

Done at Washington, DC, on: August 4, 1997.

**Thomas J. Billy,**  
Administrator.

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## FARM CREDIT ADMINISTRATION

### 12 CFR Part 650

RIN 3052-AB72

#### Federal Agricultural Mortgage Corporation; Receivers and Conservators

AGENCY: Farm Credit Administration.

ACTION: Final rule.

**SUMMARY:** The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issues a final rule amending its regulations that apply to the Federal Agricultural Mortgage Corporation (Farmer Mac or Corporation) by adding a subpart to govern a receivership or conservatorship. The final rule implements the receivership/conservatorship authorities granted to the FCA by the Farm Credit System Reform Act of 1996 (1996 Reform Act), Pub. L. 104-105 (Feb. 10, 1996) and by previous law.

**DATES:** This regulation shall become effective 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Larry W. Edwards, Director, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4051, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** The FCA proposed amendments to its regulations governing Farmer Mac on February 24, 1997 (62 FR 8190). The 1996 Reform Act added section 8.41 to the Farm Credit Act of 1971, as amended (Act), which grants the FCA the authority to place the Corporation into receivership and expands the FCA's existing authority to place the Corporation into conservatorship. This final rule implements these statutory provisions.

#### Public Comments Received

The 30-day comment period expired on March 26, 1997. The FCA received three comments, one from the Corporation, one from the Farm Credit Council (FCC) on behalf of its member Farm Credit System (FCS) institutions, and one from the United States

Department of the Treasury (Treasury). The following is a discussion of the comments and FCA's responses.

#### A. Comments of the Farm Credit Council

Several of the FCC's comments were related to the slightly different language used in the proposed regulation compared to FCA's receivership and conservatorship regulations in part 627 of this chapter, which was the model for the proposed rule. The FCC indicated that for the most part, the differences were called to FCA's attention to make sure that they were intentional. Proposed § 650.56(b)(1) provides that a receiver of Farmer Mac may exercise all powers as are conferred upon the officers and directors of the Corporation under law and the articles and bylaws of the Corporation, while § 627.2725(b)(1) refers to powers as conferred under law and the "charter," articles, and bylaws of the institution. Although the FCA may cancel the charter of the Corporation upon the appointment of a receiver, it may also leave the charter in existence until the conclusion of the receivership. In light of this, the FCA has included the word "charter" in the final regulation. Another difference between proposed part 650 and existing part 627 of this chapter noted by the FCC is that proposed § 650.59(b) begins with a reference to the "stock and other equities of the Corporation" and concludes with a reference to payment of a liquidating dividend to Farmer Mac's "stockholders." Section 627.2735(b)(2) begins with a similar reference to "the stock and other equities" of a liquidating institution, but concludes with a reference to payment of a liquidating dividend to the "owners of such equities." The FCC believes that the reference to owners of equities is broader than the simple reference to stockholders in proposed § 650.59(b). The FCA agrees, but notes that, with respect to the Corporation, all equity owners are stockholders. Therefore, the FCA makes no change to § 650.59.

The FCC also indicated that the phrase "or applied against any indebtedness of the owners of such equities," which appears in the first sentence of paragraph (b) of proposed § 650.58, is not found in paragraph (a) of that section although the same phrase appears in both paragraphs (a) and (b) of § 627.2730. The phrase was intentionally omitted from proposed § 650.58(a) because, unlike the equity holders of Farm Credit institutions who in most cases are also borrowers of the institutions, the equity holders of the Corporation will most likely not be

indebted to the Corporation. Also, the restriction against retirement of equities in § 650.58(b) is broad enough to include applying stock against the indebtedness of the owner of the stock should any stockholders be indebted to the Corporation. As a result, the FCA omitted the phrase "or applied against any indebtedness of the owners of such equities" from § 650.58(b) of the final regulation. The final comparison to part 627 of this chapter that the FCC pointed out is that proposed § 650.65(d), like its counterpart § 627.2775(c), provides that, upon the issuance of an order placing the Corporation in conservatorship, all rights, privileges, and powers of the "members," board of directors, officers, and employees of the Corporation are vested exclusively in the conservator, and questioned whether the reference to "members" is appropriate and relevant in the case of the Corporation. The FCA agrees that the term "members" is not appropriate with reference to the Corporation and removed that term in the final regulation.

The FCC commented that the word "reasonable" should be inserted in proposed § 650.56(b)(15) immediately before the phrase "expenses of the receivership." The FCC noted in this regard that proposed § 650.61(b), concerning priority of claims, expressly limits the administrative expenses of the Corporation that may be afforded a second priority to "reasonable" expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or "reasonable" expenses incurred by employees that were authorized and reimbursable under a preexisting expense reimbursement policy. In response, the FCA notes that the expenses covered by § 650.61(b) are expenses of the Corporation incurred prior to the appointment of a receiver. All such expenses may not necessarily be paid, as payment is limited to the receiver's judgment that the services underlying the claims are of benefit to the receivership. In contrast, §§ 650.56(b)(15) and 650.61(a) relate only to the authority of the receiver to pay the administrative expenses of the receivership and all costs associated with carrying out the powers and duties of a receiver. Furthermore, pursuant to § 650.56(a)(3), the receiver serves as the trustee of the receivership estate and is required to conduct all of its operations, whether incurring and paying administrative expenses or exercising any other power conferred by the regulations, for the benefit of the creditors and stockholders of the Corporation. Therefore, the FCA

believes that addition of the term "reasonable" to § 650.56(b)(15) is neither necessary nor appropriate and adopts § 650.56(b)(15) as proposed.

The FCC made two comments with regard to the preamble accompanying the proposed and final regulations. The FCC asserted that during the early drafting stages of what became section 8.41 of the Act, consideration was given to authorizing a receiver of the Corporation to borrow from the Farm Credit System Insurance Fund (Insurance Fund) to meet the ongoing administrative expenses and liquidity needs of a Corporation receivership. The authorization to borrow from the Insurance Fund for such purposes was opposed by the FCS. The FCC states that, although express borrowing authority was not adopted in section 8.41, FCS institutions would take comfort from FCA's insertion, into the preamble to the final regulation, of a statement expressly acknowledging that neither section 8.41 nor the final implementing regulations authorize the Farm Credit System Insurance Corporation (FCSIC) to loan moneys from the Insurance Fund to a Corporation receiver or conservator for any reason whatsoever. In response, the FCA acknowledges the comment and notes that FCSIC's authority to make use of the Insurance Fund is governed by title V, part E of the Act, not FCA regulations.

The other comment regarding the preamble to the proposed regulation points out that the preamble states that the Corporation will be required to comply with the applicable provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934, but proposed § 650.67(c), while expressly referring to the requirements of § 620.40 and part 621 of this chapter, makes no reference to the securities acts. The FCC questioned whether the omission was intentional or inadvertent. The FCA notes that § 620.40 and part 621 of this chapter require the Corporation to comply with the securities acts, and the statement in the preamble was merely a reference to the requirement. Therefore, the FCA makes no change to § 650.67.

#### *B. Federal Agricultural Mortgage Corporation Comments*

The Corporation commented on § 650.50 of the proposed regulation, which provides the grounds for which a receiver may be appointed for the Corporation, and requested that the FCA amend § 650.50(a)(1) to clarify the definition of insolvency. Under the proposed regulation, the Corporation would be considered insolvent if its assets are less than its obligations to its

creditors and others or if the Corporation is unable to pay its debts in the ordinary course of business. In relation to the first criterion, the Corporation guarantees mortgage-backed securities that are sold to third-party entities or individuals and then classified for accounting purposes as "off-balance-sheet" contingent liabilities of the guarantor. Because there is no definition of the word "obligations" in the Act, in the proposed regulations, or in the regulations contained in part 627 of this chapter, the Corporation questions whether obligations would include contingent liabilities, particularly guarantees. The Corporation asserts that if obligations are interpreted to include the contingent liabilities of the Corporation as a guarantor of securities pursuant to its authorities under the Act, it could be deemed to be insolvent today, which would not be a result intended by Congress or reflective of the Corporation's true financial condition. The amendment to § 650.50 suggested by the Corporation would expressly exclude contingent liabilities under guarantees issued by the Corporation. Alternatively, the Corporation commented that if the FCA intended to include contingent liabilities as obligations for the purposes of determining insolvency, the value of the liabilities should be adjusted based upon an assessment of the probability that the contingency of default will occur and that the Corporation will be called upon to pay under its guarantee and should be net of the reserves for losses of the Corporation. Further, the assets of the Corporation should include the value of any rights that the Corporation would have against any other parties in the event that it is called upon to pay on a guarantee, including, but not limited to, rights of subrogation or reimbursement from a primary obligor. The Corporation provided suggested regulatory language to implement the two alternatives.

The FCA does not believe that contingent liabilities of the Corporation as a guarantor of securities pursuant to its authorities under the Act would ordinarily be considered as obligations for purposes of determining the Corporation's solvency under § 650.50(a)(1)(i). A loss contingency related to such guarantees would affect the determination of solvency (and would likely be recorded in the Corporation's financial statements) if a loss were probable and could be reasonably estimated. Moreover, if a loss contingency were both probable and could be reasonably estimated, the amount of such contingency that would

be included in the determination of solvency would be based on an analysis of the circumstances and would not necessarily be the amount of the guarantee itself. The treatment of contingent liabilities for the purposes of § 650.50(a)(1)(i) is consistent with the treatment of contingent liabilities under Generally Accepted Accounting Principles, specifically, Statement of Financial Accounting Standards No. 5, Accounting for Contingencies (SFAS No. 5). SFAS No. 5 requires that an estimated loss from a loss contingency be recorded in the financial statements if it is both probable that a liability has been incurred at the date of the financial statements and the amount of the loss can be reasonably estimated. If a loss contingency is not recorded in the financial statements because one or both of the above criteria are not met, disclosure of the loss contingency may or may not be required depending on the likelihood that a loss will be incurred. Disclosure of contingencies in such circumstances, however, is made in management's discussion and analysis and the contingencies are not recorded as liabilities in the financial statements.

Because the FCA generally would not consider the Corporation's contingent guarantee obligations to be included in the calculation of insolvency unless a liability related to such guarantees was probable and could be reasonably estimated, the FCA has not amended § 650.50(a)(1)(i) in the manner suggested by the commenter. A blanket exclusion of such obligations would not be appropriate because it could serve to confuse rather than clarify the requirements of the regulation. Further, the FCA believes that it is unlikely that investors would mistakenly conclude that all of the Corporation's contingent guarantee obligations would be included in the FCA's calculation of insolvency because the treatment of contingent liabilities is a generally widespread and well-known concept. As a final note, although the FCA generally would not include the amount of the contingent guarantee obligations in the calculation of insolvency for the purpose of these regulations, the Corporation's general ability to meet its contingent guarantee obligations are considered by the FCA when making any determination concerning the safety and soundness of the Corporation.

The Corporation also commented regarding § 650.60(b) of the proposed regulation, which authorizes a receiver of the Corporation to allow any claim that is timely received and proved to the receiver's satisfaction. The receiver also has the power to disallow claims in

whole or in part if not proved to the receiver's satisfaction. The disallowance is final unless, within 30 days, a claimant files a written request for payment regardless of the disallowance. Any such request is reconsidered by the receiver, who may approve or disapprove the claim in whole or in part. The Corporation requested that the FCA amend § 650.60 to provide that the FCA (through an official of the FCA who did not participate in the initial disallowance of the claim) would reconsider a disallowed claim upon the request of a claimant in order to ensure that a disallowed claim would be reviewed by an entity other than the person who initially disallowed the claim. In addition, the Corporation asserts that such an amendment would ultimately make decisions regarding the allowance of claims reviewable under the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 500 *et seq.*, with all of its procedural safeguards, including the availability of judicial review. The Corporation contends that it is important for investors and others who do business with it to know that, in the unlikely event that a receiver were to be appointed, procedures regarding the recognition of their claims would be fair, and any disallowance of their claims would be subject to review by the FCA.

The FCA does not believe it is appropriate for it to review claims disallowed by the receiver and has not amended § 650.60. Unless the FCA, pursuant to section 8.41(c) of the Act, is the receiver of the Corporation, the FCA will ordinarily leave administrative decisions to the judgment of the receiver. FCA's regulations under part 627 of this chapter do not provide for the Agency's review of claim denial decisions, and the FCA does not believe it is appropriate to afford different treatment to the creditors of the Corporation. Further, these regulations do not preclude any other avenues of review that may be available to a claim holder.

### C. Treasury Comments

In the preamble discussion accompanying proposed § 650.56(b), the FCA noted that generally, a receiver or conservator of the Corporation would have all of the rights and powers that the Corporation had prior to the appointment of the receiver and requested comment on whether there should be any limits imposed on these powers. The Treasury commented that because the purpose of a receivership would be to wind up the Corporation's affairs, the receiver should not be

conducting new business, such as issuing guarantees, or expanding the Corporation's debt obligations. The power of a receiver to exercise all powers that are conferred upon the Corporation is not intended to allow the receiver to search out or engage in new business opportunities. The power of the receiver to issue guarantees, debt obligations, or any other authority of the Corporation is designed to enable the receiver to conclude any transactions that were in progress when the receiver was appointed or take other similar actions if such actions are in the best interest of the receivership. Restricting the receiver's powers to less than those of the Corporation may preclude the receiver from acting in the best interest of the receivership. Therefore, the FCA is making no change as a result of this comment.

### D. Section 650.61—Priority of Claims

The Corporation, the FCC, and the Treasury commented with regard to § 650.61, which establishes the priority for payment of claims against the Corporation in receivership. The Corporation commented that proposed § 650.61 did not explicitly provide a priority for claims of holders of securities guaranteed by the Corporation (guaranteed securities). Further, the Corporation asserts that because investors in guaranteed securities rely in part on the right of Farmer Mac to sell obligations to the Secretary of the Treasury (12 U.S.C. 2279aa–13), any inference in the regulations that the claims of holders would not take precedence over the claims of general creditors could create uncertainty with respect to the Corporation's guarantee and adversely affect the market for, and pricing of, its guaranteed securities. The Corporation recommended that the FCA amend § 650.61 to provide for payment of claims of holders of guaranteed securities prior to the payment of general, unsecured creditors.

The FCA has not adopted this suggestion because the Act does not provide a priority in liquidation for holders of guaranteed securities over other creditors of the Corporation. In addition, holders of guaranteed securities already have significant protection. They have direct access to the assets of the specific pool securing their securities as well as the guarantee of the Corporation should the assets backing the pool not be sufficient. Further, the Corporation has borrowing authority from Treasury to help enable it to fulfill guarantees.

In the preamble to the proposed regulation, the FCA stated that it was considering whether to provide a

priority over other creditors for obligations issued to the Treasury and requested comment on the issue. The FCC commented that the obligations issued to the Treasury should have a priority over other creditors only if one is provided by statute. The Corporation commented that because the statute does not provide a priority for obligations issued to the Treasury, no such priority should be provided by regulation. Further, the Corporation asserted that giving a priority position for the Treasury over other unsecured general creditors of the Corporation could adversely affect its dealings with vendors who would be general creditors in the unlikely event of a receivership. The Treasury requested that the regulations provide a priority over unsecured general creditors for any unsecured Farmer Mac obligations issued to the Treasury.

The FCA believes that any priority afforded to the Corporation's obligations should be determined by statute and the terms of the obligations. The FCA notes that other statutes may provide some protection to the Treasury, but the Act does not provide a priority in liquidation for obligations issued to the Treasury. Therefore, the FCA has not included such a priority in § 650.61. Obligations issued to the Secretary of the Treasury will be paid in the class of secured or unsecured creditors, depending on the nature of the obligations.

Other than the changes previously noted to §§ 650.56, 650.58, and 650.65, and minor editorial changes, the FCA adopts the amendments to part 650 as proposed.

### List of Subjects in 12 CFR Part 650

Agriculture, Banks, banking, Conflicts of interests, Rural areas.

For the reasons stated in the preamble, part 650 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

### PART 650—FEDERAL AGRICULTURAL MORTGAGE CORPORATION

1. The authority citation for part 650 is revised to read as follows:

**Authority:** Secs. 4.12, 5.9, 5.17, 8.11, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2279aa–11, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

2. Part 650 is amended by adding a new subpart C to read as follows:

**Subpart C—Receiver and Conservator**

Sec.

- 650.50 Grounds for appointment of a receiver or conservator.
- 650.51 Action for removal of receiver or conservator.
- 650.52 Voluntary liquidation.
- 650.55 Appointment of a receiver.
- 650.56 Powers and duties of the receiver.
- 650.57 Report to Congress.
- 650.58 Preservation of equity.
- 650.59 Notice to stockholders.
- 650.60 Creditor claims.
- 650.61 Priority of claims.
- 650.62 Payment of claims.
- 650.63 Inventory, audit, and reports.
- 650.64 Final discharge and release of the receiver.
- 650.65 Appointment of a conservator.
- 650.66 Powers and duties of the conservator.
- 650.67 Inventory, examination, and reports to stockholders.
- 650.68 Final discharge and release of the conservator.

**Subpart C—Receiver and Conservator****§ 650.50 Grounds for appointment of a receiver or conservator.**

(a) The grounds for the appointment of a receiver or conservator for the Corporation are:

(1) The Corporation is insolvent. For purposes of this paragraph, insolvent means:

(i) The assets of the Corporation are less than its obligations to its creditors and others; or

(ii) The Corporation is unable to pay its debts as they fall due in the ordinary course of business;

(2) There has been a substantial dissipation of the assets or earnings of the Corporation due to the violation of any law, rule, or regulation, or the conduct of an unsafe or unsound practice;

(3) The Corporation is in an unsafe or unsound condition to transact business;

(4) The Corporation has committed a willful violation of a final cease-and-desist order issued by the Farm Credit Administration Board;

(5) The Corporation is concealing its books, papers, records, or assets, or is refusing to submit its books, papers, records, assets, or other material relating to the affairs of the Corporation for inspection to any examiner or any lawful agent of the Farm Credit Administration Board.

(b) In addition to the grounds set forth in paragraph (a) of this section, a receiver can be appointed for the Corporation if the Farm Credit Administration Board determines that the appointment of a conservator would not be appropriate when one of the following conditions exists:

(1) The authority of the Corporation to purchase qualified loans or issue or

guarantee loan-backed securities is suspended; or

(2) The Corporation is classified under section 8.35 of the Act as within enforcement level III or IV and the alternative actions available under subtitle B of title VIII of the Act are not satisfactory.

(c) In addition to the grounds set forth in paragraph (a) of this section, a conservator can be appointed for the Corporation if:

(1) The Corporation is classified under section 8.35 of the Act as within enforcement level III or IV; or

(2) The authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended.

**§ 650.51 Action for removal of receiver or conservator.**

Upon the appointment of a receiver or conservator for the Corporation by the Farm Credit Administration Board pursuant to § 650.50 of this subpart, the Corporation may, within 30 days of such appointment, bring an action in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration Board to remove the receiver or conservator and, if the charter has been canceled, to rescind the cancellation of the charter. Notwithstanding any other provision of this part, the Corporation's board of directors is empowered to meet subsequent to such appointment and authorize the filing of an action for removal. An action for removal may be authorized only by the Corporation's board of directors.

**§ 650.52 Voluntary liquidation.**

(a) The Corporation may voluntarily liquidate by a resolution of its board of directors, but only with the consent of, and in accordance with a plan of liquidation approved by, the Farm Credit Administration Board. Upon adoption of such resolution, the Corporation shall submit the resolution and proposed voluntary liquidation plan to the Farm Credit Administration Board for preliminary approval. The Farm Credit Administration Board, in its discretion, may appoint a receiver as part of an approved liquidation plan. If a receiver is appointed for the Corporation as part of a voluntary liquidation, the receivership shall be conducted pursuant to the regulations of this part, except to the extent that an approved plan of liquidation provides otherwise.

(b) If the Farm Credit Administration Board gives preliminary approval to the liquidation plan, the board of directors

of the Corporation shall submit the resolution to liquidate to the stockholders for a vote in accordance with the bylaws of the Corporation.

(c) The Farm Credit Administration Board will consider final approval of the resolution to voluntarily liquidate and the liquidation plan after an affirmative stockholder vote on the resolution.

**§ 650.55 Appointment of a receiver.**

(a) The Farm Credit Administration Board may in its discretion appoint, ex parte and without prior notice, a receiver for the Corporation provided that one or more of the grounds for appointment as set forth in § 650.50 of this subpart exist.

(b) Upon the appointment of the receiver, the Chairman of the Farm Credit Administration Board shall immediately notify the Corporation and shall publish a notice of the appointment in the **Federal Register**.

(c) Upon the issuance of the order placing the Corporation into liquidation and appointing the receiver, all rights, privileges, and powers of the board of directors, officers, and employees of the Corporation shall be vested exclusively in the receiver. The Farm Credit Administration Board may cancel the charter of the Corporation on such date as the Farm Credit Administration Board determines is appropriate, but not later than the conclusion of the receivership and discharge of the receiver.

**§ 650.56 Powers and duties of the receiver.**

(a) *General.* (1) Upon appointment as receiver, the receiver shall take possession of the Corporation in order to wind up the business operations of the Corporation, collect the debts owed to the Corporation, liquidate its property and assets, pay its creditors, and distribute the remaining proceeds to stockholders. The receiver is authorized to exercise all powers necessary to the efficient termination of the Corporation's operation as provided for in this part.

(2) Upon its appointment as receiver, the receiver automatically succeeds to:

(i) All rights, titles, powers, and privileges of the Corporation and of any stockholder, officer, or director of the Corporation with respect to the Corporation and the assets of the Corporation; and

(ii) Title to the books, records, and assets of the Corporation in the possession of any other legal custodian of the Corporation.

(3) The receiver of the Corporation serves as the trustee of the receivership estate and conducts its operations for

the benefit of the creditors and stockholders of the Corporation.

(b) *Specific powers.* The receiver may:

(1) Exercise all powers as are conferred upon the officers and directors of the Corporation under law and the charter, articles, and bylaws of the Corporation.

(2) Take any action the receiver considers appropriate or expedient to carry on the business of the Corporation during the process of liquidating its assets and winding up its affairs.

(3) Borrow funds in accordance with section 8.41(f) of the Act to meet the ongoing administrative expenses or other liquidity needs of the receivership.

(4) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the Corporation's assets or property or rehabilitate or improve such property and assets.

(5) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the Corporation has a lien or in which the Corporation has a financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property.

(6) Investigate any matter related to the conduct of the business of the Corporation, including, but not limited to, any claim of the Corporation against any individual or entity, and institute appropriate legal or other proceedings to prosecute such claims.

(7) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any legal proceeding by or against the Corporation or in which the Corporation or its creditors or stockholders have any interest, and represent in every way the Corporation, its stockholders and creditors.

(8) Employ attorneys, accountants, appraisers, and other professionals to give advice and assistance to the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs.

(9) Hire any agents or employees necessary for proper administration of the receivership.

(10) Execute, acknowledge, and deliver, in person or through a general or specific delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effective as if it had been executed by the Corporation's officers by authority of its board of directors.

(11) Sell for cash or otherwise any mortgage, deed of trust, chose in action, note, contract, judgment or decree,

stock, or debt owed to the Corporation, or any property (real or personal, tangible or intangible).

(12) Purchase or lease office space, automobiles, furniture, equipment, and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the receivership.

(13) Release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome.

(14) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the Corporation or receiver.

(15) Pay, out of the assets of the Corporation, all expenses of the receivership (including compensation to personnel employed to represent or assist the receiver) and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver.

(16) Pay, out of the assets of the Corporation, all approved claims of indebtedness in accordance with the priorities established in this part.

(17) Take all actions and have such rights, powers, and privileges as are necessary and incident to the exercise of any specific power.

(18) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the Farm Credit Administration Board authorizes by order or by amendment of any order or by regulation.

#### **§ 650.57 Report to Congress.**

On a determination by the receiver that there are insufficient assets of the receivership to pay all valid claims against the receivership, the receiver shall submit to the Secretary of the Treasury and Congress a report on the financial condition of the receivership.

#### **§ 650.58 Preservation of equity.**

(a) Except as provided for upon final distribution of the assets of the Corporation pursuant to § 650.62 of this subpart, no capital stock, equity reserves, or other allocated equities of the Corporation in receivership shall be issued, allocated, retired, sold, distributed, transferred, or assigned.

(b) Immediately upon the adoption of a resolution by its board of directors to voluntarily liquidate the Corporation, the capital stock, equity reserves, and allocated equities of the Corporation shall not be issued, allocated, retired, sold, distributed, transferred, or assigned. Such activities could resume if the stockholders of the Corporation or

the Farm Credit Administration Board disapprove the resolution. In the event the resolution is approved by the stockholders of the Corporation and the Farm Credit Administration Board, the liquidation plan shall govern disposition of the equities of the Corporation as provided in § 650.52 of this subpart.

#### **§ 650.59 Notice to stockholders.**

As soon as practicable after a receiver takes possession of the Corporation, the receiver shall notify, by first class mail, each holder of stock of the following matters:

(a) The number of shares such holder owns;

(b) That the stock and other equities of the Corporation may not be retired or transferred until the liquidation is completed, whereupon the receiver will distribute a liquidating dividend, if any, to the stockholders; and

(c) Such other matters as the receiver or the Farm Credit Administration Board deems necessary.

#### **§ 650.60 Creditor claims.**

(a) Upon appointment, the receiver shall promptly publish a notice to creditors to present their claims against the Corporation, with proof thereof, to the receiver by a date specified in the notice, which shall be not less than 90 calendar days after the first publication. The notice shall be republished approximately 30 days and 60 days after the first publication. The receiver shall promptly send, by first class mail, a similar notice to any creditor shown on the Corporation's books at the creditor's last address appearing thereon. Claims filed after the specified date shall be disallowed except as the receiver may approve them for full or partial payment from the Corporation's assets remaining undistributed at the time of approval.

(b) The receiver shall allow any claim that is timely received and proved to the receiver's satisfaction. The receiver may disallow in whole or in part any creditor's claim or claim of security, preference, or priority that is not proved to the receiver's satisfaction or is not timely received and shall notify the claimant of the disallowance and reason therefor. Sending the notice of disallowance by first class mail to the claimant's address appearing on the proof of claim shall be sufficient notice. The disallowance shall be final unless, within 30 days after the notice of disallowance is mailed, the claimant files a written request for payment regardless of the disallowance. The receiver shall reconsider any claim upon the timely request of the claimant

and may approve or disapprove such claim in whole or in part.

(c) Creditors' claims that are allowed shall be paid by the receiver from time to time, to the extent funds are available therefor and in accordance with the priorities established in this part and in such manner and amounts as the receiver deems appropriate. In the event the Corporation has a claim against a creditor of the Corporation, the receiver shall offset the amount of such claim against the claim asserted by such creditor.

#### § 650.61 Priority of claims.

The following priority of claims shall apply to the distribution of the assets of the Corporation in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership, all Farm Credit Administration assessments for the costs of supervising and examining the Corporation, and any amounts borrowed pursuant to § 650.56(b)(3).

(b) Administrative expenses of the Corporation, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees that were authorized and reimbursable under a preexisting expense reimbursement policy and that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the Corporation.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the Corporation whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars (\$3,000) per person as adjusted for inflation, by an employee of the Corporation not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors which are secured by specific assets of the Corporation, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State law.

(g) All claims of general creditors.

#### § 650.62 Payment of claims.

(a) All claims of each class described in § 650.61 of this subpart shall be paid in full or provisions shall be made for such payment prior to the payment of any claim of a lesser priority. If there are insufficient funds to pay all claims in a class in full, distribution to that class will be on a pro rata basis.

(b) Following the payment of all claims, the receiver shall distribute the remainder of the assets of the Corporation, if any, to the owners of stock and other equities in accordance with the priorities for impairment set forth in section 8.4(e)(3) of the Act and the bylaws of the Corporation.

#### § 650.63 Inventory, audit, and reports.

(a) As soon as practicable after taking possession of the Corporation, the receiver shall take an inventory of the assets and liabilities as of the date possession was taken.

(b) The receivership shall be audited on an annual basis by a certified public accountant selected by the receiver.

(c) The receiver shall make an annual accounting or report, as appropriate, available for review upon request to any stockholder of the Corporation or any member of the public, with a copy provided to the Farm Credit Administration.

(d) As soon as practicable after final distribution, the receiver shall send to each stockholder of record a report summarizing the disposition of the assets of the receivership and claims against the receivership.

#### § 650.64 Final discharge and release of the receiver.

After the receiver has made a final distribution of the assets of the receivership, the receivership shall be terminated, the charter shall be canceled by the Farm Credit Administration Board if such cancellation has not previously occurred, and the receiver shall be finally discharged and released.

#### § 650.65 Appointment of a conservator.

(a) The Farm Credit Administration Board may in its discretion appoint, ex parte and without prior notice, a conservator for the Corporation provided that one or more of the grounds for appointment as set forth in § 650.50 of this subpart exist;

(b) Upon the appointment of a conservator, the Chairman of the Farm Credit Administration shall immediately notify the Corporation and shall publish a notice of the appointment in the **Federal Register**.

(c) As soon as practicable after the conservator takes possession of the Corporation, the conservator shall notify, by first class mail, each holder of stock in the Corporation of the establishment of the conservatorship and shall describe the effect of the conservatorship on the Corporation's operations and equity holdings.

(d) Upon the issuance of the order placing the Corporation in conservatorship, all rights, privileges, and powers of the board of directors, officers, and employees of the Corporation are vested exclusively in the conservator.

(e) The Farm Credit Administration Board may, at any time, terminate the conservatorship and direct the conservator to turn over the Corporation's operations to such management as the Farm Credit Administration Board may designate, in which event the provisions of this subpart shall no longer apply.

#### § 650.66 Powers and duties of the conservator.

(a) The conservator shall direct the Corporation's further operation until the Farm Credit Administration Board decides that the Corporation can operate without the conservatorship or places the Corporation into receivership. Upon correction or resolution of the problem or condition that provided the basis for the appointment, the Farm Credit Administration Board may turn the Corporation over to such management as the Farm Credit Administration Board may direct.

(b) The conservator shall exercise all powers necessary to continue the ongoing operations of the Corporation, to conserve and preserve the Corporation's assets and property, and otherwise protect the interests of the Corporation, its stockholders, and creditors as provided in this subpart.

(c) The conservator serves as the trustee of the Corporation and conducts its operations for the benefit of the creditors and stockholders of the Corporation.

(d) The conservator may exercise the powers that a receiver of the Corporation may exercise under any of the provisions of § 650.56(b) of this subpart, except paragraphs (b)(2) and (b)(16). In interpreting the applicable paragraphs for purposes of this section, the terms "conservator" and

“conservatorship” shall be read for “receiver” and “receivership”.

(e) The conservator may also take any other action the conservator considers appropriate or expedient to the continuing operation of the Corporation.

**§ 650.67 Inventory, examination, and reports to stockholders.**

(a) As soon as practicable after taking possession of the Corporation, the conservator shall take an inventory of the assets and liabilities of the Corporation as of the date possession was taken. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The conservatorship shall be examined by the Farm Credit Administration in accordance with section 8.11 of the Act.

(c) The conservatorship shall prepare and file financial reports and other documents in accordance with the requirements of § 620.40 and part 621 of this chapter. The conservator of the Corporation shall provide the certification required in § 621.14 of this chapter.

**§ 650.68 Final discharge and release of the conservator.**

At such time as the conservator shall be relieved of its conservatorship duties, the conservator shall file a report on the conservator's activities with the Farm Credit Administration. The conservator shall thereupon be completely and finally released.

Dated: August 7, 1997.

**Floyd Fithian,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 97-21671 Filed 8-14-97; 8:45 am]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 314**

**New Drug Applications and Abbreviated New Drug Applications; Editorial Amendments**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its new drug application (NDA) and abbreviated new drug application (ANDA) regulations to reflect a reorganization in the Center for Drug Evaluation and Research (CDER). This action will improve the accuracy of the regulations.

**EFFECTIVE DATE:** August 15, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Olivia A. Vieira, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

**SUPPLEMENTARY INFORMATION:** FDA is amending its NDA and ANDA regulations to reflect a reorganization in CDER. The name of the former Division of Regulatory Affairs (HFD-360) has been changed to the Regulatory Policy Staff (HFD-7). Furthermore, the division is no longer part of the Office of Compliance and now reports to the Associate Director for Policy (HFD-5). The regulations are being amended in 21 CFR 314.110 (a)(3) and (b), 314.120(a)(3), and 314.440(a)(3) to reflect this change.

Publication of this document constitutes final action on these changes under the Administrative Procedures Act (5 U.S.C. 553). Because the amendments are wholly editorial and nonsubstantive in nature, FDA finds that notice and public procedure are unnecessary.

**List of Subjects in 21 CFR Part 314**

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 314 is amended as follows:

**PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG**

1. The authority citation for 21 CFR part 314 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e).

**§ 314.110 [Amended]**

2. Section 314.110 Approvable letter to the applicant is amended in paragraphs (a)(3) and (b) by removing the phrase “Division of Regulatory Affairs (HFD-360)” and adding in its place the phrase “Associate Director for Policy (HFD-5)”.

**§ 314.120 [Amended]**

3. Section 314.120 Not approvable letter to the applicant is amended in paragraph (a)(3) by removing the phrase “Division of Regulatory Affairs (HFD-360)” and adding in its place the phrase “Associate Director for Policy (HFD-5)”.

**§ 314.440 [Amended]**

4. Section 314.440 Addresses for applications and abbreviated applications is amended in paragraph (a)(3) by removing the phrase “Division of Regulatory Affairs (HFD-360)” and adding in its place the phrase “Associate Director for Policy (HFD-5)”.

Dated: August 8, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97-21649 Filed 8-14-97; 8:45 am]

BILLING CODE 4160-01-M

**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Part 4044**

**Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in September 1997.

**EFFECTIVE DATE:** September 1, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD).

**SUPPLEMENTARY INFORMATION:** The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in