finance Board believes this argument has merit where 90 percent or more of the total assets of the surviving entity are derived from the assets of the disappearing member, and where the surviving entity provides written notice to the Bank that it desires to be a member of the Bank. These proposed requirements are set forth in proposed new § 933.4(d).

The Finance Board specifically requests comment on the arguments for or against this proposal, including whether the 90 percent calculation or some other number or approach is an appropriate method for determining the similarity of the disappearing and surviving entities. One Bank has suggested that the chief executive officer (CEO) of the surviving entity should be required to submit a letter stating that the surviving entity continues to meet the membership eligibility requirements. The Finance Board specifically requests comment on whether such a letter, or a certification from the CEO, should be required.

D. Allowance for Loan and Lease Losses Performance Trend Criterion—Section 933.11(b)(3)(i)(C)

Section 933.11(b)(3)(i)(C) of the current Membership Regulation provides that if an applicant's most recent composite regulatory examination rating within the past two years was ''2'' or ''3,'' the applicant's ratio of its allowance for loan and lease losses to nonperforming loans, leases and securities must have been 60 percent or greater during 4 of the 6 most recent calendar quarters. This allowance for loan and lease losses performance trend criterion was intended to be the same criterion as that required in the former Finance Board Guidelines, but was described incorrectly in the Membership Regulation. The proposed rule revises this section to state the criterion correctly, as follows: The applicant's ratio of its allowance for loan and lease losses plus the allocated transfer risk reserve to nonperforming loans and leases was 60 percent or greater during 4 of the 6 most recent calendar quarters.

E. De Novo Insured Depository Institution Applicants—Section 933.14

Section 933.14 of the current Membership Regulation sets forth the requirements for processing and approving membership applications from de novo insured depository institution applicants. See *id*. § 933.14. Section 933.14(a) provides for streamlined processing for newly-chartered applicants that have not yet commenced operations, which are deemed to meet the duly organized, inspection and regulation, financial condition, and character of management eligibility requirements. See id. § 933.14(a)(1). Section 933.14(b) requires newly-chartered applicants that have commenced operations to meet all of the eligibility requirements, subject to certain exceptions provided in paragraph (b). In particular, if such applicants have not yet filed regulatory financial reports for the last six calendar quarters preceding the date the Bank receives the membership application, the applicant need not meet the performance trend criteria in § 933.11(b)(3)(i) (A) through (C) if the applicant has filed regulatory financial reports for at least three calendar quarters of operation. See *id*. § 933.14(b)(2)(iii)(A).

A number of Banks have stated that the requirement for having filed three calendar quarters of regulatory financial reports should not be necessary for institutions that have recently commenced operations. The financial condition and character of management of such institutions already will have been recently reviewed and approved by their chartering and insuring regulators (see, *e.g.*, 12 U.S.C. 1816, 12 CFR 303.7(d)(ii) (FDIC); 12 U.S.C. 26, 12 CFR 5.20 (OCC)), will have been based on a forward looking business plan, and should not have changed significantly since the commencement of operations. The Banks should not have to duplicate the review performed by the prospective member's appropriate regulator. Further, de novo insured depository institution applicants should be treated similarly to mandatory de novo thrift institutions, which do not have to satisfy any specific Bank membership eligibility requirements since they are required by law to be Bank members.

The Finance Board believes there is merit in these arguments. Accordingly, proposed § 933.14(a)(1) extends the streamlined application processing currently applicable to newly-chartered insured depository institutions that have not yet commenced operations to newly-chartered insured depository institutions that have commenced operations. Such applicants would be deemed to meet the duly organized, inspection and regulation, financial condition, and character of management eligibility requirements. In order to be considered newly-chartered and subject to the streamlined application processing procedures of § 933.14(a)(1), applicants would have to have been chartered within three years prior to the date the Bank receives the application for membership. Three years is consistent with the time period for de novo treatment applied by other financial institution regulators. See, *e.g.*, 12 CFR 543.3(a) (OTS).

The Finance Board specifically requests comment on the arguments for or against this proposal.

F. Recent Merger or Acquisition Applicants—Section 933.15

Sections 933.9 and 933.10 of the current Membership Regulation require applicants to show satisfaction of the ''makes long-term home mortgage loans'' and ''10 percent residential mortgage loans'' requirements, respectively, based on the applicant's most recent regulatory financial report. See *id*. §§ 933.9, 933.10. An applicant

that recently has merged with or acquired another institution prior to applying for Bank membership must show satisfaction of these eligibility requirements based on the most recent regulatory financial report filed by the consolidated entity. See *id*. However, a newly consolidated entity may not be able to show compliance with these requirements as it may be several months before the next quarterly regulatory financial report is due to be filed with the appropriate regulator.

One Bank has suggested that in order to allow the applicant to be approved for membership immediately, the applicant should be allowed to provide the most recent regulatory financial report filed prior to the merger or acquisition by each of the institutions that entered into the merger or acquisition. The Bank then would consolidate the relevant data from both reports for purposes of determining compliance with §§ 933.9 and 933.10. The Finance Board believes this suggestion has merit, provided that in the case of showing satisfaction of the 10 percent residential mortgage loans requirement, the Bank obtains a certification from the applicant that there has been no material decrease in the ratio of consolidated residential mortgage loans to consolidated total assets derived from the reports since the reports were filed with the appropriate regulator. These proposed requirements are set forth in proposed new §§ 933.15 (a) and (b).

III. Regulatory Flexibility Act

The proposed rule implements statutory requirements binding on all Banks and on all applicants for Bank membership, regardless of their size. The Finance Board is not at liberty to make adjustments to those requirements to accommodate small entities. The proposed rule does not impose any additional regulatory requirements that will have a disproportionate impact on small entities. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act, see 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The current information collection has been approved by the Office of Management and Budget (OMB) and assigned OMB control number 3069–0004. The Finance Board has submitted to the OMB an analysis of the proposed changes to the collection of information contained in §§ 933.15 (a) and (b) of the proposed rule, described more fully in part II. of the **SUPPLEMENTARY INFORMATION.** The Banks and, where appropriate, the Finance Board, will use the proposed changes to the information collection to determine whether a recent merger or acquisition applicant meets certain membership eligibility requirements. See 12 U.S.C. 1424(a)(1)(C), (a)(2)(A); 12 CFR 933.9, 933.10. Only applicants meeting such requirements may become Bank members. See *id*.; *id*. Responses are required to obtain or retain a benefit. See 12 U.S.C. 1424. The Finance Board and the Banks will maintain the confidentiality of information obtained from respondents pursuant to the proposed changes to the collection of information as required by applicable statute, regulation, and agency policy. Books or records relating to this proposed collection of information must be retained as provided in the regulation.

Likely respondents and/or recordkeepers will be the Finance Board, Banks, and financial institutions that have recently undergone a merger or acquisition and are eligible to become Bank members under the Act, see *id*. section 1424(a)(1), including any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or insured depository institution. Potential respondents are not required to respond to the proposed changes to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by the OMB. See 44 U.S.C. 3512(a).

The proposed changes to the information collection will not impose any additional costs on the Finance Board or the Banks. The estimated annual reporting and recordkeeping hour burden on respondents is:

a. Number of respondents—15.

b. Total annual responses—15; Percentage of these responses collected electronically—0%.

c. Total annual hours requested—60.

d. Current OMB inventory—59,152.

e. Difference—(59,092).

The estimated annual reporting and recordkeeping cost burden on respondents is:

a. Total annualized capital/startup costs—$0.

b. Total annual costs (O&M)—$0.

c. Total annualized cost requested—$1,800.

d. Current OMB inventory—$1,684,000.

e. Difference—($1,682,200).

Comments concerning the accuracy of the burden estimates and suggestions for reducing the burden may be submitted to the Finance Board in writing at the address listed above.

The Finance Board has submitted the proposed collection of information to the OMB for review in accordance with the Paperwork Reduction Act of 1995. See *id*. section 3501 *et seq*. Comments regarding the proposed changes to the collection of information may be submitted in writing to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Federal Housing Finance Board, Washington, D.C. 20503, by April 20, 1998.

List of Subjects in 12 CFR Part 933

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby proposes to amend title 12, chapter IX, part 933, Code of Federal Regulations, as follows:

PART 933—MEMBERS OF THE BANKS

1. The authority citation for part 933 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

2. Part 933 is amended by removing the term ''primary regulator or appropriate state regulator'' wherever it appears and adding the term ''appropriate regulator'' in its place in the following locations:

a. § 933.1(l);
b. § 933.1(z);
c. § 933.2(c)(2);
d. § 933.11(a)(3);
e. § 933.11(a)(4);
f. § 933.11(b)(1);
g. § 933.12(a);
h. § 933.17(e)(1) introductory text;
i. § 933.17(e)(1)(i);
j. § 933.17(e)(2)(i); and
k. § 933.17(e)(3)(i).

§ 933.11 [Amended]

3. Section 933.11(b)(3)(i) introductory text is amended by removing the term ''primary regulatory or appropriate state regulator'' and adding the term ''appropriate regulator'' in its place.

§§ 933.11 and 933.17 [Amended]

4. Sections 933.11(a)(4) and 933.17(e)(1)(i) are amended by removing the phrase '', whichever is applicable,'' wherever it appears.

5. Part 933 is amended by removing the term ''primary regulator'' wherever it appears and adding the term ''appropriate regulator'' in its place in the following locations:

a. § 933.1(aa);
b. § 933.9;
c. § 933.10;
d. § 933.11(a)(1);
e. § 933.11(b)(2);
f. § 933.11(b)(3)(i) introductory text;
g. § 933.16; and
h. § 933.17(f)(1).

6. Section 933.1 is amended by revising paragraphs (u), (x), and (y), and adding paragraph (ee) to read as follows:

§ 933.1 Definitions.

* * * * *

(u) *Nonperforming loans and leases* means the sum of the following, reported on a regulatory financial report: Loans and leases that have been past due for 90 days (60 days in the case of credit union applicants) or longer but are still accruing; loans and leases on a nonaccrual basis; and restructured loans and leases (not already reported as nonperforming).

* * * * *

(x) *Other real estate owned* means all other real estate owned (*i.e.*, foreclosed and repossessed real estate), reported on a regulatory financial report, and does not include direct and indirect investments in real estate ventures.

(y) *Appropriate regulator* means a regulatory entity listed in § 933.8, as applicable.

* * * * *

(ee) *Consolidation* includes a consolidation, a merger, or a purchase of all of the assets and assumption of all of the liabilities of an entity by another entity.

7. Section 933.3 is amended by revising the fourth and fifth sentences of paragraph (c) to read as follows:

§ 933.3 Decision on application.

* * * * *

(c) * * * The Bank shall notify an applicant in writing when its application is deemed by the Bank to be complete. The Bank also shall notify an applicant in writing if the 60-day clock is stopped, and when the clock is resumed. * * *

* * * * *

8. Section 933.4 is amended by adding paragraph (d) to read as follows:

§ 933.4 Automatic membership.

* * * * *

(d) *Automatic membership for certain consolidations*. If a member institution and nonmember institution are consolidated and the consolidated institution will operate under the charter of the nonmember institution, on the effective date of the consolidation, the consolidated institution automatically shall become a member of the Bank of which the disappearing institution was a member immediately prior to the effective date of the consolidation, provided that:

(1) 90 percent or more of the total assets of the consolidated institution are derived from the assets of the disappearing member institution; and

(2) The consolidated institution provides written notice to such Bank that it desires to be a member of the Bank.

9. Section 933.11 is amended by revising paragraphs (b)(3)(i)(B) and (b)(3)(i)(C) to read as follows:

§ 933.11 Financial condition requirement for applicants other than insurance companies.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) *Nonperforming assets*. The applicant's nonperforming loans and leases plus other real estate owned, did not exceed 10 percent of its total loans and leases plus other real estate owned, in the most recent calendar quarter; and

(C) *Allowance for loan and lease losses*. The applicant's ratio of its allowance for loan and lease losses plus the allocated transfer risk reserve to nonperforming loans and leases was 60 percent or greater during 4 of the 6 most recent calendar quarters.

* * * * *

10. Section 933.14 is amended by removing the heading for paragraph (a), revising paragraph (a)(1), and removing and reserving paragraph (b), to read as follows:

§ 933.14 De novo insured depository institution applicants.

(a)(1) *Duly organized, subject to inspection and regulation, financial condition and character of management requirements*. An insured depository institution applicant that is chartered within three years prior to the date the Bank receives the applicant's application for membership in the Bank, is deemed to meet the requirements of §§ 933.7, 933.8, 933.11 and 933.12.

* * * * *

11. Section 933.15 is amended by redesignating paragraphs (a) and (b) as paragraphs (c) and (d), respectively, further redesignating newly designated paragraphs (c)(i) and (c)(ii) as paragraphs (c)(1) and (c)(2), respectively, revising ''primary regulator'' to read ''appropriate regulator'' in newly designated paragraphs (c)(1) and (c)(2), and adding new paragraphs (a) and (b), to read as follows:

§ 933.15 Recent merger or acquisition applicants.

* * * * *

(a) *Makes long-term home mortgage loans requirement—Regulatory financial reports*. For purposes of § 933.9, an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed a regulatory financial report for the combined entity with its appropriate regulator, shall provide the most recent regulatory financial report filed with the appropriate regulator prior to the merger or acquisition by each of the institutions that entered into the merger or acquisition, and the Bank shall consolidate the long-term home mortgage loans data in such reports for purposes of determining the applicant's compliance with § 933.9.

(b) *10 percent requirement for insured depository institution applicants—Regulatory financial reports*. For purposes of § 933.10, an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed a regulatory financial report for the combined entity with its appropriate regulator, shall provide the most recent regulatory financial report filed with the appropriate regulator prior to the merger or acquisition by each of the institutions that entered into the merger or acquisition, and the Bank shall consolidate the residential mortgage loans and total assets data in such reports for purposes of determining the applicant's compliance with § 933.10, provided the Bank obtains a certification from the applicant that there has been no material decrease in the ratio of consolidated residential mortgage loans to consolidated total assets derived from such reports since the reports were filed with the appropriate regulator.

* * * * *

12. Section 933.25 is amended by revising paragraph (a) to read as follows:

§ 933.25 Consolidations involving nonmembers.

(a) *Termination of membership*. Except as provided in § 933.4(d), if a member is consolidated into an institution that is not a member, its membership in the Bank terminates upon cancellation of its charter.

* * * * *

Dated: February 12, 1998.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 98–4069 Filed 2–18–98; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–133–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that currently requires an inspection of reworked aileron/elevator power control units (PCU's) and rudder PCU's to determine if reworked PCU manifold cylinder bores containing chrome plating are installed, and replacement of the cylinder bores with bores that have been reworked using the oversize method or the steel sleeve method, if necessary. That AD was prompted by a review of the design of the flight control systems on Model 737 series airplanes. The actions specified by that AD are intended to prevent a reduced rate of movement of the elevator, aileron, or rudder due to contamination of hydraulic fluid from chrome plating chips; such reduced rate of movement, if not corrected, could result in reduced controllability of the airplane. This action would expand the applicability of the existing AD to include airplanes equipped with certain rudder PCU's.

DATES: Comments must be received by April 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–133–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Don Kurle, Senior Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2798; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–133–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–133–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 24, 1997, the FAA issued AD 97–09–14, amendment 39–10010 (62 FR 24008, May 2, 1997), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, to require an inspection of reworked aileron/elevator power control units (PCU's) and rudder PCU's to determine if reworked PCU manifold cylinder bores containing chrome plating are installed, and replacement of the cylinder bores with bores that have been reworked using the oversize method or the steel sleeve method, if necessary. That action was prompted by a review of the design of the flight control systems on Model 737 series airplanes. The requirements of that AD are intended to prevent a reduced rate of movement of the elevator, aileron, or rudder due to contamination of hydraulic fluid from chrome plating chips; such reduced rate of movement, if not corrected, could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has requested that the applicability of the existing AD be revised to include airplanes equipped with a rudder power control unit (PCU) having part number 65C37052–( ). The manufacturer points out that AD 94–01–07, amendment 39–8789 (59 FR 4570, February 1, 1994), currently requires certain modifications to the rudder PCU having part number 65–44861. This modification involves replacing the existing dual servo valve in the rudder PCU with an improved servo valve, which revises the existing part number of the rudder PCU to part number 65C37052–( ). However, AD 94–01–07 does not require an inspection of rudder PCU's to determine if reworked PCU manifold cylinder bores containing chrome plating are installed. Upon examination of the request, the FAA finds that Model 737–100, –200, –300, –400, and –500 series airplanes equipped with a rudder PCU having part number 65C37052–( ) are also subject to the addressed unsafe condition of AD 97–09–14 and has included this part number in the applicability of this proposed AD.

In addition, the manufacturer pointed out that it erroneously indicated in comments submitted to the notice of proposed rulemaking (NPRM) for AD 97–09–14 that only aileron/elevator actuators having a part number that includes ''ss'' could be eliminated from the applicability of that rule. (Based on these comments, the FAA revised the final rule of that AD accordingly.) However, the ''ss'' is in the serial number, not the part number. The manufacturer also pointed out that it indicated that the ''ss'' only applied to the aileron and elevator PCU's, when it also applies to the rudder PCU's. The FAA has specified this information in the applicability and paragraph (a) of the proposed AD.