Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AC72

Organization; Mergers, Consolidations, and Charter Amendments of Banks or Associations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, we, or our) proposes to amend existing regulations related to mergers and consolidations of Farm Credit System (System) banks and associations to clarify the merger review and approval process and incorporate existing practices in the regulations. The proposed rule would identify when the statutory 60-day review period begins, require that only independent tabulators be authorized to validate ballots and tabulate stockholder votes on mergers or consolidations, require institutions to hold informational meetings on proposed mergers or consolidations if circumstances warrant, explain the reconsideration petition process and specify the voting record date list to be provided to stockholders who wish to file a reconsideration petition. The proposed rule would update cross-references in the existing regulations, incorporate cross references to stockholder voting rules contained elsewhere in part 611, and clarify or update terminology to enhance transparency.

DATES: You may send comments on or before April 20, 2015.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we do not accept comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- Email: Send us an email at *reg-comm@fca.gov.*
- FCA Web site: *http://www.fca.gov.* Select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

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

FOR FURTHER INFORMATION CONTACT: Shirley Hixson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4318, TTY (703) 883–4056, or Laura McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of the proposed rule are to:

- Enhance the efficiency and effectiveness of the reconsideration petition process for the stockholder and provide clarity to System banks and associations on how they must provide a stockholder list to a stockholder when requested for the purpose of filing a petition;
- Improve security and confidentiality over the voting process on mergers and consolidations through the use of independent third-party tabulators;
- Clarify the FCA's review and approval process related to proposed plans of mergers or consolidation in order to facilitate an efficient and timely response; and
- Enhance existing regulations by updating terminology and making other grammatical changes.

II. Background

The FCA issued subparts F and G of part 611 to address the procedures and stockholder disclosure requirements for Farm Credit banks and associations proposed plans of merger or consolidation (collectively, merger(s)), and charter amendments.[1] We propose to amend our merger and charter amendment regulations to respond to inquiries from System banks, associations, their stockholders, and third parties regarding the process for submitting proposed plans of merger and proposed charter amendments to the FCA for review and the related stockholder reconsideration petition process on a stockholder vote in favor of a merger. This proposed rule would enhance existing merger provisions and clarify our review process. Also, this proposed rule would clarify the various ways stockholders may file a reconsideration petition with the FCA, explaining who they would address the petition to and when we would consider the petition to be filed with the FCA.

III. Section-by-Section Analysis

A. Terminology and Other Grammatical Changes [Existing Subparts F and G]

The FCA is committed to using plain language in its rulemaking to facilitate understanding and compliance with requirements that we administer or enforce. Therefore, we propose updating certain terminology and making grammatical changes in subparts F and G to make our regulations more clear, concise, and well organized.

1. Terminology Updates [Existing Subparts F and G]

To be consistent and avoid confusion in how we use certain terms in our regulations, we propose replacing the varied references to ''funding bank'', ''supervisory bank'', and ''district bank'' with ''funding bank'' where used in subparts F and G. Existing regulations in these subparts currently use the terms

[1] *See* 53 FR 50381 (Dec. 15, 1988).

interchangeably. All three terms refer to the same relationship between Farm Credit banks and their affiliated associations. As such, there is no distinguishable purpose for using one term over the other so we believe using a single term will facilitate clear and concise regulations.

We propose adding ''agricultural credit associations'' to the list of institutions subject to the merger provisions in existing § 611.1120(c). This change would update our rules to recognize that System associations may be organized and chartered as agricultural credit associations and operate as cooperatives within the System. Similarly, we propose identifying service corporations in existing §§ 611.1000(c) and 611.1120(c) to recognize their potential existence in merging associations and banks. Also, we propose replacing the term ''bank'' in subparts F and G with ''Farm Credit bank'' to reconcile the term's usage with the definition in § 619.9140.[2] We further propose updating § 611.1010(d) to incorporate the part 611 term ''stockholder-association.'' Using this term should help in making the appropriate distinctions among those stockholders voting on bank charter amendments.

We also propose updating § 611.1010(d) on Farm Credit bank charter amendment votes to recognize different voting structures among Farm Credit banks. The proposal is to add language to the existing rule on bank charter amendments to recognize that agricultural credit banks have different voting procedures from Farm Credit banks.

2. Grammatical Changes [Existing Subparts F and G]

We propose adding the term ''association'' to the section headings for §§ 611.1121, 611.1122, and 611.1123 for clarity. We also propose substituting the phrase ''Farm Credit institution'' for ''bank or association'' when discussing prohibited conduct in § 611.1122, to cover all chartered institutions, as well as implement the terminology used in § 619.9146.

We propose general language changes to subparts F and G to enhance readability. The proposed language changes include:

- Replacing the word ''shall'' throughout subparts F and G with ''must'', ''will'', ''does'', ''may'', or ''is'', as appropriate and consistent with the manner in which ''shall'' is currently used. The word ''shall'' would remain in §§ 611.1122(c)(1) and 611.1124(f)(1).
- Removing the introductory language of existing §§ 611.1121 and 611.1122 due to redundancy and the definitions for ''consolidation'' and ''merger'' in § 611.1122, which are already addressed in existing §§ 619.9110 and 619.9210.
- Revising § 611.1121(d) to combine the existing two sentences into one cohesive sentence explaining that charter amendment approvals will include the amended charter.
- Bifurcating the two provisions in existing § 611.1122(a)(7) into two distinct paragraphs (a)(7) and (8). The proposed rule would amend § 611.1122(a)(7) to include the existing provision that the requesting associations may include any additional information or documents that they wish to submit in support of their request to merge. New § 611.1122(a)(8) would include the other existing provision that the funding bank or the FCA may request additional information.
- Adding the word ''granted'' in the last sentence of new § 611.1122(c)(2) to clarify that merger approvals are granted according to our rules.
- Adding the word ''stockholder'' in revised § 611.1122(d) and (e) to clarify that the meetings discussed in these paragraphs are stockholder meetings.
- Adding the phrase ''in person'' to § 611.1122(d) to clarify and ensure that stockholder voting on a proposed plan of merger is permitted only by voting in person or by proxy. We propose the change in response to inquiries we received on whether or not mail balloting was permitted under existing regulations. The Farm Credit Act of 1971, as amended, (Act) limits stockholder voting methods on proposed plans of mergers to in-person voting and voting by proxy ballots.[3] Voting by mail ballots on mergers is not permitted.
- Adding the reference of ''constituent associations'' to existing § 611.1123(b) to clarify that all associations subject to the proposed plan of merger are required to discuss the proposed changes to their respective bylaws that will result from the proposed merger.

As with the other grammatical changes, we intend no change in the meaning of the affected regulatory provisions.

B. Definitions [Existing § 611.100]

We propose adding three new definitions to § 611.100 that would apply to all of part 611, unless otherwise stated in the regulations. First, we propose adding as new paragraph (b) the term ''FCA'' in order to allow for the use of the ''FCA'' acronym throughout part 611 instead of the full agency name. We then propose the conforming change of replacing ''Farm Credit Administration'' with ''FCA'' in subparts F and G where used. The use of the acronym would enhance readability of the regulation.

Next, we propose adding as new paragraph (i) a definition of ''voting record date'' or ''record date.'' Several regulatory provisions in part 611 reference a voting record date but do not define the term. We propose defining ''voting record date'' as the date set by each institution before a voting event on which a stockholder must own voting stock in order to vote at the event. We recognize there is a practical need for System institutions to identify eligible voting stockholders as of the voting record date set for each stockholder voting event and believe the term must be used consistently throughout the System. We would expect System institutions set a voting record date that is not too far removed from the voting event. Due to changes in the make-up of the stockholder base that may occur between the voting record date and the date the vote is held, the stockholders permitted to vote on the event may not fully reflect the stockholders that will be affected by the long-term results of the voting action if the voting record date is too far removed from the voting event.

Lastly, we propose adding as new § 611.100(j) the term ''voting record date list'' or ''record date list.'' The proposed rule would define a ''voting record date list'' as a list of the names and addresses of borrowers holding voting stock as of the voting record date and who are eligible to cast a vote for a particular event (*e.g.,* a proposed plan of merger or director elections). As proposed, the list would be different from the stockholder list requirements in § 618.8310. The list in new § 611.100(j) would only include voting stockholders, not all stockholders as provided for in § 618.8310, and would identify the person designated to cast the vote. In situations where the voting stock is owned by more than one person or owned by an entity, the list would name the individual designated to cast the vote. Each institution would be expected to update its voting record date list of stockholders, including the names of individuals designated to vote on behalf of multiple obligors or for a

[2] Farm Credit bank as defined in § 619.9140 means Farm Credit Banks, agricultural credit banks, and banks for cooperatives.

[3] Sections 7.0(3), 7.8(a)(3), 7.12(a)(3), 7.13(a)(3) of the Act.

legal entity that is a voting stockholder, each time a voting record date is set. We believe defining this list will facilitate the orderly and accurate distribution of ballots and help ensure proper validation of ballots and tabulation of votes for each voting event.

C. Mergers and Consolidations [Subparts F and G]

1. Prohibited Activities [Existing §§ 611.1020(c) and 611.1122(f) and (h); New § 611.1122(i)]

We propose relocating in new § 611.1122(i) the existing provisions on prohibited acts in connection with a merger or consolidation, currently located in existing §§ 611.1020(c) and 611.1122(f) and (h). This is intended to improve the readability of our rule and ensure institutions are fully aware of the requirement that stockholders be provided with information that is complete, accurate and not misleading. Also, the differences in the existing provisions would be reconciled. Additionally, we propose adding ''agents'' and other parties participating in the affairs of the institution to the existing list of those covered by the prohibitions. Adding these persons is intended to provide consistency with similar prohibitions elsewhere in our rules and reduce the potential for using third-parties agents to circumvent the prohibitions. We also propose the conforming change of adding ''agents'' and other parties participating in the affairs of the institution to the list of those covered by prohibited conduct under our regulations on territorial adjustments at existing § 611.1124(g) and (i).

The proposed rule would also clarify the FCA's existing authority to require that Farm Credit banks and associations issue a corrected stockholder disclosure document to replace the document originally issued in connection with a stockholder vote on a proposed merger. The proposed clarification would add language to existing §§ 611.1020(c) and 611.1122(h) explaining our authority to require reissuance of the document if we determine that the stockholder disclosure document is inaccurate, incomplete, or misleading. Complete and accurate information is necessary to stockholders' understanding of the action on which they will vote and is critical to their making an informed decision. We also propose a conforming change to our regulations on territorial adjustments to add a new § 611.1124(j) containing the same language.

2. Farm Credit Bank Mergers and Consolidations [Existing § 611.1020]

We propose updating § 611.1020 to clarify that proposed bank mergers are generally subject to the same merger requirements as associations. Existing § 611.1020(b) references certain association merger provisions related to document submission that Farm Credit banks must follow. We propose updating § 611.1020(b) to clarify that Farm Credit banks seeking to merge must follow requirements for association mergers, including the FCA review process, stockholder voting, and reconsideration petition requirements. However, given that bank mergers may result in processing considerations that differ from associations, we also propose adding an exemption to § 611.1020(b) that would relieve banks from complying with association merger provisions, if determined appropriate by the FCA.

As a conforming change, we propose removing § 611.1020(d). The provisions in this paragraph are contained in the association merger rules at § 611.1122 and would be incorporated by reference under the above proposed change to § 611.1020(b).

3. Association Mergers [Existing § 611.1122]

a. Reorganization

We propose rearranging existing provisions within § 611.1122 to consolidate like provisions and to improve transparency of requirements. The organizational changes we propose are:

- Incorporating paragraph (i) on the timing of the notice and accompanying information of stockholder meetings into paragraph (e), which addresses the content of notices. We also propose a conforming change to paragraph (i) by removing the reference to paragraph (e).
- Moving and redesignating paragraph (j) on the mergers of more than two institutions as new paragraph (f). The proposed change would place the exemptions to the requirements of paragraph (e) immediately after paragraph (e).
- Bifurcating paragraph (g) into two paragraphs—one addressing effective dates and the other addressing notice of stockholder votes on a proposed merger. Specifically, we propose keeping those parts of paragraph (g) that address effective dates as part of new paragraph (g) and moving the provision in paragraph (g) requiring notice of the stockholder vote into new paragraph (h).
- Moving and redesignating paragraph (k) on the effective date of mergers to new paragraphs (g)(1) and (2). As proposed, the new paragraph (g)(1) would contain the existing provisions on effective dates when reconsideration petitions are filed and the new paragraph (g)(2) would contain the existing provision on effective dates when no reconsideration petition is filed.

b. FCA Review [Existing § 611.1122(c) and (g); New § 611.1122(c) and (h)]

The proposed rule would clarify the FCA review process. We believe the proposed changes will aid institutions in managing expectations, setting merger effective dates, and scheduling the stockholder vote on a merger proposal. As proposed, new § 611.1122(c) and (h) would:

- Break existing § 611.1122(c) into paragraphs for ease of use;
- Specify the need for a complete application before the commencement of the statutory 60-day review period; [4]
- Require the FCA to notify the requesting associations when the statutory 60-day review period begins;
- Restate the existing authority of FCA to require additional information to supplement an application; and
- Reiterate the existing authority under sections 5.17(a) and 5.25(a) of the Act regarding the FCA's authority to impose in writing and enforce conditions of approval.

The statutory review process performed by the FCA is a serious undertaking during which we seek to determine the potential impact of the merger on the safety and soundness of the constituent institutions and their stockholders, as well as the System as a whole. In order to conduct a thoughtful and comprehensive review, it is imperative that we be provided all the necessary documentation and information to begin our review. The FCA evaluates the initial merger submissions to determine if they are complete, recognizing that each proposed merger may have unique facts and circumstances. Under this practice, if additional information is required, we would explain to the associations that until the information is received, the statutory 60-day review period will not begin. This is to ensure our review gives full consideration of the relevant and unique facts and circumstances applicable to each proposed merger, such as size, complexity, geographic territory, and other relevant factors necessary to considering whether or not to approve or deny the request to merge. The proposed rule would incorporate this practice into our regulations to enhance the understanding of the FCA's

[4] *See* 12 U.S.C. 2279e(a)(2).

review and approval process related to proposed plans of merger.

We propose conforming changes to our regulations on territorial adjustments in § 611.1124(d) to add language on supplemental information and conditions of approval.

c. Stockholder Meetings and Votes [Existing § 611.1122(d)]

We propose changes to the requirements regarding stockholder votes on proposed plans of merger. The proposed rule would separate the existing provisions of § 611.1122(d) into paragraphs (d)(1) through (d)(3) for ease of use and clarity. As proposed, new paragraph (d)(1) would contain the existing requirement that the constituent associations to a proposed plan of merger call a meeting on written notice to each of its voting stockholders entitled to vote on the proposed plan of merger. New paragraph (d)(3) would contain the existing requirement that the voting be in person or by proxy.

Proposed new paragraph (d)(2) would clarify that merger voting procedures must follow the existing confidentiality and security in voting procedures contained in § 611.340. This change is made to clearly state that the confidentiality and security in voting requirements of § 611.340 are applicable to stockholder votes on proposed mergers. Based on the inquiries we received from System banks and associations, we consider it appropriate to clarify in § 611.1122(d) that an institution's policies and procedures for a stockholder vote on a proposed merger must comply with existing confidentiality and security in voting rules at § 611.340.

We propose that only an independent third party be authorized to validate ballots and tabulate stockholder votes on a merger or consolidation. Existing regulations at § 611.340 provide that System banks and associations may use either an independent third party or a tellers committee (which consists of voting stockholders) to validate ballots and tabulate voting results. The use of an independent third party for mergers would provide added security and confidentiality over the voting process on an issue that is not routinely presented to stockholders for a vote and that may have long-lasting effects on stockholders. Also, we believe that due to the time constraints imposed on certain phases of the merger process, using an independent third party to validate ballots and tabulate votes will facilitate the process and allow voting stockholders to focus solely on the merger vote itself. We propose a conforming change in new § 611.1122(h) to recognize the proposed rule limiting the responsibility for validating ballots and proxies and tabulating voting results on proposed mergers to only independent third parties.

We also propose adding language to § 611.1122(d) to clarify that FCA may require that the constituent banks or associations hold informational meetings with their respective stockholders prior to putting the proposed plan of merger to a vote. Depending on the complexity, geography, specific facts and circumstances, or stockholder inquiry relevant to a proposed plan of merger, we believe there may be instances where a question and answer forum would benefit stockholder understanding of the transaction and its consequences to them, and contribute to a more informed stockholder decision. In those instances, we believe stockholders would benefit from an open discussion with the board of directors and management of the constituent institutions where all views may be expressed and heard by all interested parties. We believe holding informational meetings with stockholders prior to the meeting held for the merger vote would enhance communication and stockholder understanding of an action that will have long-term effects for the stockholders.

4. Stockholder Reconsiderations [Existing § 611.1123(c); New § 611.1126]

Bank and association voting stockholders have the right to reconsider the approval of a merger by filing a reconsideration petition with the FCA, provided that certain provisions of our regulations are met. In order to make it easier to review those provisions, we propose moving them from § 611.1123(c), which sets forth our requirements on merger agreements, to new § 611.1126. Also, we propose clarifying that only voting stockholders have the right to file a reconsideration petition.

We also propose the following changes to the reconsideration petition regulations:

a. List of Stockholders [New § 611.1126(b)]

We propose adding a new provision to address the process by which stockholders wishing to file a petition obtain a list of stockholders from their bank or association. Stockholders have a statutory right to obtain a list of stockholders in their institution.[5] Existing § 618.8310 addresses the process by which stockholders may request a list of stockholders' names, addresses, and classes of stock held by the stockholder, and the prohibitions on the use of the list. We propose language in new § 611.1126(b) to clarify that the process set forth in § 618.8310, with one change, applies to requests for a list of stockholders when the purpose is to seek signatures on a petition for reconsideration of a merger. The proposed difference from the § 618.8310 provisions is that the stockholder list provided to a stockholder wishing to file a reconsideration petition be the voting record date list developed for the stockholder vote on the proposed plan of merger. This change enables the stockholder filing the petition to have the names of only those stockholders who would be eligible to sign the reconsideration petition. The list provided to the stockholder under § 618.8310 includes all stockholders of the bank or association, both voting and nonvoting. Absent the proposed provision, any stockholder wishing to file a reconsideration petition would have the added step of culling the ineligible stockholders from the list before proceeding with any further actions to timely filing the petition. The Act provides a very limited amount of time for filing a reconsideration petition and we believe giving stockholders a list of nonvoting, as well as voting, stockholders would be an unnecessary burden and one unintended by Congress. Also, we believe using the merger voting record date list will ease the burden on the bank or association, since the list will already exist and be up-to-date. As the reconsideration petition process has a very short timeframe, we believe these changes will aid all parties in coordinating their efforts and help ensure timely access to the appropriate and relevant stockholder lists.

b. Filing of Petition With the FCA [New § 611.1126(c)]

We have received requests for clarification from both System institutions and their stockholders regarding the date that the FCA considers a reconsideration petition to be filed with the Agency and how the petition may be filed. We propose adding new § 611.1126(c) to explain that there are various means of filing a reconsideration petition (*e.g.,* the U.S. Postal Service, hand delivery, electronic mail), and all are acceptable to the FCA. We propose allowing petitions to be filed in electronic form in recognition of advances in communication technology. We also propose that reconsideration petitions must be addressed to the

[5] *See* 12 U.S.C. 2184.

Secretary to the FCA Board. We propose that reconsideration petitions may be filed at:

- The FCA headquarters office in McLean, Virginia;
- Any FCA office, including the most local FCA office; or
- Delivered in-person during normal business hours to any FCA employee who is in official duty status at the time.

We would expect that if a reconsideration petition is filed by in-person delivery to an FCA employee, then the delivery should be followed up with notice of the delivery to the Secretary to the FCA Board. We believe that proposing various means for a stockholder to file a petition with the FCA will aid the stockholder in working within the 35-day time constraint for filing a petition, and will make the petition process less burdensome on the stockholder. Also, we propose clarifying that the date of postmark, ship date, or the timestamp reflected in the metadata of electronic transmissions will be used to determine the date the petition is considered filed with the FCA.

The Act requires reconsideration petitions to be ''presented'' to FCA within 30 days after the date that stockholders receive notification of the final results of the stockholder vote on the proposed plan of merger.[6] However, existing § 611.1123(c) provides that petitions must be filed with the FCA within 35 days[7] after notification of the voting results is mailed to stockholders. The additional 5 days for filing a petition as provided in the regulation allows time for the stockholder to receive the notification and ensures that stockholders have the full statutory 30 days to file a reconsideration petition. We believe a similar concession is necessary to determine when reconsideration petitions are filed with the FCA. For example, a petition would be considered timely filed with the FCA if it was mailed via the U.S. Postal Service and the postmark date was the 35th day of the regulatory reconsideration period. This concession would give stockholders the added benefit of having the full statutory 30 days to acquire needed signatures and file the petition with the FCA without concern for delivery delays.

We also propose that petitions contain contact information on the stockholder filing the petition. Having contact information on the stockholder filing the petition would enable the FCA to readily contact that individual, if necessary.

[6] Section 7.9(b)(3) of the Act (12 U.S.C. 2279c–2).

[7] Unless our rules specify ''business days'', any use of the term ''days'' means calendar days.

c. FCA Review of Petitions [Existing § 611.1123(c); New § 611.1126(d)]

We propose to clarify and enhance the existing rule on the notice process used by the FCA when a reconsideration petition is filed. In new § 611.1126(d), we propose that if a petition is received in a timely manner, notice that a reconsideration petition has been filed be sent to the relevant institutions. We believe all parties should be notified that a reconsideration petition was timely and appropriately filed with the FCA since institution action on a petition will be required.

We further propose to clarify in new § 611.1126(d) that institutions have no expectation of receiving a copy of the petition. We believe the rule should be clear regarding access to the names on the petition. By necessity, one or more stockholder will identify themselves to the institution in order to obtain the list of stockholders. However, there is no legitimate business purpose for the institutions to have the names of stockholders signing the petition. We do not believe Congress intended the institutions to have this information, or they would not have required that the petition be filed with the FCA, rather than the institution. Also, providing the names of stockholders signing a petition to their respective institutions may allow the institution to infer how that stockholder voted on the proposed plan of merger and impact the statutory right to confidential voting.[8]

d. Reconsideration Votes [Existing § 611.1123(c); New § 611.1126(e)]

We propose to clarify in new § 611.1126(e) the existing rule on the voting process after a reconsideration petition is filed. We propose clarifying that reconsideration votes are only cast in person or by proxy, similar to merger votes, and, just as merger votes, must follow the voting and confidentiality provisions of existing § 611.340, but without use of a tellers committee. This is to ensure the reconsideration voting process is the same as that used for the original merger vote.

VI. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

[8] *See* 12 U.S.C. 2208.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

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

PART 611—ORGANIZATION

■ 1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.2, 1.3, 1.4, 1.5, 1.12, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 3.21, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.21, 4.25, 4.26, 4.27, 4.28A, 5.9, 5.17, 5.25, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2142, 2154a, 2183, 2184, 2203, 2208, 2209, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; sec. 414 of Pub. L. 100–399, 102 Stat. 989, 1004.

■ 2. Section 611.100 is amended by:
■ a. Redesignating existing paragraphs (b) through (g) as paragraphs (c) through (h); and
■ b. Adding new paragraphs (b), (i) and (j) to read as follows:

§ 611.100 Definitions.

* * * * *

(b) *FCA* means the Farm Credit Administration.

* * * * *

(i) *Voting record date* or *record date* means the official date set by a Farm Credit institution whereby a stockholder must own voting stock in that institution in order to cast a vote.

(j) *Voting record date list* or *record date list* means the list of names, addresses, and classes of stock held by stockholders in the Farm Credit institution who are eligible to vote as of a specific voting record date.

■ 3. Section 611.1000 is revised to read as follows:

§ 611.1000 General authority.

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

(b) The FCA may make changes in the charter of a Farm Credit bank as may be requested by that bank and approved by the FCA pursuant to § 611.1010.

(c) The FCA may, in accordance with the provisions of the Act, make changes

in the charter of a Farm Credit bank, and any chartered service corporation thereof, as may be necessary or expedient to implement the provisions of the Act.

■ 4. Section 611.1010 is revised to read as follows:

§ 611.1010 Farm Credit bank charter amendment procedures.

(a) A Farm Credit bank may recommend a charter amendment to accomplish any of the following actions—

(1) A merger or consolidation with any other Farm Credit bank or banks operating under title I or III of the Act.

(2) A transfer of territory with any other Farm Credit bank operating under the same title of the Act.

(3) A change to its name or location.

(4) Any other change that is properly the subject of a Farm Credit bank charter.

(b) Upon approval of an appropriate resolution by the Farm Credit bank board, the certified resolution, together with supporting documentation, must be submitted to the FCA for preliminary or final approval, as the case may be.

(c) The FCA will review the material submitted and either approve or disapprove the request. The FCA may require submission of any supplemental information and analysis it deems appropriate. If the request is for merger, consolidation, or transfer of territory, the approval of the FCA will be preliminary only, with final approval subject to a vote of the Farm Credit bank's stockholders.

(d) Following receipt of the FCA's written preliminary approval, the proposal must be submitted for approval to the voting stockholders of the Farm Credit bank. A proposal will be considered approved if agreed to by a majority of the voting stockholders of each Farm Credit bank voting, in person or by proxy, at a duly authorized stockholder meeting with each stockholder-association entitled to cast a number of votes equal to the number of the association's voting shareholders, unless another voting scheme has been approved by the FCA.

(e) Upon approval by the stockholders of the Farm Credit bank, the request for final approval and issuance of the appropriate charter or amendments to charter for the Farm Credit banks involved must be submitted to the FCA.

■ 5. Section 611.1020 is revised to read as follows:

§ 611.1020 Requirements for mergers or consolidations of Farm Credit banks.

(a) As authorized under sections 7.0 and 7.12 of the Act, a Farm Credit bank may merge or consolidate with one or more Farm Credit banks operating under the same or different titles of the Act.

(b) The plan to merge or consolidate two or more Farm Credit banks is subject to the requirements of §§ 611.1122, 611.1123, and 611.1126 of this part, unless otherwise instructed by the FCA. In interpreting those sections, the phrase ''Farm Credit bank(s)'' will be read for the word ''association(s)'' and references to ''funding bank'' are to be ignored.

§ 611.1040 [Amended]

■ 6. Section 611.1040 is amended by removing the word ''shall'' and adding in its place the word ''must'' each place it appears.

■ 7. Section 611.1120 is amended by:

■ a. Removing the words ''Farm Credit Administration'' and adding in their place, the acronym ''FCA'' each place they appear in paragraph (b); and

■ b. Revising paragraph (c).

The revision reads as follows:

§ 611.1120 General authority.

* * * * *

(c) The FCA may, on its own initiative, make changes in the charter of an agricultural credit association, Federal land bank association, or a production credit association, and any chartered service corporation thereof, where the FCA determines that the change is necessary to accomplish the purposes of the Act.

■ 8. Section 611.1121 is revised to read as follows:

§ 611.1121 Association charter amendment procedures.

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

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

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

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

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

(b) Upon receipt of a proposed amendment from an association, the funding bank must review the materials submitted and provide the association with its analysis of the proposal within a reasonable period of time. Concurrently, the funding bank must communicate its recommendation on the proposal to the FCA, including the reasons for the recommendation, and any analysis the bank believes appropriate. Following review by the bank, the association must transmit the proposed amendment with attachments to the FCA.

(c) Upon receipt of an association's request for a charter amendment, the FCA will review the materials submitted and either approve or disapprove the request. The FCA may require submission of any supplemental information and analysis it deems appropriate.

(d) The FCA will notify the association of its approval or disapproval of the amendment request, including a copy of the amended charter with the approval notification, and provide a copy of such communication to the funding bank.

■ 9. Section 611.1122 is revised to read as follows:

§ 611.1122 Requirements for association mergers or consolidations.

(a) Where two or more associations plan to merge or consolidate, or where the funding bank board has adopted a reorganization plan for the associations in the district, the associations involved must jointly submit a request to the funding bank containing the following:

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

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

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

(ii) In the case of a district reorganization plan, a certified copy of the resolution of the board of directors of each association recommending either approval or disapproval of the proposal;

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

(5) Two signed copies of the continuing or proposed Articles of Association;

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

(7) Any additional information or documents each association wishes to submit in support of the request; and

(8) All additional information and documentation that the funding bank or the FCA requests.

(b) Upon receipt of a request for approval of an association merger or consolidation, the funding bank must review the materials submitted to determine whether they comply with the requirements of these regulations and must communicate with the associations concerning any deficiency. When the bank approves the request to merge or consolidate it must notify the associations. The bank must also notify the FCA of its approval together with the reasons for its approval and any supporting analysis. The associations must jointly submit the proposal together with required documentation to the FCA for preliminary approval.

(c) Upon receipt of a complete association merger or consolidation request, the FCA will review the request and either deny or give its written preliminary approval to the request within 60 days. The FCA will notify the requesting associations when the 60-day preliminary approval review period begins. The FCA may require submission of any supplemental information and analysis it deems appropriate for its consideration of the merger or consolidation request.

(1) When a request is denied, written notice stating the reasons for the denial will be transmitted to the associations and a copy provided to the funding bank(s).

(2) When a request is preliminarily approved, written notice of the preliminary approval will be given to the associations and a copy provided to the funding bank(s). Preliminary approval by the FCA does not constitute approval of the merger or consolidation. Approval of a merger or consolidation is only issued pursuant to this subpart. In connection with granting preliminary approval, the FCA may impose conditions in writing.

(d) Upon receipt of preliminary approval by the FCA of a merger or consolidation request, each constituent association must call a meeting of its voting stockholders. The FCA may also require the associations to hold informational meetings before a stockholder vote. The stockholder meeting to vote on a merger or consolidation must:

(1) Be called on written notice to each stockholder entitled to vote on the transaction as of the record date and be held in accordance with the terms of each association's bylaws.

(2) Follow the voting procedures of § 611.340, except associations may not use tellers committees to validate ballots and tabulate votes on the merger or consolidation.

(3) Require the affirmative vote of a majority of the voting stockholders of each association present and voting, either in person or by written proxy, at a meeting at which a quorum is present to constitute stockholder approval of a merger or consolidation proposal.

(e) Notice of the stockholder meeting to consider and act upon a proposed merger or consolidation must be accompanied by the information required under this paragraph. The notice and accompanying information must not be sent to stockholders until preliminary approval of the merger or consolidation has been given by the FCA.

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

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

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

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

(4) A brief statement by the boards of directors of the constituent associations setting forth the basis for the boards' recommendation on the merger or consolidation.

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

(6) A presentation of the following financial data:

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

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

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

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

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

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

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

(9) A presentation for each constituent association regarding its policy on accounting for loan performance, together with the number and dollar amount of loans in all performance categories, including those categorized as high-risk assets.

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

(11) A management discussion and analysis of the financial condition and results of operation for the past 2 fiscal years for each constituent institution. This requirement can be satisfied by including the materials contained in the management discussion and analysis of each institution's most recent annual report.

(12) A discussion of any material changes in financial condition of each constituent institution from the end of the last fiscal year to the date of the interim balance sheet provided.

(13) A discussion of any material changes in the results of operations of each constituent institution with respect to the most recent fiscal-year-to-date period for which an income statement is provided.

(14) A discussion of any change in the tax status of the new institution from those of the constituent institutions as a result of merger or consolidation. A statement on any adverse tax consequences to the stockholders of the institution as a result of the change in tax status.

(15) A statement on the proposed institution's relationship with an independent public accountant, including any change that may occur as a result of the merger or consolidation.

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

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

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

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

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

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

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

(g) The effective date of a merger or consolidation may not be less than 35 days after the date of mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the FCA of all required documents for the FCA's consideration of final approval, whichever occurs later.

(1) The constituent institutions must agree on a second effective date to be used in the event the merger or consolidation is approved on reconsideration. The second effective date may not be less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

(2) If no reconsideration petition is filed with the FCA, upon final approval by the FCA, the merger or consolidation will be effective on the date specified in the merger agreement or at such later date as may be required by the FCA.

(h) Each constituent association must notify its stockholders not later than 30 days after the stockholder vote of the final results of the vote. Upon approval of a proposed merger or consolidation by the stockholders of the constituent associations, each association must submit to the FCA a certified copy of the stockholders' resolution on which the stockholders cast their votes and a certification of the stockholder vote from the independent third party(s) used to tally the vote. After the time for submitting reconsideration petitions has expired, and if no petition is filed, the FCA will make a final approval decision on the merger or consolidation, imposing conditions as appropriate. The FCA will send written notice of the final FCA approval decision to the associations and provide a copy to the affiliated funding bank(s).

(i) No Farm Credit institution, or any director, officer, employee, agent, or other person participating in the conduct of the affairs thereof, may make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of any association in connection with an association merger or consolidation.

(1) No Farm Credit institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of a Farm Credit institution may make an oral or written representation to any person that a preliminary or final approval by the FCA of a merger or consolidation constitutes, directly or indirectly, either a recommendation on the merits of the transaction or an assurance concerning the adequacy or accuracy of any information provided to any association's stockholders in connection therewith.

(2) When a Farm Credit institution, or any of its employees, officers, directors, agents, or other person participating in the conduct of the affairs thereof, make disclosures or representations in connection with an association merger or consolidation that, in the judgment of the FCA, are incomplete, inaccurate, or misleading, whether or not such disclosure or representation is made in disclosure statements required by this subpart, such institution must make

such additional or corrective disclosure as directed by the FCA and as is necessary to provide stockholders and the general public with full and fair disclosure.

■ 10. Section 611.1123 is amended by:
■ a. Revising the section heading and paragraph (a) introductory text;
■ b. Removing the word ''shall'' and adding in its place, the word ''must'' in the last sentence of paragraph (a)(3);
■ c. Removing the word ''shall'' and adding in its place, the word ''may'' in paragraph (a)(4);
■ d. Removing the words ''supervising bank'' and ''Farm Credit Administration'' and adding in their place the words ''funding bank'' and the acronym ''FCA'', respectively, in paragraph (a)(5);
■ e. Removing the words ''Farm Credit Administration'' and adding in their place the acronym ''FCA'' in paragraph (a)(7) introductory text;
■ f. Removing the word ''institution'' and adding in its place the words ''or consolidated association'' in paragraph (a)(7)(iv);
■ g. Removing the words ''new institution'' and ''shall'' and adding in their place the words ''continuing or consolidated association'' and ''must'', respectively, in paragraph (a)(9);
■ h. Removing the words ''proposed institution'' and adding in its place the words ''continuing or consolidated association'' in paragraph (a)(10);
■ i. Revising paragraph (b); and
■ j. Removing paragraph (c).

The revisions read as follows:

§ 611.1123 Association merger or consolidation agreements.

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

* * * * *

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

■ 11. Section 611.1124 is revised to read as follows:

§ 611.1124 Territorial adjustments.

This section applies to any request submitted to the FCA to modify association charters for the purpose of transferring territory from one association to another.

(a) Territorial adjustments, except as specified in paragraph (m) of this section, require approval of a majority of the voting stockholders of each association present and voting or voting by written proxy at a duly authorized meeting at which a quorum is present.

(b) When two or more associations agree to transfer territory, each association must submit a proposal to the funding bank containing the following:

(1) A statement of the reasons for the proposed transfer and the impact the transfer will have on its stockholders and holders of participation certificates;

(2) A certified copy of the resolution of the board of directors of each association approving the proposed territory transfer;

(3) A copy of the agreement to transfer territory that contains the following information:

(i) A description of the territory to be transferred;

(ii) Transferor association's plan to transfer loans and the types of loans to be transferred;

(iii) Transferor association's plan to retire and transferee association's plan to issue equities held by holders of stock, participation certificates, and allocated equities, if any, and a statement by each association that the book value of its equities is at least equal to par;

(iv) An inventory of the assets to be sold by the transferor association and purchased by the transferee association;

(v) An inventory of the liabilities to be assumed from the transferor association by the transferee association;

(vi) A statement that the holders of stock and participation certificates whose loans are subject to transfer have 60 days from the effective date of the territory transfer to inform the transferor association of their decision to remain with the transferor association for normal servicing until the current loan is paid;

(vii) A statement that the transfer is conditioned upon the approval of the stockholders of each constituent association; and

(viii) The effective date of the proposed territory transfer.

(4) A copy of the stockholder disclosure statement provided for in paragraph (f) of this section; and

(5) Any additional relevant information or documents that the association wishes to submit in support of its request or that may be required by the FCA.

(c) Upon receipt of documents supporting a proposed territory transfer, the funding bank must review the materials submitted and provide the associations with its analysis of the proposal within a reasonable period of time. The funding bank must concurrently advise the FCA of its recommendation regarding the proposed territory transfer. Following review by the bank, the associations must transmit the proposal to the FCA together with all required documents.

(d) Upon receipt of an association's request to transfer territory, the FCA will review the request and either deny or grant preliminary approval to the request. The FCA may require submission of any supplemental information and analysis it deems appropriate for its consideration of the request to transfer territory.

(1) When a request is denied, written notice stating the reasons for the denial will be transmitted to the associations, and a copy provided to the funding bank.

(2) When a request is preliminarily approved, written notice of the preliminary approval will be transmitted to the associations, and a copy provided to the funding bank. Preliminary approval by the FCA does not constitute approval of the territory transfer. Final approval is granted only in accordance with paragraph (h) of this section. In connection with granting preliminary approval, the FCA may impose conditions in writing.

(e) Upon receipt of preliminary approval by the FCA, each constituent association must, by written notice, and in accordance with its bylaws, call a meeting of its voting stockholders. The affirmative vote of a majority of the voting stockholders of each association present and voting or voting by written proxy at a meeting at which a quorum is present is required for stockholder approval of a territory transfer.

(f) Notice of the meeting to consider and act upon a proposed territory transfer must be accompanied by the following information covering each constituent association:

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

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

(2) A copy of the Agreement to Transfer Territory and a summary of the major provisions of the Agreement;

(3) The reason the territory transfer is proposed;

(4) A map of the association's territory as it would look after the transfer;

(5) A summary of the differences, if any, between the transferor and transferee associations' interest rates, interest rate policies, collection policies, service fees, bylaws, and any other items of interest that would impact a borrower's lending relationship with the institution;

(6) A statement that all loans of the transferor association that finance operations located in the transferred territory will be transferred to the transferee association except as otherwise provided for in this section or in accordance with agreements between the associations as provided for in § 614.4070;

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

(8) A statement that the associations' bylaws, financial statements for the previous 3 years, and any financial information prepared by the associations concerning the proposed transfer of territory are available on request to the stockholders of any association involved in the transaction.

(g) No Farm Credit institution, or director, officer, employee, agent, or other person participating in the conduct of the affairs thereof, may make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of any Farm Credit institution in connection with a territory transfer.

(h) Upon approval of a proposed territory transfer by the stockholders of the constituent associations, a certified copy of the stockholders' resolution for each constituent association and one executed Agreement to Transfer Territory must be forwarded to the FCA. The territory transfer will be effective when thereafter finally approved and on the date as specified by the FCA. Notice of final approval will be transmitted to the associations and a copy provided to the bank.

(i) No director, officer, employee, agent, or other person participating in the conduct of the affairs of a Farm Credit institution may make an oral or written representation to any person that a preliminary or final approval by the FCA of a territory transfer constitutes, directly or indirectly, a recommendation on the merits of the transaction or an assurance concerning the adequacy or accuracy of any information provided to any association's stockholders in connection therewith.

(j) When a Farm Credit institution, or any of its employees, officers, directors, agents, or other persons participating in the conduct of the affairs thereof, make disclosures or representations that, in the judgment of the FCA, are incomplete, inaccurate, or misleading in connection with a territory transfer, whether or not such disclosure or representation is made in disclosure statements required by this subpart, such institution must make such additional or corrective disclosure as directed by the FCA and as is necessary to provide stockholders and the general public with full and fair disclosure.

(k) The notice and accompanying information required under paragraph (f) of this section may not be sent to stockholders until preliminary approval of the territory transfer has been granted by the FCA.

(l) Where a territory transfer is proposed simultaneously with a merger or consolidation, both transactions may be voted on by stockholders at the same meeting. Only stockholders of a transferee or transferor association may vote on a territory transfer.

(m) Each borrower whose real estate or operations is located in a territory that will be transferred must be provided with a written Notice of Territory Transfer immediately after the FCA has granted final approval of the territory transfer. The Notice must inform the borrower of the transfer of the borrower's loan to the transferee association and the exchange of related equities for equities of like kinds and amounts in the transferee association. If a like kind of equity is not available in the transferee association, similar equities must be offered that will not adversely affect the interest of the owner. The Notice must give the borrower 60 days from the effective date of the territory transfer to notify the transferor association in writing if the borrower decides to stay with the transferor association for normal servicing until the current loan is paid. Any application by the borrower for renewal or for additional credit must be made to the transferee association, except as otherwise provided for by an agreement between associations in accordance with § 614.4070.

(n) This section does not apply to territory transfers initiated by order of the FCA or to territory transfers due to the liquidation of the transferor association.

(o) Where a proposed action involves the transfer of a portion of an association's territory to an association operating in a different district, such proposal must comply with the provisions of this section and section 5.17(a) of the Act.

§ 611.1125 [Amended]

■ 12. Section 611.1125 is amended by:

■ a. Removing the words ''Farm Credit Administration'' and adding in their place the acronym ''FCA'' in paragraph (a);

■ b. Removing the word ''shall'' and adding in its place, the word ''must'' in paragraph (b) introductory text;

■ c. Removing the words ''district bank'' and adding in their place, the word ''funding bank'' in paragraphs (b) introductory text and (b)(1) through (4) wherever they appear; and

■ d. Removing the words ''district bank'' and adding in their place, the word ''funding bank'' in paragraph (c) wherever they appear.

■ 13. Subpart G is amended by adding § 611.1126 to read as follows:

§ 611.1126 Reconsiderations of mergers and consolidations.

(a) Voting stockholders have the right to reconsider their approval of a merger or consolidation, provided that a petition is filed with the FCA. The petition must be signed by 15 percent of the stockholders (who were eligible to vote on the merger or consolidation proposal) of one or more of the constituent associations. The reconsideration petition must be filed with the FCA within 35 days after the date when the association mailed the notification of the final results of the stockholder vote pursuant to § 611.1122(h).

(b) Voting stockholders that intend to file a reconsideration petition have a right to obtain from the association of which they are a voting stockholder the voting record date list used by that association for the merger or consolidation vote. The association must provide the voting record date list as soon as possible, but not later than 7 days after receipt of the request. The list must be provided pursuant to the provisions of § 618.8310(b).

(c) A reconsideration petition must be addressed to the Secretary of the FCA Board and filed with the FCA on or before the deadline described in paragraph (a) of this section. Reconsideration petitions must identify a contact person and provide contact information for that person.

(1) Filing of a reconsideration petition may only be accomplished through in-person delivery during normal business hours to any FCA employee in official duty status or by sending the petition by mail, facsimile, electronic transmission, carrier delivery, or other similar means to an FCA office.

(2) The FCA will use the postmark, ship date, electronic stamp, or similar evidence as the date of filing the reconsideration petition.

(d) The FCA will notify the named contact on the reconsideration petition whether the petition was filed on time. On the timely receipt of a reconsideration petition, the FCA will review the petition to determine whether it complies with the requirements of section 7.9 of the Act. Following a determination that the petition was timely filed and complies with applicable requirements, the FCA will give notice to the associations involved in the merger or consolidation for which the reconsideration petition was filed. The associations are not entitled to either a copy of the petition or the names of the petitioners.

(e) Following FCA notification that a reconsideration petition has been properly filed, a special stockholders meeting must be called by the association(s) to reconsider the merger or consolidation vote. The reconsideration vote must be conducted according to the merger and consolidation voting requirements of § 611.1122(d). If a majority of the stockholders voting, in person or by proxy, at a duly authorized stockholders' meeting from any one of the constituent associations vote against the merger or consolidation under the reconsideration vote, the merger or consolidation will not take place. In the event that the merger or consolidation is approved on reconsideration, the constituent associations must use the second effective date developed under § 611.1122(g)(1).

Dated: January 13, 2015.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2015–00676 Filed 1–16–15; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–153656–03]

RIN 1545–BC70

Credit for Increasing Research Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of advance notice of proposed rulemaking; notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning the application of section 41 of the Internal Revenue Code (Code), which provides a credit for increasing research activities. The proposed regulations provide guidance on computer software that is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer (internal use software) under section 41(d)(4)(E). These proposed regulations also include examples to illustrate the application of the process of experimentation requirement to computer software under section 41(d)(1)(C). The regulations will affect taxpayers engaged in research activities involving computer software. This document also provides notice of a public hearing on these proposed regulations and withdraws the advance notice of proposed rulemaking published on January 2, 2004.

DATES: Written or electronic comments must be received by March 23, 2015. Outlines of topics to be discussed at the public hearing scheduled for April 17, 2015, must be received by March 23, 2015.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–153656–03), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–153656–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC; or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–153656–03). The public hearing will be held in IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Martha Garcia, (202) 317–6853; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, call Oluwafunmilayo (Funmi) Taylor, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to provide rules relating to the credit for increasing research activities (research credit) under section 41 of the Code. On January 2, 1997, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–209494–90, referred to in this preamble as the 1997 proposed regulations) in the **Federal Register** (62 FR 81) to provide guidance on internal use software under section 41(d)(4)(E). Final regulations (TD 8930, referred to in this preamble as the 2001 final regulations), which substantively modified the 1997 proposed regulations on internal use software, and also addressed other aspects of section 41, were published in the **Federal Register** (66 FR 280) on January 3, 2001. In response to taxpayer concerns regarding the 2001 final regulations, on January 31, 2001, Treasury and the IRS published Notice 2001–19 (2001–10 IRB 784) (see § 601.601(d)(2) of this chapter) announcing that Treasury and the IRS would review the 2001 final regulations and reconsider comments previously submitted. Notice 2001–19 also provided that, upon the completion of this review, Treasury and the IRS would announce changes to the regulations, if any, in the form of new proposed regulations. On December 26, 2001, the Treasury Department and the IRS published proposed regulations (REG–112991–01, referred to in this preamble as the 2001 proposed regulations) in the **Federal Register** (66 FR 66362) relating to internal use software and other aspects of section 41. On January 2, 2004, the Treasury Department and the IRS published final regulations (TD 9104, referred to in this preamble as the 2004 final regulations) in the **Federal Register** (69 FR 22) on the research credit. The 2004 final regulations finalized the 2001 proposed regulations' rules relating to the definition of qualified research under section 41(d), but did not finalize rules relating to internal use software under section 41(d)(4)(E). The 2004 final regulations reserve the rules for internal use software. See § 1.41–4(c)(6).

Concurrently with the 2004 final regulations, the Treasury Department and the IRS issued an advance notice of proposed rulemaking (2004 ANPRM) (published in the **Federal Register** (69 FR 43)). The 2004 ANPRM invited comments from the public regarding the 2001 proposed regulations relating to internal use software under section 41(d)(4)(E). The Treasury Department and the IRS specifically requested comments concerning the definition of internal use software. In addition, the Treasury Department and the IRS requested comments on whether final rules relating to internal use software should have retroactive effect. Written and electronic comments responding to the 2004 ANPRM were received. The preamble to these proposed regulations describes many of the comments received by the Treasury Department and the IRS. Although not all of the