as those with annual receipts of less than $750,000. The Committee estimates that there are approximately 56 handlers, producer-handlers, processors, brokers, and importers subject to the data collection requirements under Part 926. The Committee further estimates that most of the entities required to file reports under Part 926 would be considered small under the SBA criteria.

This rule suspends indefinitely the provisions of 7 CFR Part 926, which require persons engaged in the handling of cranberries or cranberry products (including producer-handlers, second-handlers, processors, brokers, and importers) but not subject to the order to maintain adequate records and report sales, acquisitions, and inventory information to the Committee. Part 926 was established because the Committee needed inventory information from non-regulated entities as well as those subject to the order to better formulate its marketing decisions and recommendations. It is being suspended because the Committee has determined that, considering the size of the inventories held outside the scope of the order, collecting that data from the non-regulated entities is of marginal benefit to the industry.

This action suspends the reporting and recordkeeping requirements for these cranberry handlers and importers. It is also expected to reduce the Committee's costs associated with the collection and maintenance of that information.

Alternatives to this action included continuing to collect information as currently provided in Part 926, raising the inventory threshold that triggers the need for a non-regulated entity to report its inventory so that only those entities holding the largest inventories would be required to file reports, or requesting that non-regulated entities provide inventory information voluntarily. However, the Committee advised USDA that most cranberries and cranberry products are currently held in the inventories of the regulated handlers until needed by processors, which greatly reduces the likelihood that large unreported inventories exist. Therefore, the collection of inventory information from entities under Part 926 no longer benefits the industry.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements related to this rule were previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0222, Data Collection Requirements Applicable to Cranberries Not Subject to the Cranberry Marketing Order (7 CFR Part 926). This information collection package expires August 31, 2007. We are submitting this information collection for renewal and requesting OMB approval of a one-hour burden placeholder for future reimplementation should changes occur in the cranberry industry that require reinstatement of these reporting and recordkeeping requirements under Part 926.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http//www.ams.usda.gov/fv/moab/html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on suspending the reporting and recordkeeping requirements under 7 CFR Part 926. All comments received will be considered prior to finalization of this interim final rule.

After consideration of all relevant material presented, it is found that Part 926, suspended in this interim final rule, as hereinafter set forth, does not tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule in effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This interim final rule is a relaxation in the reporting and recordkeeping requirements under 7 CFR Part 926 and should be in place as soon as possible for the upcoming 2006–07 season and (2) This interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 926

Cranberries and cranberry products, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR Part 926 is amended as follows:

PART 926—DATA COLLECTION, REPORTING AND RECORDKEEPING REQUIREMENTS APPLICABLE TO CRANBERRIES NOT SUBJECT TO THE CRANBERRY MARKETING ORDER

■ 1. The authority citation for 7 CFR Part 926 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§§ 926.1 through 926.21 [Suspended]

■ 2. In part 926, §§ 926.1 through 926.21 are suspended indefinitely.

Dated: December 21, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–22237 Filed 12–27–06; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 917, 925, and 930

[No. 2006–23]

RIN 3069–AB30

Limitation on Issuance of Excess Stock

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting a final rule limiting the ability of a Federal Home Loan Bank (Bank) to create member excess stock under certain circumstances. Under the rule, any Bank with excess stock greater than 1 percent of its total assets will be barred from further increasing member excess stock by paying dividends in the form of shares of stock (stock dividends) or otherwise issuing new excess stock. The final rule is based on a proposed rule that sought to impose a limit on excess stock and establish a minimum retained earnings requirement. The final rule deals only with the excess stock provisions of the proposal. The Finance Board intends to address retained earnings in a later rulemaking.

EFFECTIVE DATES: This rule will become effective on January 29, 2007.

FOR FURTHER INFORMATION CONTACT: Daniel E. Coates, Associate Director, Office of Supervision, *coatesd@fhfb.gov* or 202–408–2959; or Thomas E. Joseph, Senior Attorney-Advisor, Office of General Counsel, *josepht@fhfb.gov* or 202–408–2512. You can send regular mail to the Federal Housing Finance Board, 1625 Eye Street, NW., Washington DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Federal Home Loan Bank System (Bank System) consists of 12 Banks and the Office of Finance (OF). The Banks are instrumentalities of the United States organized under the authority of the Federal Home Loan Bank Act (Bank Act). 12 U.S.C. 1421 *et seq.* Although the Banks are federally chartered institutions, they are privately owned and were created by Congress to support the financing of housing and community lending by their members (which are principally depository institutions) and, as such, are commonly categorized as ''government sponsored enterprises'' (GSEs). *See* 12 U.S.C. 1422a(a)(3)(B)(ii), 1424, 1430(i), and 1430(j). As GSEs, the Banks are able to borrow in the capital markets at favorable rates. They pass along this funding advantage to their members—and ultimately to consumers—by providing secured loans, known as advances, and other financial services to members at rates that members generally could not obtain elsewhere.

Prior to the passage of the Gramm-Leach-Bliley Act [1] (GLB Act) in November 1999, all Banks issued a single class of stock with a par value set at $100. Generally, all transactions in this stock were required to occur at the par value. *See* 12 U.S.C. 1426(a) and (b)(3) (1994); 12 CFR 925.19 and 925.22(b)(2). By statute, Bank members were required to purchase and retain a minimum amount of stock equal to the greater of: (i) $500; (ii) 1 percent of the member's aggregate unpaid principal balance of home mortgage or similar loans; or (iii) 5 percent of a member's outstanding advances. *See* 12 U.S.C. 1426(b) (1994). Further, the Bank Act did not impose specific minimum capital requirements on the Banks individually, although the Finance Board did establish such requirements by regulation. *See* 12 CFR 966.3(a).

The GLB Act amended the Bank Act to create a new capital structure for the Bank System and to impose statutory minimum capital requirements on the individual Banks. As part of this change, each Bank must adopt and implement a capital plan consistent with provisions of the GLB Act and Finance Board regulations. Among other things, each capital plan establishes stock purchase requirements that set the minimum amount of capital stock a Bank's members must purchase as a condition of membership and of doing business with the Bank. *See* 12 U.S.C. 1426(c)(1); 12 CFR 933.2(a). To date, all of the Banks but the Chicago Bank have implemented their GLB Act capital plans.

The Banks and OF operate under the supervision of the Finance Board. The Finance Board's primary duty is to ensure that the Banks operate in a financially safe and sound manner. *See* 12 U.S.C. 1422a(a)(3)(A). To the extent consistent with this primary duty, the Bank Act also requires the Finance Board to supervise the Banks and ensure that they carry out their housing finance mission, remain adequately capitalized, and are able to raise funds in the capital markets. *See* 12 U.S.C. 1422a(a)(3)(B). To carry out its duties, the Finance Board is empowered, among other things, ''to promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of [the Bank Act].'' 12 U.S.C. 1422b(a)(1).

II. Proposed Rulemaking

On March 6, 2006, the Board of Directors of the Finance Board approved a proposed rule that was intended to address supervisory concerns relating to the amount of outstanding member excess stock and retained earnings, respectively, at the Banks.[2] These proposed amendments were published for comment in the **Federal Register** on March 15, 2006. *See* Proposed Rule: Excess Stock Restrictions and Retained Earnings Requirements for the Federal Home Loan Banks, 71 FR 13306 (Mar. 15, 2006) (Proposed Rule). The 120-day comment period closed on July 13, 2006. The Finance Board received 1,066 comment letters, nearly all of which opposed some aspect of the proposed rule.

Retained Earnings Requirements. In response to long-standing Finance Board concerns, the proposed rule would have required each Bank to achieve and maintain a minimum level of retained earnings equal to $50 million plus 1 percent of the Bank's non-advance assets. The proposal also would have barred Banks not meeting that requirement from distributing more than 50 percent of net income as dividends except with the approval of the Finance Board. The Finance Board continues to believe that retained earnings are a critical component of Bank capital. However, it also sees merit in the suggestions of some commenters that the retained earnings requirement could be refined to correlate more closely to the risk profile of each Bank and that restrictions on dividend payments could be set so as not to unduly disrupt the value of Bank membership. Accordingly, and in view of the Finance Board's previously announced initiative to modernize and overhaul its risk-based capital regulation to reflect advances in identifying and managing risks that have occurred since the capital regulations were first adopted,[3] the Finance Board has decided not to address the minimum amount of retained earnings as part of this rulemaking.

Excess Stock Limitation. The proposed rule would have limited the amount of member excess stock that a Bank could have outstanding to 1 percent of its total assets. A Bank with member excess stock above that limit as of the end of any calendar quarter would have been required to report the violation to the Finance Board. Any such Bank also would have been required either to cure the violation or to submit a plan to the Finance Board to bring its level of member excess stock into compliance with the limit. The proposal also would have prohibited a Bank from paying stock dividends and from issuing excess stock to members regardless of how much excess stock it had outstanding.

In explaining its reasons for the proposed rule, the Finance Board noted that it had intended to address both mission and safety and soundness concerns. With regard to the mission concerns, the Finance Board stated that the Banks often have used member excess stock to support capital market investments that typically generate greater earnings than the costs of the Banks' debt. Although some level of such investments is appropriate for liquidity and other purposes, high levels of excess stock can create an incentive for the Banks to create large portfolios of arbitrage investments that are meant to provide a return on the excess stock, but which do not necessarily further the Bank System's public purpose. Such arbitrage activities generally result in the Banks being larger and holding more debt than otherwise would be the case.

With regard to the safety and soundness concerns, the Finance Board explained that the historical practice of most Banks to honor a member's request to repurchase excess stock creates

[1] Pub. L. 106–102, 133 Stat. 1338 (Nov. 12, 1999).

[2] Excess stock is any Bank stock held by a member that exceeds that member's minimum investment in capital stock required by the Bank Act, Finance Board regulations, or the Bank's capital plan.

[3] At the Finance Board meeting during which the proposed excess stock and retained earnings requirements were approved for publication, Finance Board staff indicated that it planned to explore and develop a more robust approach to setting risk-based capital requirements for the Banks. See Transcript of March 8, 2006 Meeting (Open Session) at p. 17. Transcripts of open sessions of Finance Board meetings are available at the Finance Board's Web site: *http://www.fhfb.gov/Default.aspx?Page=40.*

certain expectations among the members, which could lead to capital instability, particularly if a Bank were to experience large-scale repurchase requests in a short period of time. Proposed Rule, 71 FR at 13308–13309. These problems could be compounded if a Bank used the excess stock to capitalize investments that are intermediate- and long-term in nature, some of which may have significant market risk and may not be readily saleable without realizing a substantial loss in market value, such as mortgage-backed securities, federal agency securities, or acquired member assets (AMA). *See* Proposed Rule, 71 FR at 13308–13309. Such a strategy would make it difficult for a Bank to shrink its balance sheet to meet the repurchase requests. The Finance Board noted that a failure to meet member expectations could adversely affect the members' confidence in the Bank System and how banking regulators treat Bank stock for risk-based capital purposes. Proposed Rule, 71 FR at 13309. Any loss of confidence could prompt members to redeem their excess stock, withdraw from membership, or cease doing business with a Bank, all of which could undermine a Bank's financial stability. To avoid a loss of confidence, a Bank could feel pressure to continue to repurchase stock, even if that was not in the best long-term interest of the Bank's capitalization or profitability.[4]

General Overview of Comments. The Finance Board received 1,066 comment letters on its proposal, all but 2 of which opposed adoption of the proposed rule, either in whole or in part. The Finance Board received comments from all 12 Banks, many banking or financial trade groups, organizations involved in affordable housing, Bank members, individuals, and other interested parties. Of the 1,066 comment letters, 454 addressed the excess stock limit, the prohibition on stock dividends, or both. Of those 454 letters, 409 opposed the 1 percent limit on excess stock, 403 opposed the prohibition against paying stock dividends, and 358 opposed both. In addition, 6 letters addressed the prohibition on the sale of stock that is excess at the time of sale. Four of those letters also addressed the excess stock limit or the prohibition on stock dividends. Of the 454 letters addressing the excess stock limit, the prohibition on stock dividends, or both, 343 were submitted by persons located within states that constitute the geographic district of the Cincinnati Bank.

The substance of the issues raised by the comment letters is discussed in some detail below, as part of the discussion of the provisions of the final rule.[5] Generally speaking, significant numbers of commenters urged the Finance Board to withdraw the proposed rule, contending that it would adversely affect the value of membership, was contrary to the statute, would reduce the total capital of the Banks, would lower liquidity and earnings, and would reduce contributions to the Affordable Housing Program (AHP).[6]

Notwithstanding the various contentions raised by the comment letters, the Finance Board remains concerned that high levels of member excess stock can pose a risk to the Banks and provide an incentive for the Banks to engage in arbitrage investments at a level that is inconsistent with their statutory mission. For those reasons, the Finance Board has determined that it should adopt a final rule regarding excess stock, albeit with a number of changes to address criticisms made in the comment letters.

III. Final Rule

The key features of the proposed rule were a fixed limit on the amount of member excess stock that any Bank could have outstanding, along with an absolute ban on the payment of stock dividends and sales of additional excess stock. The key feature of the final rule is that it limits the ability of a Bank to issue new shares of excess stock once the amount of its outstanding excess stock reaches a certain threshold. Specifically, the final rule provides that any Bank with outstanding excess stock greater than 1 percent of its total assets may not pay dividends in the form of stock or otherwise issue shares of excess stock. Banks with excess stock below that threshold will not be limited in their ability to pay stock dividends or otherwise issue shares of excess stock. The rule also clarifies that a Bank may not issue excess stock as a stock dividend or otherwise if after the issuance of such stock, the Bank's outstanding excess stock would be above 1 percent of its total assets. In light of those changes, the final rule eliminates the proposed provisions that would have required non-complying Banks to report any violations of the limit and to cure the violation or develop a compliance plan within 60 days.

The final rule will consolidate the excess stock restrictions into § 925.23 of the Finance Board regulations rather than adopting a newly created part as had been proposed.[7] The final rule also adopts the definition of ''excess stock'' (with a modest clarifying change) set forth in the proposed rule and moves this definition from § 930.1 to § 900.2 of the Finance Board rules. As explained in the preamble to the proposed rule, these changes were meant to be clarifying in nature and to assure that the definition of excess stock applied both to the 11 Banks that have implemented their capital plans and the 1 Bank that has not done so. *See* Proposed Rule, 71 FR at 13310. Finally, the Finance Board is adopting the proposed provision requiring dividends to be calculated based on actual, rather than projected, earnings.

IV. Discussion

A significant number of the commenters opposed the creation of any limit on excess stock, as well as the Finance Board's decision to set the limit at 1 percent of each Bank's assets. The commenters questioned the need for such a rule, as well as the authority of the Finance Board to adopt the rule, and contended, among other things, that the proposed rule represented a major change in Finance Board policy, was inconsistent with the capital provisions of the GLB Act and the approved capital plans, and would have untoward consequences for the Banks and their members.

[4] Regulators of other GSEs whose stock generally is repurchased have recognized the incentive for a GSE to try to avoid suspending repurchases of stock. For example, in proposing rules addressing capital and other issues for the Farm Credit System, the Farm Credit Administration noted that:

> For an association to use this authority [to refrain from repurchasing stock] in a way that makes borrower stock a meaningful buffer [against losses], the association has to recognize potential losses in a timely manner and be willing to withhold proceeds from stock retirement requests. However, such actions can signal problems to existing and potential borrowers at the association. Thus, an association might continue to make retirements until the evidence of serious adverse financial conditions is abundantly clear.

Proposed Rule: Funding and Fiscal Affairs, Loan Policies, and Operations and Funding Operations; General Provisions; Disclosure to Shareholders; Capital Adequacy, 60 FR 38521, 38522 (July 27, 1995).

[5] A large number of the comments specifically addressed the proposed retained earnings requirements. Because the Finance Board has decided to adopt only the excess stock provisions at this time, it is not addressing comments that specifically relate to the retained earnings provisions of the proposed rule.

[6] Each Bank has to contribute 10 percent of its net income to the AHP or such prorated sums as may be required to assure that the aggregate contributions of all Banks equal no less than $100 million in any given year. *See* 12 U.S.C. 1430(j)(5).

[7] 12 CFR 925.23. Prior to the changes adopted in this rulemaking, § 925.23 addressed the rights of members to purchase excess stock. The Finance Board had proposed to incorporate the excess stock limitation along with the retained earnings requirements into a new part 934 of its regulations. *See* Proposed Rule, 71 FR at 13315.

Need for the rule. Notwithstanding the contentions of many of the comment letters, the Finance Board believes that high levels of excess stock could pose correspondingly greater risks to the Banks and that the final rule is needed to address those risks. There have been instances in which certain of the Banks have used excess stock to capitalize significant arbitrage investments or portfolios of intermediate- or long-term investments in federal agency securities or mortgages, both of which have exposed the Banks to greater market risk. For example, one Bank relied on excess stock to capitalize significant investments in federal agency securities that generated an initial favorable spread only because the Bank took on considerable interest-rate risk in funding the investments. Other Banks have used excess stock to capitalize investments in intermediate- and long-term investments, including AMA, which may well remain outstanding beyond the redemption periods associated with the excess stock. Such investments capitalized with excess stock pose additional risks relative to AMA investments capitalized by required stock, i.e., stock held pursuant to an activity-based stock purchase requirement, because the excess stock has proven to be a less stable source of capital. In certain cases, members owning excess stock have sought to have that stock redeemed or repurchased when the returns generated by the arbitrage investments and AMA caused the Bank's dividend yield to decrease.

Although the Finance Board believes that high levels of excess stock must be addressed, it is receptive to the suggestions of some commenters that the regulatory solution should be more narrowly focused on the principal risks, i.e., those Banks with the greatest levels of excess stock. For that reason, the Finance Board has determined that an appropriate approach is to restrict the Banks with the highest levels of excess stock from increasing the amount of their outstanding excess stock through the issuance of stock dividends or the sale of excess stock. The Finance Board believes that the 1 percent of assets level, which originally was proposed as a cap on the amount of excess stock that may be outstanding, is an appropriate level to trigger the restrictions imposed by the final rule. Thus, Banks with excess stock greater than 1 percent of total assets will be prohibited from paying stock dividends and otherwise issuing excess stock to their members. Banks with excess stock less than or equal to 1 percent of total assets will be able to do so, provided such action does not result in the Bank's total excess stock exceeding 1 percent of its assets.

As was discussed in the proposed rule, excess stock of up to 1 percent of assets should allow any Bank sufficient latitude to support both its mortgage-backed securities portfolio (up to 300 percent of its capital) plus a sufficient portfolio of assets for liquidity purposes. In recent years, for example, the Banks' investments in mortgage-backed securities have averaged between 11 and 13 percent of assets and their liquidity investments have averaged between 8 and 12 percent of assets. *See* Proposed Rule, 71 FR at 13309. Moreover, the fact that 8 Banks have been able to maintain adequate liquidity, serve their mission goals, and provide members with adequate services while keeping excess stock at levels below 1 percent of total assets indicates that the final rule should not pose an unreasonable burden on any Bank. With respect to those Banks with levels of excess stock below 1 percent of assets, the Finance Board intends to monitor the extent of their reliance on excess stock as part of its normal supervisory processes and will take appropriate supervisory action if the levels of or trends in excess stock pose potential safety and soundness problems for those Banks.

Legal authority. A number of the comment letters questioned the authority of the Finance Board to adopt a regulation limiting the amount of excess stock or prohibiting the payment of stock dividends. Those commenters generally contended that various provisions of the Bank Act left those matters to the individual Banks to address. The most straightforward response to that contention is that the Congress has not addressed the issue of excess stock, either in the GLB Act or in any other provisions of the Bank Act. Moreover, the Finance Board believes that the Bank Act provides ample authority for it to adopt a rule limiting excess stock, and further notes that the changes made in the final rule may well render moot certain of the arguments raised with respect to the legal authority for the proposed rule.

Congress has provided that the primary duty of the Finance Board is to ensure that the Banks operate in a financially safe and sound manner and, secondarily, to supervise the Banks and, among other things, to ensure that they remain adequately capitalized and carry out their housing finance mission. 12 U.S.C. 1422a(a)(3)(A) and (B). The Finance Board previously has described the broad nature of this authority, noting that any regulatory actions taken with the intent to enhance the safety and soundness of the Banks or to carry out any of the other statutory duties are within the legal authority conferred by those provisions, unless they would conflict with some other express limitations imposed by Congress elsewhere in the Bank Act.[8] Because the Finance Board is adopting this regulation to address its supervisory concerns about the risks associated with high levels of excess stock, the Finance Board believes that regulation is within its authority to ensure the safety and soundness of the Banks under section 2A of the Bank Act.[9] The Finance Board similarly believes that there is nothing elsewhere in the Bank Act that expressly addresses the issue of excess stock that might limit the authority conferred by section 2A of the Bank Act.

Any analysis of the Finance Board's authority to adopt a regulation must consider whether Congress has addressed the precise question at issue. If so, the Finance Board must accept the decisions made by the Congress. If Congress has not addressed the precise question, the Finance Board may do so, provided it does so in the manner permitted under the Administrative Procedures Act. *See Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837, 843–844 (1984). With regard to this rule, the precise issues are whether Congress has established a limit for the amount of excess stock that a Bank may have outstanding or otherwise has addressed the ability of the Banks to issue excess stock or has expressly assigned the responsibility for making these determinations to the Banks or to the Finance Board. In the view of the Finance Board, Congress has not expressly addressed these issues, and has not delegated to the Banks the sole right to determine the degree to which they may create or rely on excess stock to capitalize their business. Indeed, the Bank Act largely is silent on the matter of excess stock. Even the arguments raised by the commenters would require one to infer from various provisions of the Bank Act a congressional intent to leave the matter to the discretion of the Banks. In the view of the Finance Board, the context of those provisions does not suggest such an inference.[10] In the

[8] *See* Office of General Counsel Opinion, 2004–GC–01, Federal Home Loan Bank Securities Registration and Disclosure (June 16, 2004). This opinion is available at the Finance Board's Web site, *http://www.fhfb.gov/GetFile.aspx?FileID=457*.

[9] The Bank Act also authorizes the Finance Board to promulgate and enforce any regulations as it believes are necessary to carry out the provisions of the Bank Act. 12 U.S.C. 1422b(a)(1).

[10] Some commenters contended that section 6(e) of the Bank Act, 12 U.S.C. 1426(e), which

Continued

absence of any express provision in the Bank Act addressing the issue of excess stock or purporting to limit the authority of the Finance Board to act to limit the risks associated with high levels of excess stock, the Finance Board is not persuaded that it lacks the legal authority to act.

Agency policy. A number of the commenters contended that the proposed rule would have constituted a major change in agency policy, reasoning that when the Finance Board approved capital plans allowing certain of the Banks to impose a 0 percent stock purchase requirement for certain assets, it effectively established a policy to allow each Bank to determine its appropriate level of excess stock. Although the Finance Board clearly did approve plans that allow for some amount of excess stock to be used by the Banks, its prior approvals did not purport to address the issue of when the excess stock might pose a level of added risk that would raise safety and soundness concerns for those Banks, which is the issue addressed by the final rule. Had the Finance Board intended to set a policy regarding the appropriate level of excess stock, it most likely would have expressed that policy in the resolutions issued when approving the capital plans. There is nothing in any of the resolutions approving the 12 capital plans, however, that remotely suggests that the Finance Board intended to establish a policy on excess stock, such as by allowing Banks to accumulate unlimited amounts of excess stock or by committing that matter solely to the discretion of the Banks.

In any event, the Finance Board is not bound to adhere to a policy if subsequent events make clear the need for change. Recent developments at several of the Banks relating to the manner and degree to which they have relied on excess stock have made clear to the Finance Board that there can be significant risks associated with high levels of excess stock. The final rule is intended to address those risks in a manner that takes into consideration several of the key criticisms posed by the commenters. For example, some commenters believed that the proposed rule would have required a Bank to redeem or repurchase immediately shares of excess stock above 1 percent of its assets, which would have had tax consequences to the members that held excess stock as a result of prior stock dividends. Although the proposed rule would not have required any Bank to undertake forced redemptions or repurchases, the final rule addresses those criticisms. The rule does not require a Bank with excess stock above 1 percent of its assets to reduce its excess stock. The Finance Board, instead, has opted to address its supervisory concerns about excessive levels of excess stock by preventing Banks with excess stock above 1 percent of their assets from further increasing excess stock beyond current levels by paying stock dividends or otherwise issuing excess stock.

Payment of dividends based on actual earnings. The Finance Board is adopting as proposed changes to § 917.9 of its rules that will require a Bank to declare and pay dividends based on actual earnings and will prohibit a Bank from declaring and paying dividends based on anticipated or projected earnings. Other proposed changes that would have required a Bank to base dividends on earnings for the calendar quarter are not being adopted. Thus, a Bank will be able to declare and pay its dividend after consideration of its actual current net earnings for any period of its choosing.

The provision requiring a Bank to base dividends on actual earnings appeared to be non-controversial. To the extent the Finance Board received comments on this part of the proposed rule, commenters generally objected to requiring a Bank to base dividends on calendar-quarter earnings. As already discussed, the Finance Board is not requiring that dividends be tied to calendar quarter earnings, as it had proposed.

authorizes the Banks to redeem or repurchase stock in excess of a member's minimum stock purchase requirement, reflects an intent by Congress to allow each Bank to determine how much excess stock it may have outstanding. On its face, however, that provision simply authorizes the individual Banks, after establishing minimum stock purchase requirements as part of their respective capital plans, to redeem or repurchase stock that becomes excess due to the ebb and flow of business with its members. A better reading of the provision is that it confers certain rights on the Banks vis-à-vis their members with regard to the redemption or repurchase of excess stock. The Finance Board does not believe that there is any reasonable way to construe that provision as reflecting an intent on the part of Congress to override the Finance Board's authority to address safety and soundness concerns associated with high levels of excess stock. Other commenters contended that the grant of incidental powers by section 12 of the Bank Act, 12 U.S.C. 1432(a), reflects an intent by Congress to allow the Banks to determine the form of any dividend paid to their members, *i.e.*, payment in cash or in shares of Bank stock, which effectively precludes the Finance Board from limiting stock dividends. The Finance Board notes that the provision that confers the incidental powers also provides that they must be exercised consistently with the other provisions of the Bank Act. In the view of the Finance Board, that exception means that even if stock dividends are within the incidental powers of the Banks, they also are subject to any limits that the Finance Board may impose for safety and soundness reasons, as is the case here. Moreover, the Finance Board notes that the final rule is considerably less expansive than was the proposed rule, in that it bans stock dividends only for those Banks that have accumulated more than 1 percent of their total assets in excess stock, rather than an absolute ban, as had been proposed.

V. Regulatory Flexibility Act

The final rule will apply only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the final rule will not have a significant economic effect on a substantial number of small entities.

VI. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq*. Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 900

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 917

Community development, Credit, Federal home loan banks, Housing, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

12 CFR Part 925

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

12 CFR Part 930

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

■ For the reasons stated in the preamble, the Finance Board is amending 12 CFR chapter IX as follows:

PART 900—GENERAL DEFINITIONS APPLYING TO ALL FINANCE BOARD REGULATIONS

■ 1. The authority citation for part 900 continues to read as follows:

Authority: 12 U.S.C. 1422b(a).

■ 2. Amend § 900.2 by adding in alphabetical order, a defined term to read as follows:

§ 900.2 Terms relating to Bank operations, mission and supervision.

* * * * *

Excess stock means that amount of a Bank's capital stock owned by a member

or other institution in excess of that member's or other institution's minimum investment in capital stock required under the Bank's capital plan, the Act, or the Finance Board's regulations, as applicable.

* * * * *

PART 917—POWERS AND RESPONSIBILITIES OF BANK BOARDS OF DIRECTORS AND SENIOR MANAGEMENT

■ 3. The authority citation for part 917 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1427, 1432(a), 1436(a), and 1440.

■ 4. Revise § 917.9 to read as follows:

§ 917.9 Dividends.

(a) A Bank's board of directors may declare and pay a dividend only from previously retained earnings or current net earnings and only in accordance with any other applicable limitations on dividends set forth in the Act or this chapter. Dividends on such capital stock shall be computed without preference.

(b) A Bank's board of directors may not declare or pay a dividend based on projected or anticipated earnings and may not declare or pay a dividend if the par value of the Bank's stock is impaired or is projected to become impaired after paying such dividend.

(c) The requirement in paragraph (a) of this section that dividends be computed without preference shall cease to apply to any Bank that has established any dividend preferences for 1 or more classes or subclasses of its capital stock as part of its approved capital plan, as of the date on which the capital plan takes effect.

PART 925—MEMBERS OF THE BANKS

■ 5. The authority citation for part 925 continues to read as follows:

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

■ 6. Revise § 925.23 to read as follows:

§ 925.23 Excess stock.

(a) *Sale of excess stock.* Subject to the restriction in paragraph (b) of this section, a member may purchase excess stock as long as the purchase is approved by the member's Bank and is permitted by the laws under which the member operates.

(b) *Restriction.* Any Bank with excess stock greater than 1 percent of its total assets shall not declare or pay any dividends in the form of additional shares of Bank stock or otherwise issue any excess stock. A Bank shall not issue excess stock, as a dividend or otherwise, if after the issuance, the outstanding excess stock at the Bank would be greater than 1 percent of its total assets.

PART 930—DEFINITIONS APPLYING TO RISK MANAGEMENT AND CAPITAL REGULATIONS

■ 7. The authority citation for part 930 is revised to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1436(a), 1440, 1443, and 1446.

§ 930.1 [Amended]

■ 8. Amend § 930.1 by removing the definition of the term ''excess stock''.

Dated: December 22, 2006.

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

Ronald A. Rosenfeld,

Chairman.

[FR Doc. E6–22325 Filed 12–27–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25745; Directorate Identifier 2006–CE–47–AD; Amendment 39–14866; AD 2006–26–08]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 390 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) to supersede AD 2006–02–51, which applies to certain Raytheon Aircraft Company Model 390 airplanes. AD 2006–02–51 currently requires you to inspect the left engine hydraulic pump outlet tube and the clamp; replace the clamp at each inspection; replace the hydraulic pump outlet tube immediately if any problem is found; and report the results of each inspection or replacement to the FAA. This AD is the result of several hydraulic pump outlet tube failures after issuance of AD 2006–02–51, including failures on the right engine. This AD requires you to visually inspect the hydraulic pump outlet tube on both engines on a recurring basis and immediately replace the tube if damage is found. This AD also requires incorporation of an Airplane Flight Manual (AFM) change to not allow operation of an engine with its associated firewall hydraulic shutoff valve closed. In addition, this AD requires you to replace the hydraulic pump outlet tube if an engine is operated with its firewall hydraulic shutoff valve closed. We are issuing this AD to prevent failure of the hydraulic pump outlet tube and consequent leaking of hydraulic fluid. Such leakage could result in a fire. There is also a risk of loss of hydraulic system functions including normal gear extensions, speed brakes, roll spoilers, lift dump, and normal brakes.

DATES: This AD becomes effective on December 28, 2006.

The Director of the Federal Register previously approved the incorporation by reference of the documents listed in this AD on February 2, 2006 (71 FR 5581, February 2, 2006).

We must receive any comments on this AD by February 26, 2007.

ADDRESSES: Use one of the following addresses to comment on this 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 20590–0001.
- 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.

To get the service information identified in this AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043.

To view the comments to this AD, go to *http://dms.dot.gov*. The docket number is FAA–2006–25745; Directorate Identifier 2006-CE–47–AD.

FOR FURTHER INFORMATION CONTACT: James P. Galstad, Propulsion Aerospace Engineer, ACE 116W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4135; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

Reports of four failures of the left-hand engine hydraulic pump outlet tube on Raytheon Model 390 airplanes caused us to issue AD 2006–02–51, Amendment 39–14459 (71 FR 5581,