millimeters (0.39 to 0.98 inches) in diameter and 60 to 105 millimeters (2.36 to 4.13 inches) in length may be imported into the continental United States from Zambia only under the following conditions:

(1) The production site, which is a field, where the corn has been grown must have been inspected at least once during the growing season and before harvest for the following pest: *Phomopsis jaczewskii*.

(2) After harvest, the corn must be inspected by Zambia's national plant protection organization (NPPO) and found free of the pests listed in paragraph (a)(1) of this section before the corn may be shipped to the continental United States.

(3) The corn must be inspected at the port of first arrival as provided in § 319.56–6.

(4) Each shipment must be accompanied by a phytosanitary certificate issued by the NPPO of Zambia that includes an additional declaration stating that the corn has been inspected and found free of *Phomopsis jaczewskii* based on field and packinghouse inspections.

(5) The corn may be imported in commercial shipments only.

(b) Immature ''baby'' carrots (*Daucus carota* L. ssp. *sativus*) for consumption measuring 10 to 18 millimeters (0.39 to 0.71 inches) in diameter and 50 to 105 millimeters (1.97 to 4.13 inches) in length may be imported into the continental United States from Zambia only under the following conditions:

(1) The production site, which is a field, where the carrots have been grown must have been inspected at least once during the growing season and before harvest for the following pest: *Meloidogyne ethiopica*.

(2) After harvest, the carrots must be inspected by the NPPO of Zambia and found free of the pests listed in paragraph (b)(1) of this section before the carrots may be shipped to the continental United States.

(3) The carrots must be inspected at the port of first arrival as provided in § 319.56–6.

(4) Each shipment must be accompanied by a phytosanitary certificate issued by the NPPO of Zambia that includes an additional declaration stating that the carrots have been inspected and found free of *Meloidogyne ethiopica* based on field and packinghouse inspections.

(5) The carrots must be free from leaves and soil.

(6) The carrots may be imported in commercial shipments only.

Done in Washington, DC, this 4th day of January 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–134 Filed 1–10–06; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AC29

Organization; Termination of System Institution Status

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend our regulations that allow a Farm Credit System (FCS, Farm Credit, or System) bank or association to terminate its FCS charter and become a financial institution under another Federal or State chartering authority. With these amendments, we propose to update the existing regulations to clarify our requirements, separate our review of stockholder disclosure information from our review of the termination itself, improve communications, strengthen the role of an institution's directors in the termination process, and make other changes.

DATES: Please send your comments to us by March 13, 2006.

ADDRESSES: Comments may be sent by electronic mail to ''*reg-comm@fca.gov*,'' through the Pending Regulations section of our Web site at *http://www.fca.gov* or through the Government-wide *http://www.regulations.gov* portal. You may also send written comments to Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by fax to (703) 734–5784.

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 ''Legal Info,'' and then select ''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 electronic-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Dale Aultman, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414; TTY (703) 883–4434; or

Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our current proposal are to:

1. Update the termination procedure for FCS banks and associations under sections 7.10 and 7.11 of the Farm Credit Act of 1971, as amended (Act);

2. Ensure that the FCA, an institution's board of directors, and the institution's equity holders have sufficient time and opportunities to be fully informed about a termination proposal before deciding whether to approve the termination;

3. Provide that we may require a terminating institution to obtain independent analyses and rulings regarding a proposed termination;

4. Ensure that a significant proportion of stockholders are engaged in the termination process; and

5. Clarify existing requirements and ensure that stockholder disclosure materials are informative and easy to understand.

II. Background

The Agricultural Credit Act of 1987, among other things, amended the Act expressly to permit System institutions to terminate their Farm Credit status and become another type of financial institution. We first issued regulations governing terminations in 1991. At that time, the regulations covered only ''small'' FCS associations. Our current termination rule, published on April 12, 2002, reflected amendments to cover all associations and banks.[1] Since 1991, no FCS bank or association has terminated its charter under FCA regulations. However, in 2004 one System association adopted a commencement resolution to terminate its Farm Credit charter and subsequently be acquired by the subsidiary of a non-System bank. Ultimately, the association decided not to be acquired and not to terminate Farm Credit status. Although the association never submitted a termination application to us, the experience presented us with an actual event to evaluate the effectiveness and efficiency of our existing termination regulations. We found that, while the existing regulations provide the basic requirements to comply with the Act and effect a termination, certain

[1] *See* 67 FR 17907.

revisions to the regulations would ensure a more orderly process for a FCS bank or association to terminate its charter.

III. Proposed Amendments

The following outlines several new provisions and major revisions we propose to make to our regulations:

1. Proposed new §§ 611.1230 and 611.1247 separate our review of a terminating institution's disclosure information, as required by section 7.11 of the Act, from our approval of the termination itself, as set forth in section 7.10 of the Act. Our review of the disclosure information will precede the submission of the information to equity holders, as in the existing regulation, and we will begin the statutory period on the date the disclosure information is complete, as determined by us. We propose to review and approve or disapprove the termination itself after the equity holders have voted to approve the termination.

2. Proposed new §§ 611.1215 and 611.1216 give a terminating institution more flexibility in communicating with stockholders and the public during the termination process, and also provides that we may require certain termination-related documents to be posted on our Web site or the institution's Web site.

3. Proposed new § 611.1211 provides that we may require a terminating institution to obtain independent analyses of and rulings on matters related to the proposed termination, as well as to hold convenient informational meetings for stockholders.

4. Proposed new § 611.1218 strengthens protections for directors to consult independent legal counsel and allow public or private expressions of their opinions about the termination. In addition, proposed § 611.1235 provides that the board of directors of a terminating institution must again vote to approve the proposed termination before mailing the plan of termination, to ensure that the board continues to support the termination.

5. Proposed amendments to § 611.1240 ensure sufficient equity holder representation in voting processes by imposing a quorum requirement of 30 percent of voting stockholders at the stockholder meetings for the termination vote.

6. Proposed new § 611.1247 eliminates potentially confusing criteria pertaining to reasons why we may disapprove a termination application.

7. Throughout the regulations, we propose to add language requiring disclosure of information related to any planned or contemplated corporate restructuring, such as the merger of the successor institution with, or its acquisition by, another entity.

8. Throughout the regulations, we propose to remove outdated references to the Financial Assistance Corporation (FAC), which was created in 1988 as part of the Federal assistance to the System. That assistance has now been repaid.

We note that we are not proposing substantive amendments to the existing regulations that pertain to the applicability of this subpart, dissenting stockholders rights, repayment of obligations, stockholder reconsiderations, retirement of investments in other System institutions, loan refinancing by borrowers, and continuation of borrower rights.

These proposals are more fully described below.

IV. Section-by-Section Analysis

Section 611.1200—Applicability of This Subpart

We do not propose any changes to this section.

Section 611.1205—Definitions That Apply in This Subpart

We propose to add definitions of ''days'' to mean calendar days and ''business days'' to mean days on which the FCA is open for business.

We also propose to define ''equity holders'' to mean holders of stock, participation certificates, or other equities such as allocated equities.

Section 611.1210—Advance Notices—Commencement Resolution and Notice to Equity Holders

We propose to require a terminating institution to send us a draft of its notice to equity holders before the notice is sent to equity holders. If we do not request modifications to the draft notice within 2 business days of receiving it, the terminating institution may mail the notice to its equity holders. Our purpose in requiring prior review is to ensure that the notice complies with plain language principles and contains the information required. We propose changing the existing heading to the above heading to better describe the requirements of this section.

We propose to require the terminating institution to place the advance notice to equity holders on its Web site and to send us copies of all contracts and agreements related to the termination.

We also propose other minor and nonsubstantive changes to the language in this section.

Section 611.1211—Special Requirements

We propose a new section with requirements that we may impose regarding special assessments, analyses, rulings, or studies. A termination raises issues that the FCA does not routinely address, such as how to assess the value the institution and the tax implications of terminating. If we determine that expert analyses, studies, or rulings are needed, we will require a terminating institution to engage experts acceptable to us to perform such work. We may require that such analyses, studies, or rulings, or summaries, be provided to equity holders as part of the plan of termination, or separately.

We also propose that we may require a terminating institution to hold regional or local informational meetings for equity holders during the time period after they receive notice of the proposed termination and before the stockholder vote on termination. These meetings will give equity holders an opportunity to ask questions directly to management of the institution at an early point in the termination process, as well as giving management an opportunity to explain the termination plan and procedure. The meetings would be subject to the plain language requirements of proposed § 611.1217(b) regarding balanced statements of anticipated benefits and potential disadvantages.

We note that we may hold public meetings anytime after your notice to equity holders is sent, in order to obtain the perspective of interested parties.

Section 611.1215—Communications

We propose a new section on ''Communications with the public and equity holders.'' This section would permit a terminating institution to communicate with the public and with its equity holders during the termination process, provided that written communications are filed with the FCA on the date of first use. Such written communications must contain a legend urging equity holders to read the information statement that contains important information about the termination. If we believe any communications are inaccurate or misleading, we will require corrections to be made. We may also require a terminating institution to file written communications made by other participants in the termination and related transactions, such as a merger partner. The regulation contains a safe harbor for unintentional failures to make timely filings with the FCA and provides that communications that

contain no new information from previously filed communications do not need to be filed.

We believe that this proposed regulation on communications will give a timely, reasonable and flexible accommodation to terminating institutions as well as comply with section 7.11(a)(1) of the Act. That statutory provision requires FCA review of information on the termination that is to be distributed to equity holders.

The provisions in existing § 611.1215 would be moved to § 611.1219, as described below.

Section 611.1216—Public Availability of Documents Related to the Termination

In proposed new § 611.1216, we provide that we may post on our Web site, or require a terminating institution to post on its Web site, documents related to the termination. We believe that disclosure of the documents will, at an early stage in the termination process, enable equity holders and others to understand the structure and ramifications of the plan of termination. We would expect the institution to post the board of directors' resolution on its Web site to commence the termination process in addition to the notice to equity holders. Also, we may require the posting of other documents such as charter documents of the successor institution or contracts entered into with a merger or acquisition partner. In addition, we may require the posting of the results of any special assessments, analyses, studies, and rulings. It is not our intention to require the posting of confidential information. The proposed rule provides that the terminating institution may request us to keep specific documents confidential.

Section 611.1217—Plain Language Requirements

We propose to move the plain language requirements in existing § 611.1223(a) to new § 611.1217 and to apply them to all communications with equity holders required by these regulations, not just to the information statement. To help ensure a balanced presentation of the information, we also provide that communications describing the anticipated benefits of the proposed termination should also give similar prominence to the potential disadvantages of the termination.

Section 611.1218—Role of Directors

In this new section, we emphasize the importance of directors in the termination process, not only when they take action as the whole board but also when they act individually. First, we provide that directors may not be prohibited by confidentiality agreements or otherwise from publicly or privately commenting on a termination proposal and related transactions. We do not believe such prohibitions would be in the best interests of the equity holders because they prevent directors from consulting with the persons they represent and prevent equity holders from learning the opinions of those who should have the most detailed knowledgeof the proposal. We note that this provision does not permit directors to reveal trade secrets or confidential financial information that they would be prohibited from revealing in the absence of a confidentiality agreement or similar document.

We further propose to provide that one or more directors have the right to obtain legal and financial advice on a proposed or contemplated termination, and that the institution must pay reasonable expenses. This will ensure that each director has the opportunity to obtain advice from parties who have no conflict of interest in the proposed transaction.

Section 611.1219—Prohibited Acts

We propose to move existing § 611.1215 to this new § 611.1219 with a few revisions. One revision is to delete a reference to our preliminary approval of the termination, because we are proposing to eliminate the preliminary approval provision. We also propose to prohibit the institution and any director, officer, employee, and agent from making any untrue or misleading statement of a material fact, or failing to disclose any material fact to the FCA about the proposed termination and any related transactions. This prohibition already applies to statements made to or withheld from current or prospective equity holders.

Section 611.1220—Termination Resolution

Proposed § 611.1220 is an expansion of the requirement in existing § 611.1220(a) for the board to adopt a termination resolution. We propose to require that adoption of the resolution must occur no more than 1 week before submitting the plan of termination to us and to specify that the resolution must authorize submission of the plan of termination to us and to voting stockholders, then (if approved) submission of the application for termination to us and submission of an application to a Federal or State authority to charter the successor institution.

Section 611.1221—Submission to FCA of Plan of Termination and Disclosure Information; Other Required Submissions

Proposed § 611.1221 revises the existing regulation to provide that a terminating institution may not file a plan of termination until at least 30 days after the institution has sent the notice to equity holders under § 611.1210(b). In addition, we propose to move to this section a requirement from existing § 611.1220(b) regarding the number of copies of the plan to submit to the FCA; to move existing § 611.1220(c) to § 611.1223(d); and to move provisions in existing § 611.1222 to this section.

We also propose to remove references to the FAC because all outstanding FAC debt has been repaid.

Section 611.1223—Plan of Termination—Contents

We propose to rename this section ''Plan of termination—contents'' and to remove references to ''Information Statement'' because the latter term is not found in section 7.11 of the Act. Instead, we propose to refer to the material to be submitted to equity holders as the plan of termination.

As described above, we propose moving the ''plain language'' requirements in existing § 611.1223(a) to new § 611.1217 and applying them more broadly, and to move the requirement to update information in existing § 611.1220(c) to paragraph (d) of this section. We propose to add several requirements to the contents of the information statement.

Proposed paragraph (b)(7) would require a terminating institution to explain in the summary to the plan of termination whether the successor institution expects to engage in a corporate restructuring in the 18 months following termination.

Proposed paragraph (c)(7) would require a terminating institution to include copies of contracts and agreements in connection with the termination and operations of the successor institution. The FCA may permit or require a summary of the documents instead of copies.

Proposed paragraph (c)(13) would contain the requirement of existing § 611.1223(d)(9) to disclose employment, retirement, and severance agreements, and would also require disclosure of such agreements with any entity that may merge with or acquire the successor institution.

Proposed paragraph (c)(26) would provide that we may require a terminating institution to disclose assessments, analyses, studies, or

rulings that we require the institution to obtain under proposed § 611.1211.

Proposed paragraph (c)(29) would require the terminating institution to include statements by directors that desire to make individual or group statements regarding the proposed termination and related transactions. We believe that directors, especially directors of a cooperative, are entitled to share both supporting and opposing views on such an important matter with equity holders and to have those views set forth in the plan of termination without prior approval or constraint by the board. However, as with all information in the information statement, statements by directors must be reasonable in length and free of material misstatements or omissions. We note that the director certification requirement in new paragraph (c)(28) (existing § 611.1223(d)(24)) would not be deemed to be certifications of the opinions in these statements by directors.

Proposed paragraph (c)(30) would require the terminating institution to include a copy of the reaffirmation resolution, a proposed new requirement set forth in proposed § 611.1235, described below. The terminating institution would add this to the plan of termination after the FCA's review period, since we would require the institution to adopt it just before mailing the plan to equity holders.

Proposed paragraph (d) contains the requirements in existing §§ 611.1220(c) and 611.1223(d)(20).

Section 611.1230—FCA Review and Approval—Plan of Termination

Existing § 611.1230 provides for our ''preliminary approval'' of the termination application, which combines our approval of the information statement to be submitted to equity holders with our preliminary approval of the termination itself. The regulation also sets forth certain conditions of final approval of the termination application—*i.e.*, approval of the termination itself—and contains a reservation of our right to disapprove the termination if, in addition to any other reason for disapproval, we determine that the termination would have a material adverse impact on the remaining System institutions to fulfill their statutory purpose.

We propose to revise this section to pertain only to our approval of the plan of termination as described in proposed § 611.1222. As provided in section 7.11(a)(1) of the Act, we state that the terminating institution may submit its plan to its equity holders if we take no action on the plan within 60 days of receiving a complete plan of termination. We will inform the institution in writing of the date on which we determine the application complete.

We also provide that our approval of the plan of termination is not our approval of the termination itself and, the plan may be subject to any condition we impose. As with all proposed corporate restructurings, we may reject a plan of termination that we determine is incomplete.

Section 611.1235—Plan of Termination—Distribution

We propose this new section regarding distribution of the plan of termination. In paragraph (a) we propose requiring your board of directors to adopt another resolution approving the termination, in order to ensure the continuing support of the board for the termination. In addition, we propose to move existing § 611.1240(c) to this section and revise it to require the terminating institution to provide the plan of termination to equity holders at least 45 days (instead of the existing regulation's 30 days) before the stockholder vote will occur. This will ensure that the voting stockholders have ample time to read and evaluate the proposal.

Section 611.1240—Voting Record Date and Stockholder Approval

Except for existing paragraph (c), which we propose to move to § 611.1235, we propose to retain existing § 611.1240 with the following revisions. In paragraph (a), we propose to require the stockholder vote to take place at least 60 days after we have approved the plan of termination (or 60 days after the end of our review period) instead of no more than 60 days after. We propose this change to ensure that voters have enough time to review and evaluate the proposal. In paragraph (c), we propose a quorum requirement of 30 percent of voting stockholders present (in person or by proxy) at the meeting. This would not require 30 percent of voting stockholders to cast a vote but would require their presence (in person or by proxy) at the meeting. We are making this proposal because we believe an issue of such importance to all equity holders should be deliberated upon by a significant number of the voting stockholders, regardless of the number who ultimately vote. In paragraph (d), we restate the requirement in section 7.10(a)(6) of the Act that a majority vote by stockholders voting in person or by proxy is needed to approve the termination.

We also propose to add a reference in new paragraph (e) to § 611.340, to clarify that the voting security regulation applies to this stockholder vote as well as § 611.330, which covers confidentiality in voting.

Section 611.1245—Stockholder Reconsideration

In this section, we propose adding a quorum requirement of at least 30 percent of voting stockholders in paragraph (b) for the same reasons we propose a quorum requirement for the original vote.

Section 611.1246—Filing of Termination Application and Its Contents

Proposed new § 611.1246 provides that, within 90 days of notifying us that voting stockholders have approved the plan of termination, a terminating institution may submit a termination application containing the following:

- The board resolutions required by §§ 611.1220 and 611.1235,
- A board certification that there has been no material change to the information in the plan of termination or information statement since FCA approval of the plan of termination, and that there have been no subsequent events that could have a material impact on the information in the information statement or the termination, and
- Any additional information that is required by the termination regulations, that we request, or that the terminating institution's board wishes to submit.

Section 611.1247—FCA Review and Approval—Termination

New § 611.1247 would provide for a separate approval of the termination application. As noted above, we are proposing to review the termination application after our review of the plan of termination required by section 7.11(a)(1) of the Act and after a stockholder vote approving the termination. We have determined that a clear separation of the two approvals will ensure the proper level of scrutiny as to the merits of the proposal apart from the adequacy of the disclosure materials. A termination is an extraordinary event with numerous, complicated ramifications that are of broad interest to equity holders, other System institutions, lawmakers and the public. The FCA's approvals require a significant devotion of time by FCA staff and involve issues not routinely addressed by staff. A separate termination application review would also allow sufficient opportunities to schedule and hold public meetings where appropriate.

In this new section, paragraph (a) states that, after we receive the termination application, we will review it and either approve or disapprove the termination. Paragraph (b) states that we will disapprove the termination if we determine that there are one or more appropriate reasons for disapproval, consistent with our statutory and regulatory authorities. We propose to delete existing § 611.1230(b), which provides that we may disapprove a termination if we determine it would have a ''material adverse effect on the ability of the remaining System institutions to fulfill their statutory purpose.'' We are proposing this deletion because of our experience last fall when a System association took some initial steps to terminate. Some members of the public were confused by this provision and incorrectly assumed it would be the only reason for us to disapprove a termination. While we are not ruling out disapproval of a termination based on its ''material adverse impact'' on the remaining System institutions, we may disapprove a termination for any appropriate reason.

There is a possibility that we could approve a plan of termination and stockholders vote in favor of a termination, and then we disapprove the termination because of the results of special studies, analyses, rulings, meetings, or for any other reason that we deem as appropriate given the specific circumstances.

Paragraph (c) sets forth conditions required for our approval of the termination, including the following:

(1) A stockholder vote and a reconsideration vote, if any, approving the termination,

(2) Submission to FCA of executed copies of all documents required for the plan of termination;

(3) The terminating institution has paid or provided for payment of debts and retirement of equities,

(4) A charter for the successor institution has been granted a Federal or State authority,

(5) The terminating institution has made the escrow payments required by § 611.1255(c), and

(6) The terminating institution has fulfilled any condition of termination we have imposed.

In proposed paragraph (d), we provide that, when we approve a termination, we will also determine an effective date for the termination. Such date could be no earlier than the last to occur of the following events: fulfillment of the conditions in paragraph (c) of this section, 90 days after we received the termination application, 15 days after any reconsideration vote, and the terminating institution's proposed termination date.

Section 611.1250—Preliminary Exit Fee Estimate and § 611.1255—Exit Fee Calculation

We propose several parallel revisions to these sections, which explain how to calculate the preliminary exit fee estimate that must be included in the plan of termination, and how to calculate the final exit fee. We add expenditures for tax services, studies, and equity holder meetings as examples of expenses an institution may incur that are related to a termination in §§ 611.1250(a)(4)(i) and 611.1255(a)(4)(i) pertaining to associations, and in §§ 611.1250(b)(5)(i)(A) and 611.1255(b)(5)(i)(A) pertaining to banks. In § 611.1250(c), which contains the 3-year look-back adjustment provision, we expressly include real property and servicing rights as assets that may be undervalued, overvalued, or not recorded on the institution's books.

We also propose expressly to require a terminating institution to include in assets any tax benefit that has arisen or will arise due to the termination. We already have discretionary authority under existing § 611.1250(c)(1)(vi) to require such an adjustment,[2] but we have decided to apply it to all terminations. This requirement will balance existing and continuing provisions allowing for the deduction of tax expenses, due to termination, from assets in the preliminary and final exit fee calculations. We note that States have a variety of tax expenses and benefits, and many System institutions operate in more than one State. We are seeking comment on whether we should limit the tax expense deductions from, and tax benefits to, assets in the exit fee calculation to Federal taxes. We are also interested in whether we should more narrowly draw the tax provision so that it includes only income taxes, or unavoidable tax expenses, or both.

In § 611.1250(c), we propose to rename the subsection ''Adjustments'' and to add the phrase ''account balances'' to paragraph (c)(1) to clarify that we may adjust any balance sheet ''assets'' whether or not a specific related ''transaction'' has occurred within the previous 3 years. We also propose to replace references to ''tax liability'' with the term ''tax expense'' to clarify that we intend to refer to both current and deferred taxes.

[2] See the preamble discussion of ''Section 611.1240—Exit Fee'' in our proposed termination rule for small associations, 55 FR 28639 (July 12, 1990).

In paragraphs (a) and (b) of both sections, we propose to remove outdated references to the FAC.

Finally, in § 611.1255(a)(4)(i), regarding a terminating association's final exit fee calculation, we remove language that sets a 12-month timeframe for which termination expenses can be added to the calculation. This change will make the calculation parallel to the existing calculation for terminating banks.

Section 611.1260—Payment of Debts and Assessments—Terminating Association

In this section, we propose to remove outdated references to the FAC.

Section 611.1265—Retirement of a Terminating Association's Investment in Its Affiliated Bank

We do not propose any amendments to this section.

Section 611.1270—Repayment of Obligations—Terminating Bank

In this section, we propose to remove outdated references to the FAC.

Section 611.1275—Retirement of Equities Held by Other System Institutions

In this section, we propose to remove outdated references to the FAC.

Section 611.1280—Dissenting Stockholder's Rights

In this section, we propose to remove outdated references to the FAC.

Section 611.1285—Loan Refinancing by Borrowers

We do not propose any changes to this section.

Section 611.1290—Continuation of Borrower Rights

We do not propose any changes to this section.

IV. Regulatory Flexibility Act

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

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 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 6.9, 6.26, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2278a–9, 2278b–6, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

2. Revise subpart P to read as follows:

Subpart P—Termination of System Institution Status

Sec.

Subpart P—Termination of System Institution Status

§ 611.1200 Applicability of this subpart.

The regulations in this subpart apply to each bank and association that desires to terminate its System institution status and become chartered as a bank, savings association, or other financial institution.

§ 611.1205 Definitions that apply in this subpart.

Assets means all assets determined in conformity with GAAP, except as otherwise required in this subpart.

Business days means days the FCA is open for business.

Days means calendar days.

Equity holders means holders of stock, participation certificates, or other equities such as allocated equities.

GAAP means ''generally accepted accounting principles'' as that term is defined in § 621.2(c) of this chapter.

OFI means an ''other financing institution'' that has a funding and discount agreement with a Farm Credit bank under section 1.7(b)(1) of the Act.

Successor institution means the bank, savings association, or other financial institution that the terminating bank or association will become when we revoke its Farm Credit charter.

§ 611.1210 Advance notices—commencement resolution and notice to equity holders.

(a) *Adoption of commencement resolution.* Your board of directors must begin the termination process by adopting a commencement resolution stating your intention to terminate Farm Credit status under section 7.10 of the Act. Immediately after you adopt the commencement resolution, send a certified copy by overnight mail to us and to the Farm Credit System Insurance Corporation (FCSIC). If your institution is an association, also send a copy to your affiliated bank. If your institution is a bank, also send a copy to your affiliated associations, the other Farm Credit banks, and the Federal Farm Credit Banks Funding Corporation (Funding Corporation).

(b) *Advance notice.* Within 5 business days after adopting the commencement resolution, you must:

(1) Send us copies of all contracts and agreements related to the termination.

(2) Subject to paragraph (b)(2)(ii) of this section:

(i) Send an advance notice to all equity holders stating you are taking steps to terminate System status. Immediately upon mailing the notice to equity holders, you must also place it in a prominent location on your Web site. The advance notice must describe the following:

(A) The process of termination;

(B) The expected effect of termination on borrowers and other equity holders, including the effect on borrower rights and the consequences of any stock retirements before termination;

(C) The type of charter the successor institution will have; and

(D) Any bylaw creating a special class of borrower stock and participation certificates under paragraph (f) of this section.

(ii) Send us a draft of the advance notice by facsimile or electronic mail before mailing it to your equity holders. If we have not contacted you within 2 business days of our receipt of the draft notice regarding modifications, you may mail the notice to your equity holders.

(c) *Bank negotiations on joint and several liability.* If your institution is a terminating bank, within 10 days of adopting the commencement resolution, your bank and the other Farm Credit banks must begin negotiations to provide for your satisfaction of liabilities (other than your primary liability) under section 4.4 of the Act. The Funding Corporation may, at its option, be a party to the negotiations to the extent necessary to fulfill its duties with respect to financing and disclosure. The agreement must comply with the requirements in § 611.1270(c).

(d) *Disclosure to loan applicants and equity holders after commencement resolution.* Between the date your board of directors adopts the commencement resolution and the termination date, you must give the following information to your loan applicants and equity holders:

(1) For each loan applicant who is not a current stockholder, describe at the time of loan application:

(i) The effect of the proposed termination on the prospective loan; and

(ii) Whether, after the proposed termination, the borrower will continue to have any of the borrower rights provided under the Act and regulations.

(2) For any equity holders who ask to have their equities retired, explain that the retirement would extinguish the holder's right to exchange those equities for an interest in the successor institution. In addition, inform holders of equities entitled to your residual assets in liquidation that retirement before termination would extinguish their right to dissent from the termination and have their equities retired.

(e) *Terminating bank's right to continue issuing debt.* Through the termination date, a terminating bank may continue to participate in the issuance of consolidated and Systemwide obligations to the same extent it would be able to participate if it were not terminating.

(f) *Special class of stock.* Notwithstanding any requirements to

the contrary in § 615.5230(b) of this chapter, you may adopt bylaws providing for the issuance of a special class of stock and participation certificates between the date of adoption of a commencement resolution and the termination date. Your voting stockholders must approve the special class before you adopt the commencement resolution. The equities must comply with section 4.3A of the Act and be identical in all respects to existing classes of equities that are entitled to the residual assets of the institution in a liquidation, except for the value a holder will receive in a termination. In a termination, the holder of the special class of stock receives value equal to the lower of either par (or face) value, or the value calculated under § 611.1280(c) and (d). A holder must have the same right to vote (if the equity is held on the voting record date) and to dissent as holders of similar equities issued before the commencement resolution. If the termination does not occur, the special classes of stock and participation certificates must automatically convert into shares of the otherwise identical equities.

§ 611.1211 Special requirements.

(a) *Special assessments, analyses, studies, and rulings.* At any time after we receive your commencement resolution, and as we deem necessary or useful to evaluate your proposal, we may require you to engage independent experts, acceptable to us, to conduct assessments, analyses, or studies, or to request rulings, including, but not limited to:

(1) Assessments of fair value;

(2) Analyses and rulings on tax implications; and

(3) Studies of the effect of your proposal on equity holders (including the effect on holders in their capacity as borrowers), the System, and other parties.

(b) *Informational meetings.* After the advance notice, but before the stockholder vote, we may require you to hold regional or local informational meetings in convenient locations, at convenient times, and in a manner conducive to accommodating all equity holders that wish to attend, to discuss equity holder issues and answer questions. These meetings are subject to the plain language requirements of § 611.1217(b) regarding balanced statements.

§ 611.1215 Communications with the public and equity holders.

(a) *Communications after commencement resolution and before termination.* The terminating institution may communicate with equity holders and the public regarding the proposed termination, as long as written communications (other than non-public communications among participants, *i.e.*, persons or entities that are parties to a proposed corporate restructuring involving the successor institution, or their agents) made in connection with or relating to the proposed termination and any related transactions are filed in accordance with paragraph (c) of this section and the conditions in this section are satisfied.

(b) To rely on this section, you must include the following legend in each communication in a prominent location:

> Equity holders should read the plan of termination that they have received or will receive (as appropriate) because it contains important information, including an enumerated statement of the anticipated benefits and potential disadvantages of the proposal.

(c) All your written communications and all written communications by your directors, employees, and agents in connection with or relating to the proposed termination or any related transactions must be filed with us under this section on or before the date of first use.

(d) We will require you to correct communications that we deem are misleading or inaccurate.

(e) In addition to the filings we require under paragraph (c), we may require you to file timely any written communications you have knowledge of that are made by any other participants or their agents in connection with or related to the proposed termination or to any transaction related to the proposed termination.

(f) An immaterial or unintentional failure to file or a delay in filing a written communication described in this section will not result in a violation of this section, as long as:

(1) A good faith and reasonable effort was made to comply with the filing requirement; and

(2) The written communication is filed as soon as practicable after discovery of the failure to file.

(g) Communications that exist in electronic form must be filed electronically with the FCA as we direct. For communications that do not exist in electronic form, you must timely notify us by electronic mail and send us a copy by regular mail.

(h) You do not need to file a written communication that does not contain new or different information from that which you have previously publicly disclosed and filed under this section.

§ 611.1216 Public availability of documents related to the termination.

(a) We may post on our Web site, or require you to post on your Web site:

(1) Results of any special assessments, analyses, studies, and rulings required under § 611.1211;

(2) Documents you submit to us or file with us under § 611.1215; and

(3) Documents you submit to us under section 7.11 of the Act that are related directly or indirectly to the proposed termination, including but not limited to contracts entered into in connection with or relating to the proposed termination and any related transactions.

(b) We will not post confidential information on our Web site and will not require you to post it on your Web site.

(c) You may request that we treat specific information as confidential under the Freedom of Information Act, 5 U.S.C. 552 (see 12 CFR part, 602 subpart B). You should draft your request for confidential treatment narrowly to extend only to those portions of a document you consider to be confidential. If you request confidential treatment for information that we do not consider to be confidential, we may post that information on our Web site after providing notice to you. On our own initiative, we may determine that certain information should be treated as confidential and, if so, we will not make that information public.

§ 611.1217 Plain language requirements.

(a) *Plain language presentation.* All communications to equity holders required under §§ 611.1210, 611.1223, 611.1240, and 611.1280 must be clear, concise, and understandable. You must:

(1) Use short, explanatory sentences, bullet lists or charts where helpful, and descriptive headings and subheadings;

(2) Minimize the use of glossaries or defined terms;

(3) Write in the active voice when possible; and

(4) Avoid legal and highly technical business terminology.

(b) *Balanced statements.* Communications to equity holders that describe or enumerate anticipated benefits of the proposed termination should also describe or enumerate the potential disadvantages to the same degree of detail.

§ 611.1218 Role of directors.

(a) *Statements by directors.* Directors may not be prohibited by confidentiality agreements or otherwise from publicly or privately commenting orally or in writing on the termination proposal and related matters.

(b) *Directors' right to obtain independent legal advice.* One or more directors of a terminating institution or an institution that is considering terminating have the right to obtain independent legal and financial advice regarding the proposed termination and related transactions. The institution must pay for such advice and related expenses as are reasonable in light of the circumstances.

§ 611.1219 Prohibited acts.

(a) *Statements about termination.* Neither the institution nor any director, officer, employee, or agent may make any untrue or misleading statement of a material fact, or fail to disclose any material fact, to the FCA or a current or prospective equity holder about the proposed termination and any related transactions.

(b) *Representations regarding FCA approval.* Neither the institution nor any director, officer, employee, or agent may make an oral or written representation to anyone that our approval of the plan of termination or the termination is, directly or indirectly, either a recommendation on the merits of the proposal or an assurance that the information you give to your equity holders is adequate or accurate.

§ 611.1220 Termination resolution.

No more than 1 week before you submit your plan of termination to us, your board of directors must adopt a termination resolution stating its support for terminating your status as a System institution and authorizing:

(a) Submission to us of a plan of termination and other required submissions that comply with § 611.1222; and

(b) Submission of the plan of termination to the voting stockholders if we approve the plan of termination under § 611.1230 or, if we take no action, after the end of our approval period.

§ 611.1221 Submission to FCA of plan of termination and disclosure information; other required submissions.

(a) *Filing.* Send us an original and five copies of the plan of termination, including the disclosure information, and other required submissions. You may not file the plan of termination until at least 30 days after you mail the equity holder notice under § 611.1210(b). If you send us the plan of termination in electronic form, you must send us at least one hard copy with original signatures.

(b) *Plan contents.* The plan of termination must include your equity holder disclosure information that complies with § 611.1223.

(c) *Other submissions.* You must also submit the following:

(1) A statement of how you will transfer assets to, and have your liabilities assumed by, the successor institution;

(2) A copy of the charter application for the successor institution, with any exhibits or other supporting information; and

(3) A statement, if applicable, whether the successor institution will continue to borrow from a Farm Credit bank and how such a relationship will affect your provision for payment of debts. You must also provide evidence of any agreement and plan for satisfaction of outstanding debts.

§ 611.1223 Plan of termination—contents.

(a) *Disclaimer.* Place the following statement in boldface type in the material to be sent to equity holders, either on the notice of meeting or the first page of the plan of termination:

> The Farm Credit Administration has not determined if this information is accurate or complete. You should not rely on any statement to the contrary.

(b) *Summary.* The first part of the plan of termination must be a summary that concisely explains:

(1) Which stockholders have a right to vote on the termination and related transactions;

(2) The material changes the termination will cause to the rights of borrowers and other equity holders;

(3) The effect of those changes;

(4) The anticipated benefits and potential disadvantages of the termination;

(5) The right of certain equity holders to dissent and receive payment for their existing equities; and

(6) The estimated termination date.

(7) If applicable, an explanation of any corporate restructuring that the successor institution expects to engage in within 18 months after the date of termination.

(c) *Remaining requirements.* You must also disclose the following information to equity holders:

(1) *Termination resolution.* Provide a certified copy of the termination resolution required under § 611.1220.

(2) *Plan of termination.* Summarize the plan of termination.

(3) *Benefits and disadvantages.* Provide an enumerated statement of the anticipated benefits and potential disadvantages of the termination.

(4) *Recommendation.* Explain the board's basis for recommending the termination.

(5) *Exit fee.* Explain the preliminary exit fee estimate, with any adjustments we require, and estimated expenses of termination and organization of the successor institution.

(6) *Initial board of directors.* List the initial board of directors and senior officers for the successor institution, with a brief description of the business experience of each person, including principal occupation and employment during the past 5 years.

(7) *Relevant contracts and agreements.* Include copies of all contracts and agreements related to the termination, including any proposed contracts in connection with the termination and subsequent operations of the successor institution. The FCA may, in its discretion, permit or require you to provide a summary or summaries of the documents in the disclosure information to be submitted to equity holders instead of copies of the documents.

(8) *Bylaws and charter.* Summarize the provisions of the bylaws and charter of the successor institution that differ materially from your bylaws and charter. The summary must state:

(i) Whether the successor institution will require a borrower to hold an equity interest as a condition for having a loan; and

(ii) Whether the successor institution will require equity holders to do business with the institution.

(9) *Changes to equity.* Explain any changes in the nature of equity investments in the successor institution, such as changes in dividends, patronage, voting rights, preferences, retirement of equities, and liquidation priority. If equities protected under section 4.9A of the Act are outstanding, the plan of termination must state that the Act's protections will be extinguished on termination.

(10) *Effect of termination on statutory and regulatory rights.* Explain the effect of termination on rights granted to equity holders by the Act and FCA regulations. You must explain the effect termination will have on borrower rights granted in the Act and part 617 of this chapter.

(11) *Loan refinancing by borrowers.* (i) State, as applicable, that borrowers may seek to refinance their loans with the System institutions that already serve, or will be permitted to serve, your territory. State that no System institution is obligated to refinance your loans.

(ii) If we have assigned the chartered territory you serve to another System institution before the plan of termination is mailed to equity holders, or if another System institution is already chartered to make the same type of loans you make in the chartered

territory, identify such institution(s) and provide the following information:

(A) The name, address, and telephone number of the institution; and

(B) An explanation of the institution's procedures for borrowers to apply for refinancing.

(iii) If we have not assigned the territory before you mail the plan of termination, give the name, address, and telephone number of the System institution specified by us and state that borrowers may contact the institution for information about loan refinancing.

(12) *Equity exchanges.* Explain the formula and procedure to exchange equity in your institution for equity in the successor institution.

(13) *Employment, retirement, and severance agreements.* Describe any employment agreement or arrangement between the successor institution (or any entity that will directly or indirectly merge with or acquire the successor institution) and any of your senior officers (as defined in § 619.9265 of this chapter) or directors. Describe any severance and retirement plans that cover your employees or directors and state the costs you expect to incur under the plans in connection with the termination.

(14) *Final exit fee and its calculation.* Explain how the final exit fee will be calculated under § 611.1255 and how it will be paid.

(15) *New charter.* Describe the nature and type of financial institution the successor institution will be and any conditions of approval of the new chartering authority or regulator.

(16) *Differences in successor institution's programs and policies.* Summarize any differences between you and the successor institution on:

(i) Interest rates and fees;

(ii) Collection policies;

(iii) Services provided; and

(iv) Any other item that would affect a borrower's lending relationship with the successor institution, including whether a stockholder's ability to borrow from the institution will be restricted.

(17) *Capitalization.* Discuss expected capital requirements of the successor institution, and the amount and method of capitalization.

(18) *Sources of funding.* Explain the sources and manner of funding for the successor institution's operations.

(19) *Contingent liabilities.* Describe how the successor institution will address any contingent liability it will assume from you.

(20) *Tax status.* Summarize the differences in tax status between your institution and the successor institution, and explain how the differences may affect equity holders.

(21) *Regulatory environment.* Describe briefly how the regulatory environment for the successor institution will differ from your current regulatory environment, and any effect on the cost of doing business or the value of stockholders' equity.

(22) *Dissenters' rights.* Explain which equity holders are entitled to dissenters' rights and what those rights are. The explanation must include the estimated liquidation value of the stock, procedures for exercising dissenters' rights, and a statement of when the rights may be exercised.

(23) *Financial information.* (i) Present the following financial data:

(A) A balance sheet and income statement for each of the 3 preceding fiscal years;

(B) A balance sheet as of a date within 90 days of the date you send the plan of termination to us, presented on a comparative basis with the corresponding period of the previous 2 fiscal years;

(C) An income statement for the interim period between the end of the last fiscal year and the date of the balance sheet required by paragraph (d)(23)(i)(B) of this section, presented on a comparative basis with the corresponding period of the previous 2 fiscal years;

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

(E) A pro forma summary of earnings for the successor institution presented as if the termination had been effective at the beginning of the interim period between the end of the last fiscal year and the date of the balance sheet presented under paragraph (d)(23)(i)(D) of this section.

(ii) The format for the balance sheet and income statement must be the same as the format in your annual report and must contain appropriate footnote disclosures, including data on high-risk assets, other property owned, and allowance for losses.

(iii) The financial statements must include either:

(A) A statement signed by the chief executive officer and each board member that the various financial statements are unaudited but have been prepared in all material respects in conformity with GAAP (except as otherwise disclosed) and are, to the best of each signer's knowledge, a fair and accurate presentation of the financial condition of the institution; or

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

(24) *Subsequent financial events.* Describe any event after the date of the financial statements, but before the date you send the plan of termination to us, that would have a material impact on your financial condition or the condition of the successor institution.

(25) *Other subsequent events.* Describe any event after you send the plan of termination to us that could have a material impact on any information in the plan of termination.

(26) *Other material disclosures.* Describe any other material fact or circumstance that a stockholder would need to know to make an informed decision on the termination, or that is necessary to make the disclosures not misleading. We may require you to disclose any assessments, analyses, studies, or rulings we require under § 611.1211.

(27) *Ballot and proxy.* Include a ballot and proxy, with instructions on the purpose and authority for their use, and the proper method for the stockholder to sign the proxy.

(28) *Board of directors certification.* Include a certification signed by the entire board of directors as to the truth, accuracy, and completeness of the information contained in the plan of termination. If any director refuses to sign the certification, the director must inform us of the reasons for refusing.

(29) *Directors' statements.* You must include statements, if any, by directors regarding the proposed termination.

(30) *Reaffirmation resolution.* Provide a copy of the reaffirmation resolution required by § 611.1235.

(d) *Requirement to provide updated information.* After you send us the plan of termination, you must immediately send us:

(1) Any material change to information in the plan of termination, including financial information, that occurs between the date you file the plan of termination and the termination date;

(2) Copies of any additional written information on the termination that you have given or give to current or prospective equity holders before termination; and

(3) A description of any subsequent event(s) that could have a material

impact on any information in the plan of termination or on the termination.

§ 611.1230 FCA review and approval—plan of termination.

(a) *FCA review period.* No later than 60 days after we receive the plan of termination, we will review it and either approve or disapprove the plan for submission to your equity holders. If we take no action on the plan of termination within 60 days, you may submit the plan to your equity holders. The 60-day review period under section 7.11 of the Act will begin on the date we receive a complete plan of termination. We will advise you in writing when the 60-day period begins.

(b) *FCA approval of the plan of termination.* Our approval of the plan of termination for submission to your equity stockholders:

(1) Is not our approval of the termination; and

(2) May be subject to any condition we impose.

§ 611.1235 Plan of termination—distribution.

(a) *Reaffirmation resolution.* Not more than 14 days before mailing the plan of termination to your equity holders, your board of directors must adopt, by a majority vote of all directors, a resolution reaffirming support of the termination. A certified copy of the resolution must be sent to us and must accompany the plan of termination when it is distributed to stockholders.

(b) *Notice of meeting and distribution of plan.* You must provide all equity holders with a notice of meeting and the plan of termination at least 45 days before the stockholder vote. You must also provide a copy of the plan to us when you provide it to your equity holders.

§ 611.1240 Voting record date and stockholder approval.

(a) *Stockholder meeting.* You must call the meeting by written notice in compliance with your bylaws. The stockholder meeting to vote on the termination must occur at least 60 days after our approval of the plan of termination (or, if we take no action, at least 60 days after the end of our approval period).

(b) *Voting record date.* The voting record date may not be more than 70 days before the stockholders' meeting.

(c) *Quorum requirement for termination vote.* At least 30 percent, unless your bylaws provide for a higher quorum, of the voting stockholders of the institution must be present at the meeting either in person or by proxy in order to hold the vote on the termination.

(d) *Approval requirement.* The affirmative vote of a majority of the voting stockholders of the institution present and voting or voting by proxy at the duly authorized meeting at which a quorum is present as prescribed in paragraph (c) of this section is required for approval of the termination.

(e) *Voting procedures.* The voting procedures must comply with §§ 611.330 and 611.340. You must have an independent third party count the ballots. If a voting stockholder notifies you of the stockholder's intent to exercise dissenters' rights, the tabulator must be able to verify to you that the stockholder voted against the termination. Otherwise, the votes of stockholders must remain confidential.

(f) *Notice to FCA and equity holders of voting results.* Within 10 days of the termination vote, you must send us a certified record of the results of the vote. You must notify all equity holders of the results within 30 days after the stockholder meeting. If the stockholders approve the termination, you must give the following information to equity holders:

(1) Stockholders who voted against termination and equity holders who were not entitled to vote have a right to dissent as provided in § 611.1280; and

(2) Voting stockholders have a right, under § 611.1245, to file a petition with the FCA for reconsideration within 35 days after the date you mail to them the notice of the results of the termination vote.

(g) *Requirement to notify new equity holders.* You must provide the information described in paragraph (f)(1) of this section to each person that becomes an equity holder after the termination vote and before termination.

§ 611.1245 Stockholder reconsideration.

(a) *Right to reconsider termination.* Voting stockholders have the right to reconsider their approval of the termination if a petition signed by at least 15 percent of the voting stockholders is filed with us within 35 days after you mail notices to stockholders that the termination was approved. If we determine that the petition complies with the requirements of section 7.9 of the Act, you must call a special stockholders' meeting to reconsider the vote. The meeting must occur within 60 days after the date on which you mailed to stockholders the results of the termination vote.

(b) *Quorum requirement for termination reconsideration vote.* At least 30 percent, unless your bylaws provide for a higher quorum, of the voting stockholders of the institution must be present at the stockholders' meeting either in person or by proxy in order to hold the reconsideration vote. If a majority of the voting stockholders voting in person or by proxy vote against the termination, the termination may not take place.

(c) *Stockholder list and expenses.* You must, at your expense, timely give stockholders who request it a list of the names and addresses of stockholders eligible to vote in the reconsideration vote. The petitioners must pay all other expenses for the petition. You must pay expenses that you incur for the reconsideration vote.

§ 611.1246 Filing of termination application and its contents.

(a) *Filing of termination application.* Send us your termination application no later than 90 days after you send us notice of the stockholder vote approving the termination. Please send us an original and five copies of the termination application for review and approval. If you send us the termination application in electronic form, you must send us at least one hard copy with original signatures.

(b) *Contents of termination application.* The application must contain:

(1) A certified copy of the termination and reaffirmation resolutions;

(2) A certification signed by the board of directors that the board continues to support the termination, there has been no material change to any of the information contained in the plan of termination or information statement after the FCA approved the plan of termination, and there have not been any subsequent events that could have a material impact on any of the information in the plan of termination or the termination; and

(3) Any additional information that is required under this subpart, that we request or that your board of directors wishes to submit in support of the application.

§ 611.1247 FCA review and approval—termination.

(a) *FCA action on application.* After we receive the termination application, we will review it and either approve or disapprove the termination.

(b) *Basis for disapproval.* We will disapprove the termination if we determine that there are one or more appropriate reasons for disapproval consistent with our authorities under the Act and our regulations. We will inform you of our reason(s) for disapproval in writing.

(c) *Conditions of FCA approval.* We will approve your termination application only if:

(1) Your stockholders have voted in favor of termination in the termination vote and in any reconsideration vote;

(2) You have given us executed copies of all contracts, agreements, and other documents submitted under §§ 611.1221 and 611.1223;

(3) You have paid or made adequate provision for payment of debts, including responsibility for any contingent liabilities, and for retirement of equities;

(4) A Federal or State chartering authority has granted a new charter to the successor institution;

(5) You deposit into escrow an amount equal to 110 percent of the estimated exit fee plus 110 percent of the estimated amount you must pay to retire equities of dissenting stockholders and Farm Credit institutions, as described in § 611.1255(c); and

(6) You have fulfilled any condition of termination we impose.

(d) *Effective date of termination.* If we approve the termination, we will revoke your charter, and the termination will be effective on the date that we provide, but no earlier than the last to occur of:

(1) Fulfillment of all conditions listed in or imposed under paragraph (c) of this section;

(2) Your proposed termination date;

(3) Ninety (90) days after we receive your termination application described in § 611.1246; or

(4) Fifteen (15) days after any reconsideration vote.

§ 611.1250 Preliminary exit fee estimate.

(a) *Preliminary exit fee estimate—terminating association.* You must provide a preliminary exit fee estimate to us when you submit the plan of termination under § 611.1222. Calculate the preliminary exit fee estimate in the following order:

(1) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period as of the quarter end immediately before the date you send us your plan of termination.

(2) Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as ''dollar amount.''

(3) Compute the average daily balances based on financial statements that comply with GAAP. The financial statements, as of the quarter end immediately before the date you send us your plan of termination, must be independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter. We may, in our discretion, waive the audit requirement if an independent audit was performed as of a date less than 6 months before you submit the plan of termination.

(4) Make adjustments to assets as follows:

(i) Add back expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, tax services, studies, auditing, business planning, equity holder meetings, and application fees for the termination and reorganization.

(ii) Subtract the dollar amount of estimated current and deferred tax expenses, if any, due to the termination.

(iii) Add the dollar amount of estimated current and deferred tax benefits, if any, due to the termination.

(iv) Adjust for the dollar amount of significant transactions you reasonably expect to occur between the quarter end before you file your plan of termination and date of termination. Examples of these transactions include, but are not limited to, gains or losses on the sale of assets, retirements of equity, loan repayments, and patronage distributions. Do not make adjustments for future expenses related to termination, such as severance or special retirement payments, or stock retirements to dissenting stockholders and Farm Credit institutions.

(5) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(6) Make any adjustments we require under paragraph (c) of this section.

(7) After making these adjustments to assets and liabilities, subtract liabilities from assets. This is your preliminary total capital for purposes of termination.

(8) Multiply assets as adjusted above by 6 percent, and subtract this amount from preliminary total capital. This is your preliminary exit fee estimate.

(b) *Preliminary exit fee estimate–terminating bank.* (1) Affiliated associations that are terminating with you must calculate their individual preliminary exit fee estimates as described in paragraph (a) of this section.

(2) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period as of the quarter end immediately before the date you send us your plan of termination.

(3) Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as ''dollar amount.''

(4) Compute the average daily balances based on bank-only financial statements that comply with GAAP. The financial statements, as of the quarter end immediately before the date you send us your plan of termination, must be independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter. We may, in our discretion, waive this requirement if an independent audit was performed as of a date less than 6 months before you submit the plan of termination.

(5) Make adjustments to assets and liabilities as follows:

(i) Add back to assets the following:

(A) Expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, tax services, studies, auditing, business planning, equity holder meetings, and application fees for the termination and reorganization; and

(B) Any specific allowance for losses, and a pro rata portion of any general allowance for loan losses, on direct loans to associations that you do not expect to incur before or at termination.

(ii) Subtract from your assets and liabilities an amount equal to your direct loans to your affiliated associations that are not terminating.

(iii) Subtract the following from assets:

(A) Equity investments in your institution that are held by nonterminating associations and that you expect to transfer to another System bank before or at termination. A nonterminating association's investment consists of purchased equities, allocated equities, and a share of the bank's unallocated surplus calculated in accordance with the bank's bylaw provisions on liquidation. We may require a different calculation method for the unallocated surplus if we determine that using the liquidation provision would be inequitable to stockholders; and

(B) The dollar amount of estimated current and deferred tax expenses, if any, due to the termination.

(iv) Add the dollar amount of current and deferred estimated tax benefits, if any, due to the termination.

(v) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(vi) Adjust for the dollar amount of significant transactions you reasonably expect to occur between the quarter end before you file your plan of termination and date of termination. Examples of these transactions include, but are not limited to, retirements of equity, loan

repayments, and patronage distributions. Do not make adjustments for future expenses related to termination, such as severance or special retirement payments, or stock retirements to dissenting stockholders and Farm Credit institutions.

(6) Make any adjustments we require under paragraph (c) of this section.

(7) After the above adjustments, combine your balance sheet with the balance sheets of your terminating associations after they have made the adjustments required in paragraph (a) of this section. Subtract liabilities from assets. This is your preliminary total capital estimate for purposes of termination.

(8) Multiply the assets of the combined balance sheet after the above adjustments by 6 percent. Subtract this amount from the preliminary total capital estimate of the combined balance sheet. The remainder is the preliminary exit fee estimate of the bank and terminating affiliated associations.

(9) Your preliminary exit fee estimate is the amount by which the preliminary exit fee estimate for the combined entity exceeds the total of the individual preliminary exit fee estimates of your affiliated terminating associations.

(c) *Adjustments.* (1) We will review your account balances, transactions over the 3 years before the date of the termination resolution under § 611.1220, and any subsequent transactions. Our review will include, but not be limited to, the following:

(i) Additions to or subtractions from any allowance for losses;

(ii) Additions to assets or liabilities, or subtractions from assets or liabilities, due to transactions that are outside your ordinary course of business;

(iii) Dividends or patronage refunds exceeding your usual practices;

(iv) Changes in the institution's capital plan, or in implementing the plan, that increased or decreased the level of borrower investment;

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

(vi) Assets, including real property and servicing rights, that may be overvalued, undervalued, or not recorded on your books.

(2) If we determine the account balances do not accurately show the value of your assets and liabilities (whether the assets and liabilities were booked before or during the 3-year look-back adjustment period), we will make any adjustments we deem necessary.

(3) We may require you to reverse the effect of a transaction if we determine that:

(i) You have retired capital outside the ordinary course of business;

(ii) You have taken any other actions unrelated to your core business that have the effect of changing the exit fee; or

(iii) You incurred expenses related to termination prior to the 12-month average daily balance period on which the exit fee calculation is based.

(4) We may require you to make these adjustments to the preliminary exit fee estimate that is disclosed in the information statement, the final exit fee calculation, and the calculations of the value of equities held by dissenting stockholders, Farm Credit institutions that choose to have their equities retired at termination, and reaffiliating associations.

§ 611.1255 Exit fee calculation.

(a) *Final exit fee calculation—terminating association.* Calculate the final exit fee in the following order:

(1) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period preceding the termination date. Assume for this calculation that you have not paid or accrued the items described in paragraph (a)(4)(ii) of this section.

(2) Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as ''dollar amount.''

(3) Compute the average daily balances based on financial statements that comply with GAAP. The financial statements, as of the termination date, must be independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter.

(4) Make adjustments to assets and liabilities as follows:

(i) Add back expenses related to the termination. Related expenses include, but are not limited to, legal services, accounting services, tax services, studies, auditing, business planning, payments of severance and special retirements, equity holder meetings, and application fees for the termination and reorganization.

(ii) Subtract from assets the dollar amount of current and deferred tax expenses, if any, due to the termination.

(iii) Add to assets the dollar amount of current and deferred tax benefits, if any, due to the termination.

(iv) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(v) Make the adjustments that we require under § 611.1250(c). For the final exit fee, we will review and may require additional adjustments for transactions between the date you adopted the termination resolution and the termination date.

(5) After making these adjustments to assets and liabilities, subtract liabilities from assets. This is your total capital for purposes of termination.

(6) Multiply assets by 6 percent, and subtract this amount from total capital. This is your final exit fee.

(b) *Final exit fee calculation—terminating bank.* (1) The individual exit fees of affiliated associations that are terminating with you must be calculated as described in paragraph (a) of this section.

(2) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period preceding the termination date. Assume for this calculation that you have not paid or accrued the items described in paragraph (b)(5)(iii)(B) and (C) of this section.

(3) Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as ''dollar amount.''

(4) Compute the average daily balances based on bank-only financial statements that comply with GAAP. The financial statements, as of the termination date, must be independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter.

(5) Make adjustments to assets and liabilities as follows:

(i) Add back the following to your assets:

(A) Expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, tax services, studies, auditing, business planning, payments of severance and special retirements, equity holder meetings, and application fees for the termination and reorganization.

(B) Any specific allowance for losses, and a pro rata share of any general allowance for losses, on direct loans to associations that are paid off or transferred before or at termination.

(ii) Subtract from your assets and liabilities your direct loans to affiliated associations that were paid off or transferred in the 12-month period before termination or at termination.

(iii) Subtract from your assets the following:

(A) Equity investments held in your institution by affiliated associations that you transferred at termination or during the 12 months before termination; and

(B) The dollar amount of current and deferred tax expenses, if any, due to the termination;

(iv) Add to assets, the dollar amount of estimated current and deferred tax benefits, if any, due to the termination.

(v) Subtract from liabilities any liability that we treat as regulatory capital (or that we do not treat as a liability) under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(vi) Make the adjustments that we require under § 611.1250(c). For the final exit fee, we will review and may require additional adjustments for transactions between the date you adopted the termination resolution and the termination date.

(6) After the above adjustments, combine your balance sheet with the balance sheets of terminating associations after making the adjustments required in paragraph (a) of this section.

(7) Subtract combined liabilities from combined assets. This is the total capital of the combined balance sheet.

(8) Multiply the assets of the combined balance sheet after the above adjustments by 6 percent. Subtract this amount from the total capital of the combined balance sheet. This amount is the combined final exit fee for your institution and the terminating affiliated associations.

(9) Your final exit fee is the amount by which the combined final exit fee exceeds the total of the individual final exit fees of your affiliated terminating associations.

(c) *Payment of exit fee.* On the termination date, you must:

(1) Deposit into an escrow account acceptable to us and the FCSIC an amount equal to 110 percent of the preliminary exit fee estimate, adjusted to account for stock retirements to dissenting stockholders and Farm Credit institutions, and any other adjustments we require.

(2) Deposit into an escrow account acceptable to us an amount equal to 110 percent of the equity you must retire for dissenting stockholders and System institutions holding stock that would be entitled to a share of the remaining assets in a liquidation.

(d) *Pay-out of escrow.* Following the independent audit of the institution's account balances as of the termination date, we will determine the amount of the final exit fee and the amounts owed to stockholders to retire their equities. We will then direct the escrow agent to:

(1) Pay the exit fee to the Farm Credit Insurance Fund;

(2) Pay the amounts owed to dissenting stockholders and Farm Credit institutions; and

(3) Return any remaining amounts to the successor institution.

(e) *Additional payment.* If the amount held in escrow is not enough to pay the amounts under paragraph (d)(1) and (d)(2) of this section, the successor institution must pay any remaining liability to the escrow agent for distribution to the appropriate parties. The termination application must include evidence that, after termination, the successor institution will pay any remaining amounts owed.

§ 611.1260 Payment of debts and assessments—terminating association.

(a) *General rule.* If your institution is a terminating association, you must pay or make adequate provision for the payment of all outstanding debt obligations and assessments.

(b) *No OFI relationship.* If the successor institution will not become an OFI, you must either:

(1) Pay debts and assessments owed to your affiliated Farm Credit bank at termination; or

(2) With your affiliated Farm Credit bank's concurrence, arrange to pay any obligations or assessments to the bank after termination.

(c) *Obligations to other Farm Credit institutions.* You must pay or make adequate provision for payment of obligations to any Farm Credit institution (other than your affiliated bank) under any loss-sharing or other agreement.

§ 611.1265 Retirement of a terminating association's investment in its affiliated bank.

(a) *Safety and soundness restrictions.* Notwithstanding anything in this subpart to the contrary, we may prohibit a bank from retiring the equities you hold in the bank if the retirement would cause the bank to fall below its regulatory capital requirements after retirement, or if we determine that the bank would be in an unsafe or unsound condition after retirement.

(b) *Retirement agreement.* Your affiliated bank may retire the purchased and allocated equities held by your institution in the bank according to the terms of the bank's capital revolvement plan or an agreement between you and the bank.

(c) *Retirement in absence of agreement.* Your affiliated bank must retire any equities not subject to an agreement or revolvement plan no later than when you or the successor institution pays off your loan from the bank.

(d) *No retirement of unallocated surplus.* When your bank retires equities you own in the bank, the bank must pay par or face value for purchased and allocated equities, less any impairment. The bank may not pay you any portion of its unallocated surplus.

(e) *Exclusion of equities from capital ratios.* If another Farm Credit institution makes an agreement to retire equities you hold in that institution after termination, we may require that institution to exclude part or all of those equities from assets and capital when the institution calculates its capital and net collateral ratios under subparts H and K of part 615 of this chapter.

§ 611.1270 Repayment of obligations—terminating bank.

(a) *General rule.* If your institution is a terminating bank, you must pay or make adequate provision for the payment of all outstanding debt obligations, and provide for your responsibility for any probable contingent liabilities identified.

(b) *Satisfaction of primary liability on consolidated or Systemwide obligations.* After consulting with the other Farm Credit banks, the Funding Corporation, and the FCSIC, you must pay or make adequate provision for payment of your primary liability on consolidated or Systemwide obligations in a method that we deem acceptable. Before we make a final decision on your proposal and as we deem necessary, we may consult with the other Farm Credit banks, the Funding Corporation, and the FCSIC.

(c) *Satisfaction of joint and several liability and liability for interest on individual obligations.* (1) You and the other Farm Credit banks must enter into an agreement, which is subject to our approval, covering obligations issued under section 4.2 of the Act and outstanding on the termination date. The agreement must specify how you and your successor institution will make adequate provision for the payment of your joint and several liability to holders of obligations other than those obligations on which you are primarily liable, in the event we make calls for payment under section 4.4 of the Act. You and your successor institution must also provide for your liability under section 4.4(a)(1) of the Act to pay interest on the individual obligations issued by other System banks. As a part of the agreement, you must also agree that your successor institution will provide ongoing information to the Funding Corporation to enable it to fulfill its funding and disclosure duties. The Funding Corporation may, at its option, be a

party to the agreement to the extent necessary to fulfill its duties with respect to financing and disclosure.

(2) If you and the other Farm Credit banks are unable to reach agreement within 90 days before the proposed termination date, we will specify the manner in which you will make adequate provision for the payment of the liabilities in question and how we will make joint and several calls for those obligations outstanding on the termination date.

(3) Notwithstanding any other provision in these regulations, the successor institution will be jointly and severally liable for consolidated and Systemwide debt outstanding on the termination date (other than the obligations on which you are primarily liable). The successor institution will also be liable for interest on other banks' individual obligations as described in section 4.4(a)(1) of the Act and outstanding on the termination date. The termination application must include evidence that the successor institution will continue to be liable for consolidated and Systemwide debt and for interest on other banks' individual obligations.

§ 611.1275 Retirement of equities held by other System institutions.

(a) *Retirement at option of equity holder.* If your institution is a terminating institution, System institutions that own your equities have the right to require you to retire the equities on the termination date.

(b) *Value of equity holders' interests.* You must retire the equities in accordance with the liquidation provisions in your bylaws unless we determine that the liquidation provisions would result in an inequitable distribution to stockholders. If we make such a determination, we will require you to distribute the equity in accordance with another method that we deem equitable to stockholders. Before you retire any equity, you must make the following adjustments to the amount of stockholder equity as stated in the financial statements on the termination date:

(1) Make deductions for any taxes due to the termination that have not yet been recorded;

(2) Deduct the amount of the exit fee; and

(3) Make any adjustments described under § 611.1250(c) that we may require as we deem appropriate.

(c) *Transfer of affiliated association's investment.* As an alternative to equity retirement, an affiliated association that reaffiliates with another Farm Credit bank instead of terminating with its bank has the right to require the terminating bank to transfer its investment to its new affiliated bank when it reaffiliates. If your institution is a terminating bank, at the time of reaffiliation you must transfer the purchased and allocated equities held by the association, as well as its share of unallocated surplus, to the new affiliated bank. Calculate the association's share before deduction of the exit fee as of the month end preceding the reaffiliation date (or the termination date if it is the same as the reaffiliation date) in accordance with the liquidation provisions of your bylaws, unless we determine that the liquidation provisions would result in an inequitable distribution. If we make such a determination, we will require you to distribute the association's share of your unallocated surplus in accordance with another method that we deem equitable to stockholders. Before you distribute any unallocated surplus, you must make the following adjustments to stockholder equity as stated in the financial statements as of the month end preceding the reaffiliation date (or the termination date if it is the same as the reaffiliation date):

(1) Add back any taxes due to the termination, and the exit fee; and

(2) Make any adjustments described under § 611.1250(c) that we may require as we deem appropriate.

(d) *Prohibition on certain affiliations.* No Farm Credit institution may retain an equity interest otherwise prohibited by law in a successor institution.

§ 611.1280 Dissenting stockholders' rights.

(a) *Definition.* A dissenting stockholder is an equity holder (other than a System institution) in a terminating institution on the termination date who either:

(1) Was eligible to vote on the termination resolution and voted against termination;

(2) Was an equity holder on the voting record date but was not eligible to vote; or

(3) Became an equity holder after the voting record date.

(b) *Retirement at option of a dissenting stockholder.* A dissenting stockholder may require a terminating institution to retire the stockholder's equity interest in the terminating institution.

(c) *Value of a dissenting stockholder's interest.* You must pay a dissenting stockholder according to the liquidation provision in your bylaws, except that you must pay at least par or face value for eligible borrower stock (as defined in section 4.9A(d)(2) of the Act). If we determine that the liquidation provision is inequitable to stockholders, we will require you to calculate their share in accordance with another formula that we deem equitable.

(d) *Calculation of interest of a dissenting stockholder.* Before you retire any equity, you must make the following adjustments to the amount of stockholder equity as stated in the financial statements on the termination date:

(1) Deduct any taxes due to the termination that you have not yet recorded;

(2) Deduct the amount of the exit fee; and

(3) Make any adjustments described under § 611.1250(c) that we may require as we deem appropriate.

(e) *Form of payment to a dissenting stockholder.* You must pay dissenting stockholders for their equities as follows:

(1) Pay cash for the par or face value of purchased stock, less any impairment;

(2) For equities other than purchased equities, you may:

(i) Pay cash;

(ii) Cause or otherwise provide for the successor institution to issue, on the date of termination, subordinated debt to the stockholder with a face value equal to the value of the remaining equities. This subordinated debt must have a maturity date of 7 years or less, must have priority in liquidation ahead of all equity, and must carry a rate of interest not less than the rate (at the time of termination) for debt of comparable maturity issued by the U.S. Treasury plus 1 percent; or

(iii) Provide for a combination of cash and subordinated debt as described above.

(f) *Payment to holders of special class of stock.* If you have adopted bylaws under § 611.1210(g), you must pay a dissenting stockholder who owns shares of the special class of stock an amount equal to the lower of the par (or face) value or the value of such stock as determined under § 611.1280(c) and (d).

(g) *Notice to equity holders.* The notice to equity holders required in § 611.1240(f) must include a form for stockholders to send back to you, stating their intention to exercise dissenters' rights. The notice must contain the following information:

(1) A description of the rights of dissenting stockholders set forth in this section and the approximate value per share that a dissenting stockholder can expect to receive. State whether the successor institution will require borrowers to be stockholders or whether

it will require stockholders to be borrowers.

(2) A description of the current book and par value per share of each class of equities, and the expected book and market value of the stockholder's interest in the successor institution.

(3) A statement that a stockholder must return the enclosed form to you within 30 days if the stockholder chooses to exercise dissenters' rights.

(h) *Notice to subsequent equity holders.* Equity holders that acquire their equities after the termination vote must also receive the notice described in paragraph (g) of this section. You must give them at least 5 business days to decide whether to request retirement of their stock.

(i) *Reconsideration.* If a reconsideration vote is held and the termination is disapproved, the right of stockholders to exercise dissenters' rights is rescinded. If a reconsideration vote is held and the termination is approved, you must retire the equities of dissenting stockholders as if there had been no reconsideration vote.

§ 611.1285 Loan refinancing by borrowers.

(a) *Disclosure of credit and loan information.* At the request of a borrower seeking refinancing with another System institution before you terminate, you must give credit and loan information about the borrower to such institution.

(b) *No reassignment of territory.* If, at the termination date, we have not assigned your territory to another System institution, any System institution may lend in your territory, to the extent otherwise permitted by the Act and the regulations in this chapter.

§ 611.1290 Continuation of borrower rights.

You may not require a waiver of contractual borrower rights provisions as a condition of borrowing from and owning equity in the successor institution. Institutions that become other financing institutions on termination must comply with the applicable borrower rights provisions in the Act and part 617 of this chapter.

Dated: January 6, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 06–240 Filed 1–10–06; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23441; Directorate Identifier 2005–NM–199–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. The existing AD currently requires repetitive detailed and ultrasonic inspections of the thrust links of the rear engine mounts for any crack or fracture and corrective actions if necessary. This proposed AD would require repetitive replacement of the thrust links with new or overhauled thrust links, which ends the repetitive detailed and ultrasonic inspections. This proposed AD results from the finding of fractured and cracked forward lugs of the rear engine mount thrust link on the number one strut on two airplanes. We are proposing this AD to prevent cracked or fractured thrust links that could lead to the loss of the load path for the rear engine mount bulkhead and damage to other primary engine mount structure, which could result in the in-flight separation of the engine from the airplane and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by February 27, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2005–23441; Directorate Identifier 2005–NM–199–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or can visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.