Rules and Regulations

Federal Register
Vol. 80, No. 163
Monday, August 24, 2015

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AC72

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

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, we, or our) amends existing regulations related to mergers and consolidations of Farm Credit System (FCS or System) banks and associations to clarify the merger review and approval process and incorporate existing practices in the regulations. The final rule identifies when the FCA statutory 60-day review period begins, requires that only independent parties validate ballots and tabulate stockholder votes on mergers or consolidations, requires institutions to hold informational meetings on proposed mergers when circumstances warrant, explains the reconsideration petition process, and identifies the voting record date list. The final rule updates cross-references in the existing regulations, incorporates cross-references to stockholder voting rules contained elsewhere in part 611, and clarifies and updates terminology.

DATES: This regulation shall become effective no earlier than 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. The FCA will publish a notice of the effective date in the **Federal Register**.

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

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of the final rule are to:

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

II. Background

The Farm Credit Act of 1971, as amended (Act),[1] identifies the FCA as the safety and soundness regulator of the Farm Credit System and authorizes the FCA to issue regulations to implement the provisions of the Act.[2] The Act also gives the FCA several other authorities, including, but not limited to, approving System institution mergers.[3] FCA regulations in subparts F and G of part 611 address the procedures and stockholder disclosure requirements for Farm Credit banks and associations proposed plans of merger or consolidation (collectively, merger(s)), and charter amendments. We issued a proposed rule to amend our merger and charter amendment regulations on January 20, 2015 (80 FR 2614). The comment period for the proposed rule closed on April 20, 2015.

III. Comments and Our Responses

We received 3 comment letters on the proposed rule, one each from: The Independent Community Bankers of America (ICBA), the Farm Credit Council (FCC) on behalf of its membership, and AgriBank, FCB. All commenters expressed general support for the rule but offered specific comments on mergers and territorial adjustments. No comments were made on the definitions or charter amendment rules.

All provisions of the rule are finalized as proposed, except as discussed in our response to comments below.

A. General Comments Received

1. FCA Role in Mergers

AgriBank made a general comment on the role of FCA in determining the structure of System institutions, stating that FCA should limit itself to a safety and soundness review of mergers and leave all other considerations to the judgment of shareholders. We decline the commenter's suggestion that we limit our role in mergers to that of a safety and soundness reviewer. The Act requires the FCA to approve all System mergers and our merger approval authority comes with responsibilities beyond a safety and soundness review. Beyond approving the merger itself, we must also ensure that disclosure documents provided to stockholders comply with our regulations, voting procedures comply with the Act, and reconsideration petitions are properly addressed. We also have responsibility under the Act to issue and amend the charters of System institutions, which are often affected in mergers.[4]

2. Merger Rules Versus Termination Rules

The ICBA made a general remark that it would like our merger and consolidation regulations to mirror those existing for institutions seeking termination from the System. The ICBA gave specific examples of where our merger rules could be changed to resemble our termination rules. The ICBA explained that it believes mergers are similar to terminations as a merger results in one or more institutions terminating its existence.

It is not appropriate to change our merger rules to have them substantially resemble our termination rules. Mergers and terminations are different events that require different rules. Institutions that seek to leave the System are relinquishing their Government-sponsored enterprise (GSE) status to enter the private banking sector. Upon termination from the System, these institutions are no longer subject to FCA regulation and oversight. Further, that institution's business model may also

[1] Public Law 92–181, 85 Stat. 583.

[2] 12 U.S.C. 2252.

[3] 12 U.S.C. 2289a through 2279g.

[4] 12 U.S.C. 2002(a) and 2252.

change from a cooperative structure, meaning its members may no longer be member-borrowers in their institution. Conversely, System institutions seeking to merge are changing from two or more FCS institutions to one institution, which are still subject to FCA regulation and oversight. By merging, these institutions do not surrender their GSE status or cooperative business model.

3. Limiting Mergers

The ICBA requested a moratorium on future mergers within the System, arguing that allowing more mergers will only increase the size of institutions and reduce their effectiveness as ''locally oriented lenders serving farmers and ranchers.'' In the alternative, the ICBA asked that we limit the number of mergers that may occur within a close timeframe. The ICBA explained that multiple mergers occurring at the same time could have ''dramatic impact on the makeup and structure'' of the System, particularly in regards to expanded territories.

We decline the request to place a moratorium on mergers within the System. Each institution decides, independent of FCA, whether to pursue a merger. Voting shareholders in these institutions then must approve the merger through a vote. If the majority of the votes on the merger from voting shareholders in any of the merging institutions are against the merger, the merger may not proceed. Therefore, the voting shareholders of the System decide whether larger institutions reduce the System's effectiveness. Notwithstanding this, we do consider the impact a merger may have on the overall safety and soundness of the System during our review.

The ICBA also remarked that multiple mergers, and large ones at that, lead to potential conflicts among the merging institutions' management as the managers often obtain financial gain or further personal agendas from the mergers rather than give priority consideration to the stockholders' best interest. As discussed previously, voting shareholders of the merging institutions decide whether the merger is in their best interest. To ensure the stockholders are fully informed before casting their votes, FCA is required by section 7.11 of the Act to review the disclosures made to voting stockholders by the management of the merging institutions. As part of our review of disclosure information, we ensure specific disclosures are made regarding changes in staffing and compensation benefits resulting from the planned merger.

Finally, the ICBA asked FCA to consider the impact to Other Financial Institutions (OFIs) during a merger and whether a merger will disadvantage the OFIs. We agree with the ICBA's point that continuing service to authorized borrowers, including OFIs, must be considered as part of a merger of Farm Credit banks. A merger plan that could disadvantage any borrowers authorized to receive funding from a Farm Credit bank would be scrutinized and questioned through FCA's merger review process.

4. Public Involvement in Mergers

The ICBA asked that we require institutions to post merger documents in the public, non-private, section of the merging institutions' Web sites, similar to what our termination rules require. We have not made this change. In a termination action, an institution is leaving the System, changing regulators, and giving up its GSE status to become a commercial bank, savings association, or similar type of financial lender. It is because a termination action has a direct impact on both the shareholders of the terminating institution and the general public that we require public disclosures in termination actions. A merger of System institutions does not have a direct impact on the general public, so detailed public disclosures are considered unnecessary. However, we do require in § 611.1122(e) that merging institutions provide extensive disclosure of merger documents to their stockholders.

5. Regulatory Flexibility Act

The FCC questioned our Regulatory Flexibility Act (RFA) [5] certification. In the proposed rule, we certified that the rule would not have a significant economic impact on a large number of small entities. Our certification considered each Farm Credit bank together with ''its affiliated associations.'' The FCC objected to our combining associations with Farm Credit banks, stating that because each institution has to comply with the regulatory requirements each should be considered individually for purposes of identifying economic impact.

The RFA definition of a small entity incorporates the Small Business Administration (SBA) definition of a ''small business concern,'' including its size standards. A small business concern is one independently owned and operated, and not dominant in its field of operation. For purposes of the RFA, the interrelated ownership, supervisory control, and contractual relationship between associations and their funding banks are the basis for FCA's conclusion to treat them as a single entity. Therefore, System institutions do not satisfy the RFA definition of ''small entities.''

B. Comments on Merger and Consolidation Procedures [Subparts F and G]

1. FCA Authorities in Mergers [§§ 611.1000(c) and 611.1120(c)]

The FCC agreed with the technical updates to recognize changes in System institution formations and the use of the term ''FCA'' instead of ''Chairman.'' However, the FCC asked that the rule at § 611.1120(c), which discusses the authority of FCA to amend association and service corporation charters, more closely resemble the related provision for Farm Credit banks in § 611.1000(c). Specifically, the FCC asked that § 611.1120(c) include the phrase ''in accordance with the provisions of the Act.''

In updating the provision in § 611.1120(c) on FCA-initiated charter amendments for associations, we relied upon section 5.17(a)(2) of the Act, which provides that FCA may ''where necessary or appropriate to carry out the policy and objectives of this Act'' amend the charters of all System institutions. As the FCC noted, the language in § 611.1000(c) regarding FCA-initiated charter amendments for Farm Credit banks contains the phrase ''in accordance with the Act'' but this same phrase is missing from § 611.1120(c). As explained in the 1988 rulemaking (53 FR 50381, Dec. 15, 1988), the phrase ''in accordance with the Act'' was added to § 611.1000(c)—even though considered at the time unnecessary—to respond to comments requesting the rule retain specific language that had been deleted from the statute by the Agricultural Credit Technical Corrections Act of 1988 (Pub. L. 100–399). As more than 25 years has passed since that language was removed from the Act, we do not believe it necessary to keep it in our rules any longer. However, the lack of this language in our rules does not mean the FCA is not required to exercise its functions and powers in a manner that is consistent with the Act. That is an implicit requirement in every provision governing FCA actions. For these reasons, and to avoid potential confusion, we are removing the language from § 611.1000(c) and replacing it with the language used in § 611.1120(c).

[5] 5 U.S.C. 601 *et seq.*

2. Board of Director Actions in Mergers [§ 611.1122(a)]

The ICBA asked that we require an institution's board of directors to hold three votes on every merger, similar to our termination rules. As previously stated, we decline to change our merger rules in a manner that would have them substantially resemble our termination rule. Terminations and mergers are different events that require different rules. Our termination rules require a board of directors to vote on a commencement resolution to terminate (§ 611.1210), a plan of termination resolution (§ 611.1220), and a resolution reaffirming support for the termination (§ 611.1235). Our merger rule at § 611.1122(a)(3)(i) currently provides for the boards of directors of the merging institutions to vote on a merger resolution. After the boards approve the merger resolution, the associations jointly submit a request to the funding bank(s). Once the plan of merger is reviewed and approved by the funding bank(s), the request is submitted to the FCA for review. When the proposed merger is between two or more Farm Credit banks, the banks' boards approve the resolution and the request is submitted to the FCA.

3. Merger Analysis and Studies [§ 611.1122(c)]

The ICBA asked that we require independent analysis and other studies on proposed mergers. The ICBA explained that as this is a requirement in our termination rules, an infrequent event, its importance is greater in the more frequent mergers and consolidations. We appreciate the suggestion and note that we had proposed a similar requirement in this rulemaking at § 611.1122(c). The rule as final provides that at any time during the review process the FCA may require merging institutions to submit any supplemental information we deem appropriate. This allows us to request additional documents, studies, analyses, or opinions that would provide information specific to the unique complexities of each proposed merger.

4. Informational Meetings [§ 611.1122(d)]

The FCC agreed that informational meetings identified in § 611.1122(d) may be useful, but expressed concern that FCA may use its authority in this area to make informational meetings mandatory in all cases. The FCC instead urged that FCA make the decision on a case-by-case basis and then only after considering all views on the necessity for any such meetings. We agree and did not intend for the proposed rule provision to automatically lead to the standardization of informational meetings. We have clarified the rule at § 611.1122(d) to explain that this authority will be exercised when considered appropriate for the merger under review.

AgriBank supported the § 611.1122(d) provision regarding FCA requiring informational meetings, but asked that each institution be left to determine how those meetings are conducted. Specifically, the bank commented that whether an informational meeting was held in-person or electronically should be left to the judgment of the institution. We do not believe that a regulation change is necessary. However in those instances when we require an informational meeting, we will work with the merging institutions to identify the most appropriate meeting format for the subject merger.

The ICBA also supported informational meetings, asking that they be timed to occur at least 60 days before the merger vote. The FCA declines to adopt the suggested 60-day timeframe. Merger requests include planned effective dates and those dates vary. As such, the effective date of a planned merger will likely influence the date of any required informational meeting, since those meetings would occur before both the merger vote and the effective date. As a result, setting a regulatory timeframe in which to hold informational meetings could create unnecessary compliance problems.

5. Stockholder Votes [§ 611.1122(d)(2) and (d)(3)]

The ICBA agreed with the requirement in § 611.1122(d)(2) that merger votes only be validated and tabulated by an independent third party. However, the ICBA asked that we copy our termination rule by expanding the quorum requirement in § 611.1122(d)(3) to specify that merger votes require at least 30 percent of voting stockholders be present (in person or by proxy) in order to hold a merger vote. Our merger rule at § 611.1122(d)(3) requires that a quorum be present before a merger vote is taken and each institution's bylaws determine what constitutes the quorum. We did not propose changes to the quorum requirements for merger votes as part of this rulemaking and believe such a consideration needs to be specifically open for comment before changing our regulations in this area. Thus, while we appreciate the ICBA's suggestion, we decline to make the suggested change to § 611.1122(d)(3) in this final rulemaking, but may consider it in future rulemakings.

6. Territorial Adjustments [§ 611.1124]

AgriBank commented on the existing provisions regarding territorial adjustments, specifically discussing those provisions in the existing rule dealing with how loans in a territory are transferred. The bank commented that it might not be necessary or desirable in every transfer of territory to include all loans and asked FCA to change the rule to permit either result. We did not propose changes to the loan transfer requirements for territorial adjustments as part of this rulemaking and believe the subject to have great impact on our territorial transfer regulations, capital requirements, and other safety and soundness concerns. We further believe the transfer of loans and the associated impact to shareholders merits specific solicitation of comment before considering a change in our current rules. Thus, we decline to make the suggested change to § 611.1124 in this final rulemaking, but may consider it in future rulemakings.

7. Stockholder Reconsiderations [§ 611.1126]

Commenters generally agreed with the reconsideration procedures identified in the rule. The ICBA expressed specific agreement with the requirement in § 611.1126(b) that shareholders pursuing the reconsideration of a merger vote be provided the voting record date list rather than the more expansive list of voting and nonvoting stockholders. The FCC generally supported the requirements of § 611.1126, but asked that institutions be given copies of reconsideration petitions. We do not believe it is appropriate to provide System institutions with copies of reconsideration petitions. We clarified in new § 611.1126(d) that institutions have no expectation of receiving a copy of the petition. As explained in the proposed rule, we do not believe Congress intended the institutions to have this information since the Act does not require that the petition be filed with the merging institutions. We also continue to believe that providing the names of stockholders signing a petition to their respective institutions may allow the institutions to infer how those stockholders voted on the proposed plan of merger, a result that would be contrary to the statutory right to confidential voting.[6]

The FCC also commented that it expected the FCA to ''take appropriate steps to ensure the authenticity of'' reconsideration petitions. The Act requires reconsideration petitions to be

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

filed with the FCA. The FCA must determine if a filed petition satisfies statutory requirements, including determining if the petition was signed by the appropriate number of authorized stockholders. Since the primary concern of a petition is that it be signed by only those eligible to vote in the merger action, our accuracy in validating this aspect will be substantially dependent on the record date lists maintained by the merging institutions.

IV. Regulatory Flexibility Act

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

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

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

PART 611—ORGANIZATION

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

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

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

§ 611.100 Definitions.

* * * * *

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

* * * * *

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

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

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

§ 611.1000 General authority.

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

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

(c) The FCA may, on its own initiative, make changes in the charter of a Farm Credit bank, and any chartered service corporation thereof, where the FCA determines that the change is necessary to accomplish the purposes of the Act.

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

§ 611.1010 Farm Credit bank charter amendment procedures.

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

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

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

(3) A change to its name or location;

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

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

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

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

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

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

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

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

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

§ 611.1040 [Amended]

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

■ 7. Section 611.1120 is amended by:
■ a. Removing the words ''Farm Credit Administration'' and adding in their place, the acronym ''FCA'' each place they appear in paragraph (b); and
■ b. Revising paragraph (c).

The revision reads as follows:

§ 611.1120 General authority.

* * * * *

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

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

§ 611.1121 Association charter amendment procedures.

(a) An association that proposes to amend its charter must submit a request

to its funding bank containing the following information:

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

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

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

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

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

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

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

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

§ 611.1122 Requirements for association mergers or consolidations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

furnished with the notice to stockholders.

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

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

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

(6) A presentation of the following financial data:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Where a proposed merger or consolidation will involve more than

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

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

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

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

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

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

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

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

■ 10. Section 611.1123 is amended by:

■ a. Revising the section heading and paragraph (a) introductory text;

■ b. Removing the word ''shall'' and adding in its place, the word ''must'' in the last sentence of paragraph (a)(3);

■ c. Removing the word ''shall'' and adding in its place, the word ''may'' in paragraph (a)(4);

■ d. Removing the words ''supervising bank'' and ''Farm Credit Administration'' and adding in their place the words ''funding bank'' and the acronym ''FCA'', respectively, in paragraph (a)(5);

■ e. Removing the words ''Farm Credit Administration'' and adding in their place the acronym ''FCA'' in paragraph (a)(7) introductory text;

■ f. Removing the word ''institution'' and adding in its place the words ''or consolidated association'' in paragraph (a)(7)(iv);

■ g. Removing the words ''new institution'' and ''shall'' and adding in their place the words ''continuing or consolidated association'' and ''must'', respectively, in paragraph (a)(9);

■ h. Removing the words ''proposed institution'' and adding in its place the words ''continuing or consolidated association'' in paragraph (a)(10);

■ i. Revising paragraph (b); and

■ j. Removing paragraph (c).

The revisions read as follows:

§ 611.1123 Association merger or consolidation agreements.

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

* * * * *

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

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

§ 611.1124 Territorial adjustments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The reason the territory transfer is proposed;

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

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

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

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

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

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

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

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

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

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

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

(m) Each borrower whose real estate or operations is located in a territory that will be transferred must be provided with a written Notice of Territory Transfer immediately after the FCA has granted final approval of the territory transfer. The Notice must inform the borrower of the transfer of the borrower's loan to the transferee

association and the exchange of related equities for equities of like kinds and amounts in the transferee association. If a like kind of equity is not available in the transferee association, similar equities must be offered that will not adversely affect the interest of the owner. The Notice must give the borrower 60 days from the effective date of the territory transfer to notify the transferor association in writing if the borrower decides to stay with the transferor association for normal servicing until the current loan is paid. Any application by the borrower for renewal or for additional credit must be made to the transferee association, except as otherwise provided for by an agreement between associations in accordance with § 614.4070.

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

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

§ 611.1125 [Amended]

■ 12. Section 611.1125 is amended by:
■ a. Removing the words ''Farm Credit Administration'' and adding in their place the acronym ''FCA'' in paragraph (a);
■ b. Removing the word ''shall'' and adding in its place, the word ''must'' in paragraph (b) introductory text.
■ c. Removing the words ''district bank'' and adding in their place, the word ''funding bank'' in paragraphs (b) introductory text and (b)(1) through (4) wherever they appear; and
■ d. Removing the words ''district bank'' and adding in their place, the word ''funding bank'' in paragraph (c) wherever they appear.
■ 13. Add a new § 611.1126 to subpart G to read as follows:

§ 611.1126 Reconsiderations of mergers and consolidations.

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

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

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

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

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

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

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

Dated: August 19, 2015.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2015–20896 Filed 8–21–15; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–1070; Airspace Docket No. 14–ANM–9]

Establishment of Class D and Class E Airspace; Aurora, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace, Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface at Aurora State Airport, Aurora, OR, to accommodate standard instrument approach procedures for the new air traffic control tower. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, October 15, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/airtraffic/publications/.* The Order is also available for inspection at the National Archives and Records Administration (NARA). For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783. For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is