Proposed Rules

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

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AC00

Organization; Stockholder Vote on Like Lending Authority

AGENCY: Farm Credit Administration.

ACTION: Reproposed rule; request for comment.

SUMMARY: The Farm Credit Administration (FCA or Agency) is reproposing regulations to carry out territorial consent requirements of the Farm Credit Act of 1971, as amended (Act). The reproposed rule requires Farm Credit System (FCS or System) institutions and stockholders in certain areas of the country to vote on certain charter amendments. The charter amendments would provide eligible customers the opportunity to obtain lending services from more than one association.

EFFECTIVE DATE: Please send your comments to us by October 30, 2000.

ADDRESSES: You may send comments by electronic mail to ''reg-comm@fca.gov'' or through the Pending Regulations section of our Web site at ''www.fca.gov.'' You may also send comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or fax them to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

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SUPPLEMENTARY INFORMATION:

I. Objectives

On March 8, 2000, we announced our plan to remove geographic barriers by considering applications for national (also referred to as nationwide) charters from direct lender associations. We believe removing the geographic constraints on System entities will promote greater efficiency, improve customer service, and ensure the System continues to meet the current and future needs of rural America. We also believe national charters can improve the safety and soundness of FCS associations' loan portfolios because they offer opportunities to diversify commodity and geographic concentration risks. We issued guidance to System institutions on May 3, 2000, explaining the process of applying for a national charter. Before we can grant national charters in all 50 states, however, the Act requires certain associations to conduct stockholder votes. Our objectives for this rule are to:

- Implement the stockholder approvals required by statute; and
- Ensure stockholders have adequate information before voting on competitive charters.

II. Background

On May 9, 2000, we published a proposed rule in the **Federal Register** to amend part 611 of our regulations. *See* 65 FR 26776. Provisions in the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 amendments) require stockholder votes on competitive charters involving certain associations in Alabama, Louisiana, Mississippi, and New Mexico.[1] Stockholder approval in these states is necessary before we can act on applications for competitive charters that would include the territory served by the covered associations. The proposed rule required stockholders in these four states to vote on competitive charters that would allow eligible customers to borrow from more than one association.

We received 18 comment letters in response to the proposed rule. Of this total, we received comments from three Farm Credit banks, three production credit associations (PCAs), four Federal land credit associations (FLCAs), two agricultural credit associations, and one jointly managed PCA/FLCA. We also received a comment letter from a Farm Credit Bank (FCB) and seven of its affiliated associations. Several commenters sent in more than one comment.

The comment letters revealed several views about the proposed requirements for conducting stockholder votes on competitive charters. One commenter wrote to convey full support for the proposed rule. Several commenters expressed support for removing the territorial restrictions that prevent borrowers from choosing their System lender, but objected to specific requirements of the proposed rule. Many of the commenters objected to the short timeframes required to fulfill the proposed voting procedures. Other commenters raised concerns over the impact added competition would have on their institution and urged us to withdraw or substantially revise the rule to address these concerns. Finally, the FCB of Texas and seven of its affiliated associations (hereinafter referred to as the FCB of Texas) questioned our authority to issue a rule requiring stockholder votes on competitive charters.

We have decided to repropose this regulation. On July 20, 2000, we published a notice in the **Federal Register** seeking comment on our May 3, 2000 publication entitled *National Charters* (Booklet). *See* 65 FR 45066. This Booklet is located on our Web site at ''www.fca.gov'' and provides guidance on the national charter application process. Because we believe that comments on the Booklet may be relevant to this regulation, we have decided to ask for further comment on the regulation. In addition, we have modified the proposed rule to address many of the comments we received. The modifications provide greater flexibility for implementing the statutory voting requirements. We believe that an additional opportunity for comment may be beneficial to the covered associations and their stockholders.

III. The Reproposed Regulations—General Comments

A. FCA Authority

The FCB of Texas commented the FCA lacks the authority to force a vote on competitive charters in the covered areas. The commenters assert that

[1] Pub. L. 102–552, 106 Stat. 4102 (Oct. 28, 1992) (codified as section 5.17(a)(2)(B), (a)(2)(C), (a)(13), and (1)(14) of the Act.)

nothing in the Act or its amendments requires affected institutions to conduct votes of their stockholders or boards of directors. And, if a covered association does not conduct a vote, the FCA would not be able to approve a new or amended competitive charter. According to the commenters, the FCA's authority is merely to inform the covered institutions of an overcharter request. It would then be up to the institutions' boards of directors to conduct the votes if they chose to do so. Finally, the commenters assert that conducting a vote on competitive charters is a business decision that is best left to the institution.

In response to these comments, we observe that the FCA has broad authority in section 5.17(a)(9) of the Act to prescribe regulations necessary or appropriate for carrying out the Act. Section 5.17(a)(11) of the Act gives us the authority to exercise such incidental powers as may be necessary or appropriate to fulfill our duties and carry out the purposes of the Act. We also have the authority in sections 2.0(b)(8)(D), 2.10(c)(4) and 5.17(a)(2)(A) of the Act to issue and approve amendments to Federal charters of System institutions. This reproposed rule is based on these authorities implementing the requirements of the 1992 amendments.

The 1992 amendments state that FCA cannot issue a charter amendment that will result in competition for institutions in covered areas unless specified approvals take place. The Act does not, however, contain any details on how to fulfill the approvals. We agree with the commenters that, as a general principle, business decisions should be left to System institutions. However, the FCA wishes to implement the Act in a way that ensures a fair process for all institutions and stockholders affected by this statutory requirement.

Many institutions have submitted charter amendment requests to us for national territories. The Act requires certain approvals before we can grant national charter amendments. We believe that it is critical that the approval process be fair to both the covered institutions that must approve the charter amendments and the institutions seeking the charter amendments. To ensure an appropriate approval process, we are implementing a voting process through notice and comment rulemaking. By taking this action, all affected parties will have an opportunity to provide input on the process.

The commenters have suggested a situation that provides strong justification for FCA to adopt regulations requiring a voting process to implement the 1992 amendments. The commenters suggest that covered institutions could refuse to conduct a stockholder vote. Under this scenario, no competitive charter amendments in the covered geographic areas would ever be possible. This result would be unfair to the System institutions seeking national charters. It would also be unfair to stockholders in the covered areas who would be deprived of the opportunity to express their views on the merits of having other FCS lenders serving their areas. This is clearly not what Congress intended when it adopted the 1992 amendments.

There is no evidence in the plain language of the Act or the legislative history that Congress intended to prevent competitive charter amendments from being granted. If Congress intended to prevent competitive charters, it could have done so. There is also no evidence that Congress intended to grant the covered institutions the ability to prevent charter amendments through inaction. Instead, the remedy Congress granted the covered institutions is to prevent competition by disapproving charter amendments through votes of the stockholders and bank boards of directors in all the covered areas and association boards of directors in New Mexico.

If the covered associations never act on competitive charters, no other associations could get charter amendments for those areas. This would unfairly restrict all the other associations in the System from seeking competitive charters in the covered areas. In contrast, our approach in the reproposed regulation is fair. Those stockholders, associations, and banks that do not want competitive charters in the covered territories have a full and fair remedy to prevent competitive charters. They can vote to disapprove the issuance of competitive charters. This rule would ensure that a fair approval process occurs.

B. Group Voting on National Charters

Some commenters stated that voting on national charters as a group violates the 1992 amendments. They contend the 1992 amendments require a vote to approve or disapprove each competitive charter amendment. They believe that the covered institutions should have an opportunity to evaluate the identity of the specific association requesting the charter amendment and the impact of granting it a competitive charter. The commenters note our concern over the cost and disruptive effect voting on each charter request would entail.

In response, we note that the 1992 amendments do not specify the details for stockholders, associations, and bank boards of directors to approve or disapprove competitive charter amendments. Therefore, it is our responsibility to specify how to carry out the consent requirement in a reasonable manner. We acknowledge that there are other, less desirable procedures, such as a separate vote on each competitive charter amendment that might comply with the Act. We believe, however, the Act also permits the covered institutions to conduct a vote on whether *any* association charter amendment can be granted. We further believe that the intent of Congress, which was to give covered institutions the right to prevent their territories from being overchartered without their consent, is preserved by voting on whether any association could be chartered in the covered territories.

The commenters suggest that FCA bundle many requests together to lessen the burden of separate stockholder and board votes. This suggestion presents many practical problems considering there are over 100 direct lender associations in the System. Providing specific association-by-association information on each association seeking a national charter would be cumbersome and burdensome to both the covered institutions and the voting stockholders. We believe we are proposing the most reasonable approach by requiring covered institutions to conduct votes on whether *any* competitive charter may be granted in their territories. If a covered institution wishes to allow competitive charters for certain associations but not others, it can vote to disapprove the question in the rule and conduct individual votes on particular associations at a later time. In the latter event, the institution can make the business decision to conduct votes on more than one association at a time as it sees fit. However, we do not believe it is appropriate for us to place this added burden on covered institutions and their stockholders.

C. Fairness of Process

Finally, one bank and three associations commented that it is unfair that a covered association could vote to disapprove overchartering but remain eligible to receive a nationwide charter. The commenters encouraged us to prevent covered associations from being able to protect their current lending area from competition by disapproving the question, while at the same time applying for a nationwide charter.

We note that the commenters make compelling points on this issue. We did not, however, make this change in the reproposed regulations for several reasons. First, the 1992 amendments grant certain rights to the covered associations that the Act does not provide to the rest of the FCS associations. We believe implementing the commenters' suggestions could be viewed as penalizing the covered associations for exercising their statutory protections. Further, limiting those eligible for national charters would be inconsistent with the Board's philosophy to ensure greater opportunities for agricultural and rural borrowers.

IV. The Reproposed Regulations—Section-by-Section Discussion

A. Section 611.1150—Definitions

We received three comments concerning which institutions should be covered by the voting requirements. The FCB of Wichita commented that Farm Credit of New Mexico, FLCA, (New Mexico FLCA), should be a covered association. The New Mexico FLCA commented that we should include it as a covered association and that it supports the comments of the FCB of Wichita. The bank stated that the New Mexico FLCA exercises lending authority in territory that was served by associations that were reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (1987 Act).[2] Thus, the bank concluded that the New Mexico FLCA comes within the protections of the 1992 amendments. The bank believes that excluding the New Mexico FLCA could result in unfair competition from other New Mexico associations should cross-title lending authority be implemented.[3]

We did not include the New Mexico FLCA as a covered association because we believe the 1992 amendments apply only to associations that were reassigned. The language of the 1992 amendments must be interpreted consistent with its legislative history. The legislative history clarifies that Congress intended the amendments to only apply to those ''associations availing themselves of the opportunity to be reassigned.'' [4] Congress stated that: ''The amendment is intended only to assure the farmer-borrowers who own the reassigned associations that their associations would not be overchartered without their consent.'' [5] Thus, the legislative history demonstrates that section 5.17(a)(13) and (14) does not apply to the New Mexico FLCA.

After the PCAs changed their affiliation from the FCB of Wichita to the FCB of Texas, the FCB of Texas' charter was amended to include short- and intermediate-term lending in New Mexico, but that authority was not deleted from the FCB of Wichita's charter. The overlapping bank charters created the potential for PCA overchartering that the 1992 amendments were designed to address. At the time the 1992 amendments were enacted, there was no potential for overchartering the New Mexico FLCA because it was not reassigned and the FCB of Wichita continued to have the only long-term lending charter for that territory.[6] Therefore, we believe Congress clearly intended to protect only the reassigned New Mexico PCAs from overchartering without consent.

We also received comments from the Northwest Louisiana PCA and the FCB of Texas that the rule should include the Northwest Louisiana PCA as a covered association. The commenters maintain that the 1992 amendments were intended to protect those areas that suffered because of the failure and subsequent receivership of the former Federal Intermediate Credit Bank of Jackson (FICBJ). Because the Northwest Louisiana PCA is included in that geographic area, it should not be overchartered without its consent. They further maintain that excluding the PCA merely because it reassigned to the FCB of Texas would unfairly deny it this statutory protection.

This position is contrary to the language of the 1992 amendments. Congress carefully crafted a description of the area where the protections would apply. Section 5.17(a)(2)(B) applies only to the geographic area where due to the failure of the FICBJ to merge, the FICBJ or its successor (AgFirst FCB) is chartered to provide short-and intermediate-term credit, and a neighboring FCB that is not the FICBJ's successor (FCB of Texas) is chartered to provide long-term credit. Northwest Louisiana PCA was reassigned from the FICBJ to the FCB of Texas in 1993. However, because the reassignment was *not* under section 433 of the 1987 Act, the PCA's territory was deleted from the FICBJ's charter. The FCB of Texas is currently chartered to provide long-term credit in the geographic area served by Northwest Louisiana PCA. Neither the FICBJ nor its successor (AgFirst FCB) is chartered to provide short-and intermediate-term credit in this area. As a result, Northwest Louisiana PCA is not entitled to the protections of the 1992 amendments.

Finally, one association commented the 1992 amendments should not apply in areas where the FCB of Texas no longer provides direct long-term credit because it has transferred its long-term lending authority to the FLCAs. Thus, the commenter believes that the protections should not apply to the FLCAs and should only apply to the remaining Federal land bank association (FLBA), the Federal Land Bank Association of South Mississippi. In response, we note that under section 5.17(a)(2)(C) the protections apply in the area where the FCB of Texas ''is chartered to provide long-term credit.'' [7] As the commenters correctly note, the FCB of Texas has transferred direct lending authority to the FLCAs in the former Jackson district and no longer provides credit directly.[8] Although the direct lending authority remains in the bank's charter, our regulations make clear that this authority cannot be exercised once a bank transfers direct lending authority to its FLCAs. However, the FCB of Texas' charter also authorizes it to lend to its associations for the purpose of providing long-term credit. We conclude that the charter thus allows the bank to ''provide long-term credit'' within the meaning of section 5.17(a)(2)(C) and that the consent provisions apply to the FLCAs.

We have carefully considered the comments on the definition of covered associations. For the reasons stated above, we are making no changes to the associations covered by the reproposed rule.

B. Section 611.1151—What Stockholders Must Decide

Most of the commenters expressed concern with the wording of the proposed stockholder question. Some of the commenters believe the question could be confusing or misleading to stockholders on the consequences of their vote. Commenters also inquired why we proposed one question for stockholders and another for boards of directors. Others felt that the question was too vague and should more closely follow the language of the statute. Finally, other commenters contended

[2] Pub. L. 100–233, 101 Stat. 1568 (Jan. 6, 1988).

[3] The FCA Board stated on March 8, 2000, that the second phase for implementing its philosophy on intra-System competition would involve cross-title authority for direct lender associations. The FCA will provide guidance on cross-title authority issues at a later date.

[4] H.R. Rep. No. 783, 102nd Cong., 2nd Sess. (Aug. 4, 1992).

[5] *Id.*

[6] Until recently, the New Mexico FLCA was a Federal land bank association that had no direct lending authority of its own. It made loans only as an agent of the FCB of Wichita.

[7] Section 5.17(a)(2)(B) and (a)(2)(C) of the Act.

[8] *Id.*

that the question was designed to encourage approval.

These commenters have persuaded us to repropose a single question for both stockholders and boards of directors. The question in the reproposed rule more closely follows the statute, but is written in plain language to promote greater understanding by the voters. By more closely following the statute, the consequences of approving or disapproving the question should be clearer to stockholders. We note that neither the proposed nor reproposed question is intended to encourage a particular outcome. In addition, to help reduce the potential for confusion, we are adding a statement for the New Mexico PCAs to explain that the territories that currently overlap will not be affected by the outcome of the question.

Two banks and two associations encouraged us to change the voting process to allow reciprocal approval of the question. The commenters expressed concern that under the proposal, a covered association voting ''yes'' would open its territory to another covered association that voted ''no.'' The commenters suggested that covered associations should be able to condition their approval of the question on the approval of other covered associations.

We agree with the commenters' suggestion, and the reproposed question provides for reciprocal voting. The reproposed question is as follows:

Should the Farm Credit Administration issue a charter or charter amendment that would allow any Farm Credit System association to exercise lending authority in the territory now served by X Association?

Approval. Voting to approve means that any other association will be able to make loans in the territory now served by X Association, but only if X Association has the opportunity to make loans in the territory served by the other association.

Disapproval. Voting to disapprove means that no other association will be able to [make long-term mortgage loans or make short-and intermediate-term loans as appropriate] in the territory now served by X Association. [For New Mexico PCAs—Currently, more than one PCA serves your territory. This competition will not be eliminated regardless of your vote.]

C. Section 611.1152—Bank and Association Boards of Directors' Votes

The FCB of Texas commented that its stockholders should be permitted to vote on the question as it affects lending in the former Jackson district. The bank believes that its charter will be affected by the national charter amendments and therefore, the Act requires a vote of its stockholders. Section 5.17(a)(2)(B) of the Act requires approval by various parties depending on which charters are ''affected.'' Because this rulemaking only addresses amendments to association charters, only the provisions of section 5.17(a)(2)(B)(i) apply. Under that section, bank stockholders do not participate in the voting. Further, this rule applies to charter amendment requests for direct lender associations only. By the time voting occurs under this rule, the FCB of Texas will have no direct lending authority in the former Jackson district.[9] Therefore, the FCB of Texas' charter will not be affected by direct lender association charter amendment requests. Thus, we are not including bank stockholder voting in the reproposed rule.

A bank and two associations asked for clarification on bank and association board voting. They asked which bank boards would vote in connection with the PCAs that were reassigned in New Mexico. We clarify that the board of directors of the FCB of Wichita will vote on the question as it affects the PCA of Southern New Mexico, which is affiliated with it. The FCB of Texas will vote on the question as it affects the two associations it funds, the PCA of New Mexico and the PCA of Eastern New Mexico.

The commenters also asked whether each of the boards of directors of the PCAs that were reassigned in New Mexico would vote on competitive charters with respect to the other New Mexico PCAs. We clarify that the boards of directors of the PCAs in New Mexico will vote on the question only with respect to their own institution.

Finally, the FCB of Texas asserted that conducting stockholder votes before the boards of directors' votes could waste resources and promote unnecessary conflict between stockholders and the boards of directors. The commenters also noted that typically a matter is presented to stockholders only after the board of directors has considered the issue and recommends approval. The commenters maintain that if the boards of directors vote first and disapprove the question, there would be no need for a stockholder vote.

We believe there are compelling reasons for the association stockholders to vote first. It is the stockholders/borrowers who will be most affected by the outcome of the national charter votes. We believe that the bank boards (and, in New Mexico, the PCA boards) should have the benefit of knowing the views of the association stockholders before making their own decision.

We also disagree that this order of voting promotes confusion and unnecessary conflict between stockholders and their boards of directors. In the former Jackson district, the Act does not provide for the approval of the association boards of directors.[10] Nonetheless, the voting procedure allows the associations' board and management to make a recommendation to the stockholders and provide reasons for their recommendations. Thus, we do not believe this process will confuse the stockholders about their boards' position on the issue.

D. Section 611.1153—Information Statement

The FCB of Texas commented the FCA lacks the authority to dictate the form and substance of the Information Statement. The commenters assert that nothing in the Act grants the FCA the power to prescribe or even influence the material in an information statement transmitted to stockholders. The commenters also assert that the FCA has no authority to make any changes in the content of the Information Statement. The commenters agree that all information contained in the Information Statement should be accurate and complete, but they are concerned that we are attempting to control the contents of their communications with stockholders.

The FCA has authority in the Act to regulate and review information provided by institutions to stockholders in several areas. For example, section 5.17(a)(8) authorizes us to regulate information on the financial condition and operations of the institutions, and section 7.11 authorizes us to approve the disclosures to stockholders for certain corporate actions including mergers, transfers of lending authority and terminations. We have implemented these statutory provisions by rule. These areas highlight the need for FCA review of and involvement in the disclosure provided to stockholders to ensure stockholders receive complete and accurate information. We also have broad authority to prescribe regulations necessary and appropriate to implement the Act. Using that authority, we have

[9] The FCB of Texas is scheduled to transfer its direct lending authority to the FLBA by October 1, 2000.

[10] We believe the commenters' concern about a possible conflict between association stockholders and a bank's board of directors is misplaced. These two groups are members of different organizations that may have different interests.

previously adopted rules to implement other corporate actions, such as transfers of lending authority and mergers, consolidations, and charter amendments of associations. These rules include detailed requirements for our review and approval of the information provided to stockholders. We used these regulations as a guideline for developing the model Information Statement. We believe that regulating the disclosure given to stockholders for significant chartering actions is critical to carrying out our statutory authority.

Our authority to change the content of the Information Statement is consistent with our authority to review and approve it and to adopt regulations prescribing its content. Notwithstanding our authority to do so, we recognize that making changes to the Information Statement would be a step beyond the past procedures we have adopted. Based on the points raised by the commenters, we do not believe it is necessary to include this provision in the reproposed rule.

As a general matter, we want to assure the commenters that our intent is not to influence a vote of the stockholders of the associations. We want only to ensure that the stockholders receive accurate and complete information on the consequences of competitive charters in the covered areas. We also believe that our involvement in the disclosure process is necessary to ensure that the stockholders receive balanced information. We point out that the association boards of directors are free to recommend approval or disapproval to their stockholders and provide detailed reasons for their recommendations. Finally, we are not requiring the institutions to adopt the model Information Statement word-for-word. Although we believe the model Information Statement is balanced and provides complete information to stockholders, institutions may modify the wording, as long as the information presented is complete, balanced, and not misleading.

The FCB of Texas commented that the FCA has no authority to include a statement of the FCA Board in the Information Statement. The commenters believe that this is inconsistent with the FCA's role as an arms-length regulator. The commenters further state that inclusion of a FCA Board statement would be an attempt to manipulate the business decisions of the institutions. We believe that we have authority to require a statement of our views on the charter amendments to be included in the Information Statement. We do, however, understand the commenters' concerns. Our goal in proposing to include our views in the Information Statement was to ensure fair and balanced disclosure. Based on the commenters' concerns, however, we have reconsidered whether including the FCA Board's views is necessary. Because we will review and approve the Information Statement, and because we are providing a model Information Statement, we do not believe that including our views is necessary.

Finally, we clarify for the commenters that all equity holders will receive the Information Statement to keep them informed of the issues affecting their institution. Only voting stockholders, according to the institution's bylaws, would vote on the question.

E. Section 611.1154—Timeframe for the Vote

The FCB of Texas commented that the proposed regulations provided extremely short time limits for conducting the vote. For example, they believe that 10 days for stockholders to review the Information Statement is inadequate. They noted the proposed timeframe does not provide an opportunity for information meetings with stockholders to discuss the potential benefits and drawbacks of this initiative. Finally, the commenters suggest they will need a minimum of 6 months for the entire process, including preparation of the Information Statement.

We understand that the stockholders will be voting on a significant issue. As a result, we have revised the timeframes for preparing the Information Statement and conducting the stockholders' and boards of directors' votes. The reproposed regulation requires the stockholders' votes be completed by July 16, 2001, and the boards of directors' votes be completed by July 31, 2001. The extended timeframes should also allow more time for the institutions to prepare the Information Statement as well as greater time for stockholders to review and discuss the question. In order to ensure that the votes are conducted by July 31, 2001, however, the reproposed regulations require that the covered associations submit the Information Statement to us for review by May 1, 2001. It is also important to note that while we granted covered associations the flexibility to determine the time available for stockholder review, the reproposed regulations continue to require that stockholders be given at least 10 days. Finally, the reproposal extends the time for our review of the Information Statement from 10 to 15 business days.

F. Miscellaneous Sections

We received no comments on §§ 611.1155 through 611.1158; thus we are making no changes to this section in the reproposed rule.

Proposed § 611.1159 would prohibit an officer, director, employee, or agent of an institution from making any representation that would appear to be a statement of the FCA on the merits of the question. The FCB of Texas commented that this section would violate the First Amendment of the Constitution because it ''chills free speech.'' Further, they believe that as written, the prohibition is too vague. We respond by revising § 611.1159 to more clearly communicate our intention. The reproposed rule prohibits any officer, director, employee, or agent of an institution from making any untrue or misleading statement to stockholders in connection with a vote on the question. This prohibition is standard in disclosures to stockholders for most corporate activities involving stockholder votes, and it is not intended to restrict free speech. Instead, it is intended to ensure that stockholders are not misled.

We received numerous comments on proposed § 611.1160, which provided for us to conduct a stockholder vote on the question if an institution failed to do so. The commenters questioned whether FCA has the authority to conduct a vote of stockholders. We continue to believe that we have the authority to implement the 1992 amendments by conducting a vote of stockholders if necessary. After carefully considering the comments, however, we do not believe that this provision is necessary. Instead, we will rely on our enforcement authorities to ensure the votes are conducted. Thus, we are not including § 611.1160 in the reproposed rule.

G. Other Comments

A bank and two associations commented that they could not evaluate the issues that this proposal raised with regard to cross-title lending authority. The commenters noted that they would reserve further comments on this issue until they received more information on this process. As previously noted, we plan to provide guidance on cross-title authority issues at a later date.

One association commented that imposing voting requirements on associations in some states without imposing the same requirements on associations in all states may violate the due process clause of the Fifth Amendment. We note that we are merely implementing the statutory

voting requirements that Congress enacted in the 1992 amendments.

List of Subjects in 12 CFR Part 611

Accounting, Agriculture, Banks and banking, Rural areas.

For the reasons stated in the preamble, we are reproposing amendments to part 611 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues 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, 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, 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. Add subpart J to read as follows:

Subpart J—Stockholder Vote on Like Lending Authority

Sec.

611.1150 What definitions are used in this subpart?
611.1151 What must your stockholders decide?
611.1152 What votes must be conducted by bank and certain association boards of directors?
611.1153 What must the Information Statement contain?
611.1154 What is the timeframe for this vote?
611.1155 How are the votes tabulated?
611.1156 Who is notified of the results of the stockholder vote?
611.1157 How many votes are needed for passage of the questions?
611.1158 What notifications must be made?
611.1159 Are there additional requirements?
Appendix A to Subpart J—Model Information Statement

Subpart J—Stockholder Vote on Like Lending Authority

§ 611.1150 What definitions are used in this subpart?

(a) *Days* means calendar days unless otherwise noted.

(b) *You or covered associations* means the associations subject to section 5.17(a)(2)(B), (a)(2)(C), (a)(13) and (a)(14) of the Farm Credit Act of 1971, as amended, specifically First South Production Credit Association; Louisiana Federal Land Bank Association, FLCA; Federal Land Bank Association of North Alabama, FLCA; Federal Land Bank Association of South Alabama, FLCA; Federal Land Bank Association of North Mississippi, FLCA; Production Credit Association of Southern New Mexico; Production Credit Association of Eastern New Mexico; Production Credit Association of New Mexico; and the FLBA of South Mississippi provided that it is chartered as a Federal land credit association.

(c) *We or us* means the Farm Credit Administration.

§ 611.1151 What must your stockholders decide?

(a) You must conduct a vote of your voting stockholders, voting in person or by proxy, at a duly authorized meeting, on this question:

Question: Should the Farm Credit Administration issue a charter or charter amendment that would allow any Farm Credit System association to exercise lending authority in the territory now served by X Association?	
Approval: Voting to approve means that any other association will be able to make loans in the territory now served by X Association, *but only if* X Association has the opportunity to make loans in the territory served by the other association.	*Disapproval:* Voting to disapprove means that no other association will be able to [make long-term mortgage loans or make short- and intermediate-term loans as appropriate] in the territory now served by X Association.
New Mexico PCAs must include the following: Currently, more than one PCA serves your territory. This competition will not be eliminated regardless of your vote.	

(b) Before the vote on the question, you must prepare an Information Statement, obtain Farm Credit Administration approval of it, and distribute it to your stockholders.

§ 611.1152 What votes must be conducted by bank and certain association boards of directors?

(a) Not later than 12 days following the notice from the independent third party required by § 611.1156(a), the board of directors of the Farm Credit Bank of Texas, AgFirst Farm Credit Bank, and the Farm Credit Bank of Wichita must vote on the question in paragraph (a) of § 611.1151 with regard to their affiliated associations and report the results to us.

(b) Not later than 12 days following the notice from the independent third party required by § 611.1156(a), the boards of directors of the Production Credit Association of Southern New Mexico, the Production Credit Association of Eastern New Mexico, and the Production Credit Association of New Mexico must vote on the question in paragraph (a) of § 611.1151 and report the results to us.

(c) The votes referenced in paragraphs (a) and (b) of this section must take place no later than July 31, 2001.

§ 611.1153 What must the Information Statement contain?

(a) The Information Statement must include the question in § 611.1151(a) and must substantially conform to the model Information Statement provided as an appendix to this subpart. The Information Statement must also include a:

(1) Notice of meeting;

(2) Proxy ballot and instructions;

(3) Brief summary of the question;

(4) Discussion of the advantages and disadvantages of approving the question; and

(5) Association board statement or recommendation (optional).

(b) We may also require additional information in the Information Statement to ensure stockholders have accurate and adequate information.

§ 611.1154 What is the timeframe for this vote?

(a) You must submit the Information Statement to us no later than May 1, 2001, but you may submit it earlier. You may send the Information Statement to us by regular mail, facsimile, electronic transmission, overnight mail, or other similar delivery method.

(b) Not later than 15 business days after receipt of the Information Statement, we will review the Information Statement and notify you of our approval or denial. We may require you to change the Information Statement to ensure that it provides accurate and complete information to stockholders on the question.

(c) You must ensure your stockholders have a minimum of 10 days to review the Information Statement before the meeting at which the stockholders will vote on the question in § 611.1151.

(d) A meeting of the stockholders to vote on the question in § 611.1151 must take place no later than July 16, 2001.

§ 611.1155 How are the votes tabulated?

The votes will be tabulated by an independent third party within 2 business days of the stockholder meeting.

§ 611.1156 Who is notified of the results of the stockholder vote?

(a) On the day the votes are tabulated, the independent third party must report the results to you, the appropriate bank(s), and us.

(b) Within 10 days of the stockholder meeting, the independent third party must provide the Farm Credit Administration with a certified copy of the stockholders' vote on the question.

§ 611.1157 How many votes are needed for passage of the questions?

The votes in §§ 611.1151 and 611.1152 will be determined by the majority of those voting, in person or by proxy as appropriate, at a duly authorized meeting in accordance with the associations' or banks' quorum requirements.

§ 611.1158 What notifications must be made?

(a) You must notify the stockholders of the results of the votes referenced in §§ 611.1151 and 611.1152 within 10 business days.

(b) The board of directors of the Farm Credit Bank of Texas, the Farm Credit Bank of Wichita, and the AgFirst Farm Credit Bank must notify each of the covered associations with which they have a funding relationship of the results of the vote in § 611.1152(a) within 2 business days.

§ 611.1159 Are there additional requirements?

No bank or association director, officer, employee, or agent may make any untrue or misleading statement to a stockholder of the association in connection with a vote on the question in § 611.1151.

Appendix A to Subpart J—Model Information Statement

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Note: Appendix A Contains a Model Information Statement to Aid in Compliance With Subpart J of Part 611.

A–1—Notice of Stockholders' Meeting of X Association

1. A meeting of the stockholders of X Association will be held at (location) located at (address), on (date), beginning at (time).

2. At this meeting, you will be asked to vote on the following question:

Should the Farm Credit Administration issue a charter or charter amendment that would allow any Farm Credit System association to exercise lending authority in the territory now served by X Association?

Approval. Voting to approve means that any other association will be able to make loans in the territory now served by X Association, but only if X Association has the opportunity to make loans in the territory served by the other association.

Disapproval. Voting to disapprove means that no other association will be able to [make long-term mortgage loans or make short- and intermediate-term loans as appropriate] in the territory now served by X Association.

(New Mexico PCAs must include the following: Currently, more than one PCA serves your territory. This competition will not be eliminated regardless of your vote.)

3. The Farm Credit Administration (FCA) Board has received applications from direct lender associations for national (also referred to as nationwide) charters. National charters would enable other Farm Credit System (System) lenders to make loans in the territory now served by your Association. As a result, you could have greater choice of System lenders in your area.

4. The Farm Credit Act of 1971, as amended (Act), requires approval by the voting stockholders of your Association before the FCA can issue a charter or amend a charter that would allow any System lender to make loans, of the same type as those that your Association can make, in the geographic territory now served by your Association. For the question to be approved, a majority of the voting stockholders of X Association voting, in person or by proxy, at a duly authorized meeting of such stockholders, must vote to approve the question. The Act requires other approvals before nationwide charters can be issued in the territory served by X Association. Also, approval of the question is conditional upon X Association being able to lend in the other associations' territories. These approvals are explained in the brief summary of the question (Appendix A–5).

5. Attached is a packet of information related to the question. The packet includes a brief summary of the question; advantages/disadvantages of allowing other System associations to exercise lending authority for eligible customers in the geographic territory; and a Board of Directors' Statement (optional).

6. Information on balloting and proxies is included under Appendix A–2, including the deadline of (date) for receipt of the proxy forms by your Association. If you have any questions about the Information Statement or the question, you may discuss them at the stockholders' meeting on (date). Your board of directors urges you to vote in person or by proxy at the stockholders' meeting.

7. If you are a nonvoting stockholder or holder of participation certificates, you cannot vote on the question. However, we sent you this Information Statement to keep you informed of the possible changes affecting your Association.

Enclosures.

_____

Name
(Signature of appropriate association official(s))

A–2—Proxy Instructions and Ballot

If you are entitled to vote and are unable to attend the meeting in person, you may appoint a proxy to vote as you direct. The following are instructions for completing the Proxy Ballot and Proxy Form:

1. Complete the Proxy Ballot.

a. Mark either ''APPROVE'' or ''DISAPPROVE'' in the appropriate box on the Ballot. *Unmarked Proxy Ballots will be voted to approve the question.*

b. Enclose Proxy Ballot in the Ballot Envelope provided. Seal the envelope.

2. Complete the Proxy Form.

a. If you prefer, you may name as your proxy someone other than the directors named on the Proxy Form by writing in the name of the person in the blank space provided. Please note that for your vote to count, the person you name as proxy must be a voting stockholder of the association and must be present at the stockholders' meeting.

b. Date and sign the Proxy Form in the space indicated.

3. Enclose your signed and dated Proxy Form and sealed Ballot Envelope in the business reply envelope provided. Mail to your Association in the pre-addressed return envelope provided.

For your vote to count, your Proxy Ballot and Proxy Form must be received in the association office no later than (time) on (date) or delivered to an election official before balloting at the stockholders' meeting. You have the right to cancel your proxy at any time prior to the beginning of balloting at the stockholders' meeting.

A–3—Proxy Form

I, _____, as holder of stock and authorized to vote such stock in X Association, cancel any previous proxies and appoint (Name), Director, X Association, as my proxy, or I appoint _____, as my proxy to attend the association stockholders' meeting on (date), and any continuation or adjournment of the meeting, to vote for me on the question, and to act for me with the same effect as if I were personally present.

I understand that I may cancel this proxy and the authority it represents at any time prior to balloting at the stockholders' meeting. Unless cancelled, this proxy will expire upon the official announcement of the results of the vote on the question. I also understand that, if necessary, the person I name as my proxy can substitute someone else as my proxy and can later cancel that substitution.

Date: _____

_____

Signature*

_____

Representative Title**

*Please sign exactly as your name appears on the above label.

**When signing as an executor, administrator, trustee, or guardian on behalf of a corporation or partnership, please sign your name on the first line and indicate your full representative title on the second line.

A–4—Ballot (For Use as Proxy Ballot or Voting in Person) X Association

Question: Should the Farm Credit Administration issue a charter or charter amendment that would allow any Farm Credit System association to exercise lending authority in the territory now served by X Association?

I direct that my Ballot be voted as follows:

_____ *Approval.* Voting to approve means that any other association will be able to make loans in the territory now served by X Association, but only if X Association has the opportunity to make loans in the territory served by the other association.

_____ *Disapproval.* Voting to disapprove means that no other association will be able to [make long-term mortgage loans or make short- and intermediate-term loans as appropriate] in the territory now served by X Association.

(New Mexico PCAs must include the following: Currently, more than one PCA serves your territory. This competition will not be eliminated regardless of your vote.)

If I do not direct how this ballot shall be voted, I intend it to be cast to APPROVE the question.

Note: For your vote to count, your Proxy Ballot and Proxy Form must be received in the association office no later than (time) on (date) or delivered to an election official prior to balloting at the stockholders' meeting. You have the right to cancel your proxy at any time prior to the beginning of balloting at the stockholders' meeting.

A–5—Brief Summary of the Question

1. In a July 14, 1998, Philosophy Statement, the FCA Board expressed its view that competition is beneficial for customers and will help ensure the Farm Credit System will continue to meet the current and future needs of rural America. To facilitate competition and improve services for all farmers, ranchers, and other eligible customers, the FCA Board indicated its support for several measures including the removal of geographical restrictions of System entities.

2. The FCA Board has received applications for national charters from System direct lender associations. Before the FCA can grant applications for full nationwide charters, however, the Agency must carry out two requirements of the Act that call for stockholder voting in certain areas of the country. Congress required stockholder voting in the geographic area in which the Federal Intermediate Credit Bank (FICB) of Jackson or its successor (AgFirst Farm Credit Bank) is chartered to provide short- and intermediate-term credit and the Farm Credit Bank of Texas is chartered to provide long-term credit. Congress also required the consent of stockholders of three production credit associations in New Mexico pursuant to section 433 of the Agricultural Credit Act of 1987.

3. Your Association serves the [counties/states of xxx], and (insert either (1) has territory that is within the geographic area of the successor to the former FICB of Jackson or (2) reaffiliated under section 433.] As a result, you are being asked whether you approve the FCA's issuance of charters to associations that would allow them to make similar loans to you and other eligible customers in the territory of your Association.

4. Approval of the question does not, however, guarantee that other associations may be chartered to lend in your Association's territory. Associations other than those in the area served by the former Jackson FICB and the PCAs in New Mexico may apply for nationwide charters if they choose to do so. Similarly, your Association may be able to obtain a charter for all areas outside of those covered by the Act.

5. In addition, amending the charters of other associations in the territory served by the former Jackson FICB and the PCAs in New Mexico is conditional upon those associations also voting to approve the question. If you vote to approve the question, you are approving the question only for those associations that will allow your Association to lend in their territories. Similarly, your Association's ability to provide credit in the territories served by other associations in the areas covered by the Act will depend upon whether your Association's stockholders approve the same question you have before you.

6. Following the stockholder vote on the question, the board of directors of the [insert appropriate bank] [and insert associations if this Information Statement refers to section 5.17(a)(13) and (a)(14)] will also vote on the question. The question must be approved by a majority of the stockholders voting and a majority of the board of directors of the banks [and associations, if appropriate] before another System lender may be chartered to make similar loans in the territory of your Association. If approved by all parties involved, the FCA may grant requests from other FCS associations to serve the territory currently served by your Association.

A–6—Advantages and Disadvantages of Approving the Question

There are advantages and disadvantages of your approval of the question. The following is a brief discussion of the principal advantages and disadvantages to the stockholders of your Association. This discussion does not claim to provide a complete analysis of all the expected outcomes of approval of the question. In addition, there can be no assurance that any expected advantage or disadvantage below will take place in whole or part. The realization of any advantages and disadvantages depends on how each association implements its nationwide charter. You should also consider that the advantages and disadvantages affect not only you but also all other eligible System customers and potential customers.

Advantages

1. Allowing other System associations to make loans in the territory of your Association may provide System customers in the [insert geographic area] with more choices for credit. You may have a greater choice of financial services because System lenders offer different loan products, interest rates, and repayment options. If the question is approved, you may have the freedom to select the System lender of your choice.

2. Competition for loans within a geographic area may also provide associations the opportunity and incentive to become more efficient and more competitive. This competition is likely to lower the cost of credit and improve the quality of service for you and other customers.

3. System lenders across the country may be better able to develop niche products and thus offer specialized lending services to customers in the territory of your Association and across the country. You may be able to obtain your main source of operational funding from one lender and specialized services from another. E-commerce services may be enhanced after territorial restrictions are removed.

4. National charters may also help System lenders compete more effectively with non-System lenders who are not restricted by geographical constraints. System lenders will be able to provide seamless credit to agricultural producers across the United States. Removing geographical boundaries may also allow System lenders to diversify the geographic and commodity mix in their loan portfolios, thereby providing opportunities to improve their long-term safety and soundness.

5. Finally, approval of this question may heighten awareness of each System lender's public policy mission for service within its original chartered territory. The FCA will continue to ensure that each System association fulfills its responsibility to make services available to all eligible customers within its current chartered territory.

Disadvantages

1. As System lenders compete for customers, some associations may become less viable if added competitive pressures reduce profit margins. In addition, if the challenges associated with greater competition are not met, the capital investment of stockholders may be at a higher risk. There are 155 associations that may request nationwide charters as of September 1, 2000. As a result, the management of your Association may be under increased pressure to provide efficient and cost effective services.

2. In the long run, some associations may be forced to cut back or eliminate certain services. Also, associations entering new geographic areas may primarily focus on larger or more profitable borrowers while less attention may be given to the more marginal borrowers in the associations' new and existing chartered territories.

3. Some associations may not be competitive in their present form and may have to merge or take other corporate restructuring actions to remain viable.

A–7—X Association Board Statement (Optional)

The Association board of directors may state its views and recommendation on the question and elaborate on the reasons for its recommendation.

Dated: September 26, 2000.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–25071 Filed 9–28–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–221–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require an inspection to ensure correct installation of certain self-seal couplings in each nacelle, and corrective action, if necessary. This proposal also would require installation of a new clamp to the self-seal couplings. This action is necessary to prevent separation of the self-seal couplings, which could result in loss of engine oil pressure and a flight-crew-commanded engine shutdown. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 30, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–221–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–221–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–221–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–221–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that it received reports of inadvertent separation of certain self-seal couplings of the nacelles. Subsequent closure of the valves in the two coupling halves resulted in rupture of the engine-mounted generator. Rupture of the generator caused loss of engine oil pressure and spillage of oil into the nacelle.

Separation of the self-seal couplings, if not corrected, could result in loss of engine oil pressure and a flight-crew-commanded engine shutdown.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 2000–79–005, dated May 22, 2000, which describes procedures for a one-time general visual inspection to ensure correct installation of air-cooled oil cooler (ACOC) self-seal couplings in each nacelle, and corrective action, if necessary. The service bulletin also describes procedures for installation of a new clamp to the self-seal couplings to enhance the lock ring function. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1–158, dated May 23, 2000, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or