

2. Section 319.56-2v would be revised to read as follows:

**§ 319.56-2v Conditions governing the entry of citrus from Australia.**

(a) The Administrator has determined that the irrigated horticultural areas within the following districts of Australia meet the criteria of § 319.56-2 (e) and (f) with regard to the Mediterranean fruit fly (*Ceratitidis capitata* [Wiedemann]), the Queensland fruit fly (*Dacus tryoni* [Frogg]), and other fruit flies destructive of citrus:

(1) The Riverland district of South Australia, defined as the county of Hamley and the geographical subdivisions, called "hundreds," of Bookpurnong, Cadell, Gordon, Holder, Katarapko, Loveday, Markaranka, Morook, Murtho, Parcoola, Paringa, Pooginook, Pyap, Stuart, and Waikerie;

(2) The Riverina district of New South Wales, defined as:

(i) The shire of Carrathool; and  
(ii) The Murrumbidgee Irrigation Area, which is within the administrative boundaries of the city of Griffith and the shires of Leeton, Narrendera, and Murrumbidgee; and

(3) The Sunraysia district, defined as the shires of Wentworth and Balranald in New South Wales and the shires of Mildura, Swan Hill, Wakool, and Kerang, the cities of Mildura and Swan Hill, and the borough of Kerang in Victoria.

(b) Oranges (*Citrus sinensis* [Osbeck]); lemons (*C. limonia* [Osbeck] and *meyer* [Tanaka]); limes (*C. aurantiifolia* [Swingle] and *latiifolia* [Tanaka]); mandarins, including satsumas, tangerines, tangors, and other fruits grown from this species or its hybrids (*C. reticulata* [Blanco]); and grapefruit (*C. paradisi* [MacFad.]) may be imported from the Riverland, Riverina, and Sunraysia districts without treatment for fruit flies, subject to paragraph (c) of this section and all other applicable requirements of this subpart.

(c) If surveys conducted in accordance with § 319.56-2d(f) detect, in a district listed in paragraph (a) of this section, the Mediterranean fruit fly (*Ceratitidis capitata* [Wiedemann]), the Queensland fruit fly (*Dacus tryoni* [Frogg]), or other fruit flies, citrus fruit from that district will remain eligible for importation into the United States in accordance with § 319.56-2(e)(2), provided the fruit undergoes cold treatment in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter, and provided the fruit meets all other applicable requirements of this subpart. Entry is limited to ports listed in § 319.56-

2d(b)(1) of this subpart if the treatment is to be completed in the United States. Entry may be through any port if the treatment has been completed in Australia or in transit to the United States. If no approved treatment for the detected fruit fly appears in the PPQ Treatment Manual, importation of citrus from the affected district or districts is prohibited.

Done in Washington, DC, this 1st day of September 1995.

**Terry L. Medley,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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**FARM CREDIT ADMINISTRATION**

**12 CFR Parts 613, 614, 618, 619, and 626**

**RIN 3052-AB10**

**Eligibility and Scope of Financing; Loan Policies and Operations; General Provisions; Definitions; Nondiscrimination in Lending**

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA) through the Farm Credit Administration Board (Board) proposes to amend the current regulations that govern eligibility and purposes for financing from Farm Credit System (Farm Credit, FCS, or System) banks and associations. This proposal would incorporate recent statutory amendments that govern eligibility and loan purposes from Farm Credit banks that operate under title III of the Farm Credit Act of 1971, as amended (Act). The proposed rule would also implement recently enacted sections 3.1(11)(B) and 4.18A of the Act, which grant Farm Credit banks and associations authorities to participate with non-System lenders in loans to similar entities. At the same time, the FCA proposes to eliminate restrictions in the current regulations that are not required by the Act. The FCA proposes to substantially reorganize these regulations in order to enhance their clarity. The FCA also proposes several technical amendments to other regulations so they conform with this proposal. The proposed rule would relocate the nondiscrimination in lending regulations to a new part without change.

**DATES:** Comments should be received on or before December 11, 1995.

**ADDRESSES:** Comments may be mailed or delivered to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Copies of all communications received will be available for review by interested parties in the Office of Examination, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:**

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or

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**SUPPLEMENTARY INFORMATION:**

**I. General**

The FCA proposes to amend its regulations in part 613 to eliminate unnecessary regulatory restrictions and implement statutory changes. Several recent amendments to sections 3.7 and 3.8 of the Act expand eligibility and purposes of financing for borrowers from BCs and ACBs. Two new statutory provisions were enacted in 1992 and 1994, which authorize Farm Credit banks and associations to participate with non-System lenders in loans to borrowers who are functionally similar but otherwise ineligible for direct FCS financing when the loans are for purposes that are within the System's scope of financing (sections 3.1(11)(B) and 4.18A of the Act).

The FCA's approach in crafting new eligibility regulations is guided by the Board's Policy Statement on Regulatory Philosophy (Policy Statement).<sup>1</sup> Pursuant to this Policy Statement, the FCA is committed to adopting regulations only as necessary to: (1) Implement or interpret the law; or (2) promote the safe and sound operations of System institutions. Consistent with the Policy Statement, the FCA proposes to remove regulatory provisions that prescribe operational procedures, to simplify and clarify the regulations wherever possible, and to delete existing regulatory restrictions that are not imposed by law or necessary to interpret the law or promote safety and soundness. The FCA's proposal should permit FCS institutions to more

<sup>1</sup> See 60 FR 26034 (May 16, 1995).

effectively meet the credit needs of agricultural and aquatic producers, farm-related businesses, rural homeowners, cooperatives, and rural utilities in today's economic environment. Additionally, it should help stimulate economic development in rural areas by increasing the availability of affordable credit to eligible borrowers.

The FCA believes that removing non-statutory restrictions in these regulations will enable the FCS to compete appropriately in agricultural and rural credit markets and ultimately enhance its safety and soundness. In this context, the FCA's proposal will enable the FCS to fulfill its statutory mission (as stated in the preamble to the Act) to provide: (1) "A farmer-owned cooperative System of making credit available to farmers, ranchers, and their cooperatives;" and (2) "an adequate and flexible flow of money into rural areas."

## II. Financing Under Titles I and II of the Act

The FCA proposes new eligibility regulations for Farm Credit banks and associations that operate under titles I and II of the Act. These rules are designed to clarify current eligibility criteria and the scope or purposes for which System financing may be obtained. The FCA's proposal eliminates provisions in existing subparts A and B of part 613 that prescribe management practices and procedures or unnecessarily restrict the eligibility of persons authorized to borrow under the Act.

The FCA also proposes to reorganize and clarify these regulations so they can be better utilized by the FCS, the FCA, and other interested parties. The existing regulations in subparts A and B would be replaced by four new regulations in subpart A of part 613, which would authorize System banks and associations to extend credit to the following classes of eligible borrowers: (1) Bona fide farmers, ranchers, and producers or harvesters of aquatic products; (2) processing or marketing operators; (3) farm-related businesses that provide services to farmers and ranchers; and (4) rural homeowners. An explanation of the proposed amendments follows.

### A. Bona Fide Farmers, Ranchers, and Aquatic Producers and Harvesters

Sections 1.9(1) and 2.4(a)(1) of the Act state that "bona fide farmers, ranchers, and producers or harvesters of aquatic products" are eligible to borrow from Farm Credit banks and associations that operate under titles I or II of the Act, respectively. The term "bona fide

farmer, rancher, or producer or harvester of aquatic products" is not defined in either the Act or its legislative history.

The FCA proposes to adopt a single regulation, § 613.3000, that will determine eligibility for financing for loans made to farmers, ranchers, and aquatic producers and harvesters. As a result of this consolidation, the FCA proposes to delete existing §§ 613.3000, 613.3005, 613.3010, and 613.3020.

Proposed § 613.3000(a)(2) defines a bona fide farmer, rancher, and aquatic producer as an individual or legal entity that either: (1) Produces agricultural products or produces or harvests aquatic products to generate income; or (2) owns agricultural land. The definition in the proposed regulation does not represent a significant departure from the existing regulations. The FCA proposes to combine the separate definitions of farmers and ranchers in existing § 613.3010(a) and aquatic producers and harvesters in § 613.3010(d) into a single provision, without substantive change. Agricultural land is defined by proposed § 613.3000(a)(1) as "land that is devoted to or available for the production of agricultural or aquatic products." This proposed definition is more streamlined and would replace current § 619.9025.

### 1. Elimination of Regulatory Restrictions on Eligibility

Although the regulatory definition of "bona fide farmer" remains essentially unchanged, this proposal would reduce or eliminate restrictions in the current regulations on financing to three types of farmers: part-time farmers, certain legal entities, and certain foreign nationals. The proposed regulation, consistent with the Act, eliminates all distinctions among farmers regarding their eligibility for agricultural and aquatic financing. The FCA proposes to place limits on financing that eligible borrowers may obtain for certain purposes. For the reasons explained below, limitations on financing of non-agricultural credit needs have been retained.

#### A. Part-time Farmers

The FCA proposes to eliminate any distinction between full-time and part-time farmers, ranchers, and aquatic producers and harvesters. Although the eligibility provisions in titles I and II of the Act do not distinguish full-time from part-time producers, current § 613.3005(a) establishes different lending policies and objectives for full-time and part-time producers who are eligible to borrow. The existing

regulation requires Farm Credit Banks (FCBs), agricultural credit banks (ACBs), and their affiliated associations to provide: (1) "Full credit, to the extent of creditworthiness, to full-time bona fide farmers;" (2) "conservative credit" to part-time farmers for agricultural enterprises; and (3) "restricted credit for other credit requirements as needed to ensure a sound credit package."

System institutions have noted that § 613.3005 is more restrictive than the Act. Further, uniform and consistent application throughout the FCS has been difficult to achieve. For these reasons, the FCA proposes to repeal § 613.3005 (a) and (c) and replace it with a new § 613.3000, which will be clear, concise, and easier to implement.

Proposed § 613.3000 does not differentiate between full-time and part-time agricultural and aquatic producers. Moreover, the evolution of agriculture has made part-time producers an increasingly important sector of the agricultural industry and rural America,<sup>2</sup> and existing regulations restricting the scope of lending to them may not serve the purposes of the Act, which does not distinguish between full-time and part-time farmers. The applicant's creditworthiness, not eligibility criteria, would determine the availability of System loans to part-time farmers, as it does with full-time farmers. The broad prescriptions for operational policies and procedures of current § 613.3005(c), which were designed to keep the focus on agricultural lending would be replaced with limitations on the amount of other business credit needs of farmers that could be financed. Although the FCA is removing the policy and procedure requirements of § 613.3005(c), the FCA believes that FCS banks and associations should continue to adopt and implement sound management practices and policies to guide their operations.

#### B. Legal Entities

The FCA's proposed regulation also removes most distinctions between individuals and legal entities. No restriction on lending to legal entities appears in the Act, and a review of the legislative history of the Act reveals that Congress, over an extended period of time, deleted all statutory restrictions on loans to legal entities by title I and II institutions or their predecessors. The FCA proposes to update its regulations to conform with these changes.

<sup>2</sup>A recent report by the United States Department of Agriculture, entitled *Rural Conditions and Trends, Spring 1995*, reported 88 percent of a farm household's income comes from sources off the farm, with farm (income) accounting for the rest.

Under an existing regulation, § 613.3020(b), a legal entity is ineligible for loans from Farm Credit banks and associations unless more than 50 percent of: (1) Its equity or voting shares are owned by individuals conducting an agricultural or aquatic operation; (2) the value of its assets are related to the production of agricultural or aquatic commodities; or (3) its income is derived from agricultural or aquatic activities. Furthermore, the current regulation imposes additional requirements on a legal entity that is owned or controlled by another legal entity that is an ineligible borrower.

In 1993, the FCA solicited public comment on the burdens that existing regulations impose on System institutions. See 58 FR 34003, June 23, 1993. Several commenters responded that existing § 613.3020(b) limits the System's ability to finance legal entities despite the removal of such restrictions in the Act. Some of the comment letters also noted that the current regulation favors individual borrowers over legal entities.

After considering these comments, the FCA proposes to adopt a regulatory approach that equalizes the treatment of legal entities and individual borrowers with respect to financing their agricultural and aquatic needs. Section 1.1(b) of the Act states that one of the objectives of the FCS is to "be responsive to the credit needs of all types of agricultural producers having a basis for credit." Accordingly, the FCA concludes that the eligibility requirements for System institutions should not influence any borrower's decision about whether to farm, ranch, or fish in an individual capacity or as a legal entity.

The FCA proposes to eliminate the requirements in current § 613.3020(b) that most of the owners, assets, or income of an eligible legal entity be related to an agricultural or aquatic enterprise. Rather, any legal entity that engages in agricultural or aquatic production to generate income or owns agricultural land would become an eligible System borrower under proposed § 613.3000(a)(2). The FCA's proposal does not preempt State laws that prohibit or otherwise restrict legal entities (other than closely held family farm corporations) from owning agricultural land or conducting a farming, ranching, or aquatic operation.

Under the proposed regulation, entities that are eligible under title III of the Act would not qualify as legal entities for purposes of financing under titles I or II of the Act. The FCA is aware that some cooperatives now qualify for financing from FCBs and associations,

as well as from BCs and ACBs. In fact, some cooperatives have existing financial relationships with associations. Although the FCA does not desire to interfere with existing business relationships, it is concerned that expanded competition within the FCS could be detrimental. The FCA invites comments on whether this approach is appropriate and on other alternatives for addressing this concern.

#### C. Nationality of the Borrower

Current FCA regulations permit System lenders to provide agricultural financing to foreign nationals only if they are permanent residents of the United States. This restriction derives from language in section 1.1(a) of the Act, which states:

The farmer-owned cooperative Farm Credit System (is) designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them (and) their cooperatives.

The FCA has viewed this provision as a basis for limiting the ability of the System to lend to certain foreign nationals. Existing § 613.3010(c) states that only foreign nationals who are admitted into the United States for permanent residence pursuant to 8 U.S.C. 1101(a)(20) are eligible for System financing. Legal entities that are owned by foreign nationals who are permanent residents of the United States also qualify for System financing under this provision.

The FCA is aware that non-resident foreign nationals and legal entities owned by such persons have applied to FCS banks and associations for agricultural or aquatic loans. System institutions and members of Congress have made the Agency aware of applicants who own and operate farms or processing and marketing operations in the United States, but are ineligible for financing because they are not citizens or permanent residents. FCS banks and associations are currently required by current § 613.3010(c) to reject automatically the loan applications of such prospective borrowers solely on the basis of their nationality and residency status. Many FCS banks and associations state that the current regulation compels them to deny loans to otherwise creditworthy farmers, ranchers, and aquatic producers and harvesters who make significant contributions to American agriculture. Furthermore, existing § 613.3010 causes System lenders to forfeit to competitors profitable business opportunities with entities that are statutorily eligible to borrow from the

System. Many FCS representatives and some members of Congress have questioned the FCA's decision to prohibit System institutions from financing those agricultural and aquatic producers who are non-resident foreign nationals or foreign national legal entities.

These comments have prompted the FCA to consider whether the existing regulation is unnecessarily restrictive. In considering these comments, the FCA examined the immigration and nationality laws of the United States. As a general rule, foreign nationals are allowed to enter the United States as either immigrants or non-immigrants. According to 8 U.S.C. 1101(a)(20), persons who are lawfully admitted for permanent residence in the United States have immigrant status. As noted earlier, agricultural or aquatic producers who are admitted into the United States as permanent residents are already eligible to borrow from System institutions.

Non-immigrants generally are defined as foreign nationals who do not intend to abandon their residence in their home countries and settle permanently in the United States. Certain categories of non-immigrants are allowed to conduct businesses and own property in the United States. For example, non-immigrant foreign nationals may enter the United States to conduct business as:

- (1) Businesspersons under 8 U.S.C. 1101(a)(15)(B);
- (2) Merchants or traders under 8 U.S.C. 1101(a)(15)(E); or
- (3) Executives, managers, or specialists for a legal entity that employs them, pursuant to 8 U.S.C. 1101(a)(15)(L).

The proposed regulation would expand eligibility provisions to encompass all foreign nationals who are authorized by the laws of the United States to engage in agricultural or aquatic production or to own agricultural land in the United States. It would also cover domestic legal entities in which foreign nationals have an ownership interest. The FCA believes that this interpretation is consistent with section 1.1(a) of the Act and it provides FCS institutions with greater flexibility to finance bona fide farmers, ranchers, and aquatic producers and harvesters who actively contribute to the growth, productivity, and prosperity of domestic agriculture and the rural economy.

As a result of its consideration of this issue, the FCA proposes to amend its eligibility regulations to enable Farm Credit banks and associations to finance certain non-immigrant foreign nationals

who are bona fide farmers, ranchers, and aquatic producers or harvesters, as defined by proposed § 613.3000. More specifically, proposed § 613.3000 (a)(2) and (a)(3)(ii) would expand the definition of "individual" to include foreign nationals who have been admitted lawfully into the United States pursuant to any provision in 8 U.S.C. 1101(a)(15) that authorizes such individuals to own property or operate or manage businesses. This would permit such persons to qualify as a bona fide farmer, rancher, or aquatic producer or harvester if they are engaged in production or own agricultural land.

The proposed regulation would afford the same treatment to legal entities owned by citizens and permanent residents of the United States, or controlled by non-resident foreign nationals, provided that the entity is chartered domestically. The FCA observes, however, that certain foreign nationals and foreign national legal entities have registration and disclosure obligations under the Agricultural Foreign Investment Act of 1978 (AFIDA), 7 U.S.C. 3508, and its implementing regulation, 7 CFR Part 781. Because the Secretary of Agriculture is authorized by section 3 of AFIDA, 7 U.S.C. 3502, to impose civil penalties on non-resident foreign nationals and foreign national legal entities who fail to comply with these disclosure provisions, System institutions that lend to borrowers who are subject to the AFIDA should ensure that the borrowers have complied with its requirements. The FCA observes that the proposed regulation does not preempt State laws that prohibit or otherwise restrict non-resident foreign nationals and foreign national legal entities from owning agricultural land or conducting a farming, ranching, or aquatic operation within their jurisdiction.

The FCA notes that legal entities that are chartered by a foreign government or headquartered outside the United States are also covered by the AFIDA. The FCA seeks comment on whether foreign national legal entities that do not have a domestic subsidiary should be eligible for financing under the final regulation.

## 2. Limitations on Financing

The proposed regulations would impose no limitations on the System's ability to finance the agricultural and aquatic needs of farmers, ranchers, and aquatic producers. Proposed § 613.3000(c) would authorize FCS banks and associations to extend credit to all eligible borrowers for any agricultural or aquatic purpose,

including refinancing pre-existing agricultural or aquatic debt.

Proposed § 613.3000(d) would enable eligible farmers, ranchers, and aquatic producers or harvesters to obtain System loans for their other credit needs with certain limitations. Sections 1.11(a) and 2.4(a) of the Act expressly authorize System banks and associations to finance the other credit needs of agricultural and aquatic producers. This statutory authority has existed since 1955,<sup>3</sup> when Congress originally acknowledged that farmers and ranchers often require credit for other "sound and appropriate" purposes so they can make ends meet and remain on the farm.<sup>4</sup> This longstanding Congressional policy is currently codified in § 613.3005(a).

The FCA proposes a regulatory approach that grants FCS banks and associations greater flexibility to finance the other credit needs of bona fide farmers, ranchers, and aquatic producers and harvesters, but simultaneously preserves the mission of System institutions as agricultural lenders. The proposed regulation removes the existing requirement that a borrower have an outstanding agricultural or aquatic loan in order to receive financing for other credit needs. Today, many agricultural and aquatic producers pursue non-farm business opportunities as a matter of economic survival. A Farm Credit System that is responsive to such other credit needs helps agricultural and aquatic producers to remain on their farms and ranches and in America's rural communities. Furthermore, System lenders fulfill their obligation to "provide for an adequate and flexible flow of money into rural areas, and \* \* \* to meet current and future rural credit needs" when they finance certain non-farm businesses owned by farmers in rural areas. In this context, the Act expressly contemplates that Farm Credit banks and associations will contribute to economic development in rural areas by financing the other business needs of farmers, ranchers, and aquatic producers and harvesters.

Lending for farmers' other credit needs also enables FCBs, ACBs, and their affiliated associations to strengthen their viability by diversifying their loan portfolios. A strong and competitive

Farm Credit System increases the availability of affordable credit in rural America. Lending for other domestic and business needs allows System banks and associations to offer a full array of quality credit services to farmers, ranchers, and aquatic producers and harvesters at competitive interest rates and to provide an incidental benefit to rural communities.

Because the primary mission of the FCS is to finance agriculture and aquaculture, the FCA's proposal would restrict loans for the other credit needs of System borrowers. In the FCA's opinion, the availability of credit for non-agricultural purposes should be proportionally related to the borrower's involvement in farming, ranching, or aquatic production or harvesting. For the reasons explained below, proposed § 613.3000(d) would grant borrowers who engage in agricultural or aquatic production ("farmer-producers") greater access to the FCS for their other credit needs than it would grant to borrowers who are eligible only because they own agricultural land as an investment ("farmer-investors") and non-resident foreign nationals. The FCA's proposal is designed to permit family farm corporations and other legal entities that are closely held by eligible farmers, ranchers, and aquatic producers and harvesters to finance their other credit needs at an FCS bank or association. However, the proposed regulation would authorize System banks and associations to finance only the agricultural or aquatic needs of publicly traded corporations and conglomerates with significant assets unrelated to agriculture.

Proposed § 613.3000(d)(1) would enable farmer-producers to obtain System financing for their housing and other domestic needs without restriction (other than their creditworthiness). Proposed § 613.3000(d)(1) also allows farmer-producers to obtain limited System financing for their other business needs in an amount that does not exceed the market value of their agricultural or aquatic assets. This regulatory approach would ensure that the amount of financing that farmer-producers obtain from FCS banks and associations for non-farm business needs would be proportionate to their investment in their agricultural or aquatic activities.

For the purposes of proposed § 613.3000(d), agricultural assets include real estate, a home that is located on a farm or ranch, equipment, chattel, and livestock. The proposed regulation contemplates that the market value of agricultural assets would be determined at the time of loan

<sup>3</sup> The former Federal land banks were granted this authority by the Farm Credit Act of 1955, Pub. L. No. 347, section 304(a), 69 Stat. 655 (Aug. 11, 1955). The Farm Credit Act of 1956 granted this authority to the PCAs, Pub. L. No. 84-809, section 105(i), 70 Stat. 665 (July 26, 1956).

<sup>4</sup> S. Rep. No. 1201, 84th Cong., 1st Sess., (July 28, 1955), p. 21; H. Rep. No. 863, 84th Cong., 1st Sess., (June 20, 1955), p. 20.

application from the most credible source available to FCS institutions. Because real estate, equipment, and livestock make up the bulk of agricultural assets on most loan applications, appraisals and collateral valuations would be the logical sources to support the market value of the most material of these assets. Absent available appraisals and valuations completed for the FCS institution, other sources could serve as a basis for determining market value such as county tax assessment values or real estate multiple listings. It is not the FCA's intent to cause extra cost or regulatory burden on either the FCS institution or the borrower in order to establish the market value of agricultural assets for determining the level of financing available from the System. Rather, a reasonable but credible valuation performed by FCS institutions that can be supported and tested should suffice for determining compliance with this subpart.

Proposed § 613.3000(d)(2) would limit financing that farmer-investors could obtain from the FCS for all of their other credit needs, including housing and domestic needs, to the market value of their agricultural assets. Such borrowers are not engaged in agricultural production and own agricultural land as a passive investment. As the FCA interprets the Act through its legislative history, Congress did not intend that these farmer-investors have the same access to the FCS for non-agricultural credit needs as farmer-producers. Proposed § 613.3000(d)(2) precludes farmer-investors from obtaining FCS loans for their other credit needs in amounts that are disproportionate to their investment in agriculture. The proposed regulation imposes no restrictions on loans for agricultural or aquatic purposes that farmer-investors may obtain from System banks and associations, and therefore, farmer-investors would have increasing access to the FCS for their other credit needs as their investment in agriculture increases. Retired farmers, ranchers, and aquatic producers and harvesters whose land is cultivated by others would be considered farmer-producers, if they acquired their agricultural land originally for agricultural production purposes rather than as an investment.

Non-resident foreign nationals are accorded the same treatment under proposed § 613.3000(d) as farmer-investors. Although such borrowers are often active agricultural or aquatic producers, their legal status imposes restrictions on their activities within the United States. Prudence requires greater restrictions on these borrowers than on

farmer-producers who are citizens or permanent residents of the United States.

Proposed § 613.3000(d)(3) would continue to authorize System banks and associations to finance the other credit needs of family farm corporations and other small and medium sized legal entities that are closely held by bona fide farmers, ranchers, and aquatic producers or harvesters. Although all agricultural corporations would now become eligible to borrow from Farm Credit banks and associations that operate under titles I and II of the Act, the FCA intends that most large agricultural borrowers could obtain System financing only for their agricultural or aquatic needs. Under proposed § 613.3000(d)(3), legal entities could obtain System loans for their other credit needs in an amount that does not exceed the market value of their agricultural assets only if: (1) The securities of the borrower are not traded on a public exchange; and (2) more than 50 percent of the assets of the borrowing legal entity are used in agricultural or aquatic production. The FCA believes that this approach would effectively preclude System banks and associations from financing the other credit needs of large agribusiness corporations and conglomerates.

The FCA requests comments on whether and how the final regulations ought to distinguish among types of eligible farmers with respect to financing other credit needs.

#### *B. Financing of Processing or Marketing Operations*

Sections 1.11(a) and 2.4(a) of the Act authorize FCBs, ACBs, and their affiliated associations to finance the processing or marketing operations of bona fide farmers, ranchers, and aquatic producers or harvesters. According to the Act, the processing or marketing operation must be "directly related" to the agricultural or aquatic activities of the borrower. The Act also requires the borrower's agricultural or aquatic activities to supply some portion of the throughput used in the processing or marketing operations. The Act limits processing or marketing loans to borrowers who supply less than 20 percent of the throughput to 15 percent of the total outstanding loans, during the preceding fiscal year, of: (1) The FCB or ACB; and (2) all associations that are affiliated with the same funding bank.

The existing regulation, § 613.3045, imposes certain restrictions on financing for processing or marketing operations that are not required by the Act or are no longer needed to ensure

the safety and soundness of the FCS. For example, additional compliance thresholds presently exist for loans to borrowers who supply less than 50 percent of the throughput. A restriction that has been particularly problematic relates to processing or marketing operations that have different owners than the agricultural or aquatic operation providing the throughput. Section 613.3045(b)(2)(iii) currently requires that the entire ownership of the processing or marketing operation vest in eligible borrowers. Many System banks and associations responded to the Notice of Regulatory Burden by requesting relief from this 100-percent ownership requirement. According to System commenters, processing or marketing operations have become ineligible under the existing regulation solely because of a slight change in ownership. FCS institutions point out, for example, that a borrower who establishes an employee ownership program can no longer borrow from the System.

The FCA now proposes to revise and redesignate this regulation, so it more closely parallels the Act. The revised regulation, § 613.3010, will simply require that the processing or marketing operation: (1) Be directly related to the borrower's agricultural or aquatic activities; and (2) consistently process some throughput produced by the borrower.

In an effort to reduce regulatory burden on FCS banks and associations, the FCA proposes to repeal the additional requirements that existing § 613.3045(b)(2) imposes on borrowers who supply less than 50 percent of the throughput to a processing or marketing operation. The FCA believes that this regulatory requirement is no longer necessary to interpret the Act since a statutory portfolio limitation has replaced the statutory requirement that the borrower supply at least 20 percent of the throughput.<sup>5</sup> The FCA also proposes to repeal § 613.3045(e), which unnecessarily specifies paperwork requirements for FCS institutions.

The FCA's proposal would also relax the current requirement that bona fide farmers, ranchers, and aquatic producers or harvesters own 100 percent of an eligible processing or marketing operation. Proposed § 613.3010(a)(1) clarifies that an eligible borrower includes a legal entity in which a controlling interest is owned by individuals or other legal entities that qualify as bona fide farmers, ranchers, or aquatic producers or harvesters. The

<sup>5</sup>Pub. L. No. 101-624, section 1832, 104 Stat. 3359 (1990).

controlling interest requirement in proposed § 613.3010(a)(1) implements sections 1.11(a)(1) and 2.4(a)(1) of the Act, which require a processing or marketing operation to be directly related to the agricultural or aquatic operations of the borrower. The FCA seeks comments on whether the controlling interest requirement appropriately implements the intent of the Act and provides sufficient guidance to System lenders.

Proposed § 613.3010(b) implements the portfolio restrictions that sections 1.11(a)(2) and 2.4(a)(1) of the Act impose on loans to borrowers who contribute less than 20 percent of the throughput used by a processing or marketing operation. This provision would limit retail loans that System banks and associations make to borrowers who supply less than 20 percent of the throughput to 15 percent of outstanding loans at the end of the preceding fiscal year for: (1) The funding bank; and (2) all associations that are funded by the same FCB or ACB. Proposed § 613.3010(b) also retains the existing requirement in § 613.3045(d)(2) that each funding bank, in conjunction with its affiliated associations, ensures that processing or marketing loans to borrowers who supply less than 20 percent of the throughput are equitably allocated among the associations.

The FCA believes the proposed regulation would better enable System institutions to finance entities that contribute substantially to the agricultural economy and rural communities and that increase the income of America's farmers, ranchers, and aquatic producers or harvesters. This proposal would ultimately benefit both producers and consumers by providing competitive credit for this sector of the agricultural economy and fostering economic development in rural areas.

### *C. Loans to Farm-Related Businesses*

Sections 1.9(2), 1.11(c)(1), and 2.4(a)(3) of the Act authorize FCBs, ACBs, and direct lender associations to finance "persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs." Presently, § 613.3050(a) imposes an additional requirement that farm-related businesses furnish "custom-type services" that are directly related to on-farm operating needs of farmers and ranchers. The term "custom-type services" is defined by § 619.9120 as the "performance of on-farm functions on a 'for-hire' basis which farmers and ranchers typically have done for

themselves." Furthermore, to qualify under § 613.3050(b)(2) a farm-related business must sell only goods and inputs that "are incident to the services provided." Examples of farm-related services authorized by this regulation include: (1) Spraying of crops; (2) harvesting; (3) hauling agricultural commodities to grain elevators, livestock markets, and other processing centers; (4) custom feed mixing operations; (5) veterinary services; and (6) drying farm commodities.

The FCA has received numerous comments from the FCS about the burdensome nature of §§ 613.3050 and 619.9120. Many System representatives have stated that the current regulatory requirements too narrowly restrict the types of agricultural service businesses that can qualify for FCS loans. Statistics about FCS loans to farm-related businesses suggest that this may be true. Farm-related business loans comprise less than 1 percent of all loans in the Farm Credit System, and many FCS banks and their affiliated associations have no farm-related business loans in their portfolios. These circumstances may indicate that current §§ 613.3050 and 619.9120 frustrate the ability of System banks and associations to fund statutorily eligible and creditworthy farm-related service businesses, and unnecessarily deny many farm-related businesses competitive credit options.

To address this issue, the FCA is proposing a new regulation, § 613.3020, which would replace §§ 613.3050(a), 613.3050(b), and 619.9120, with an eligibility standard for farm-related businesses that is more closely aligned with the plain language of the Act. Under proposed § 613.3020(a), an individual or legal entity who furnishes services to farmers and ranchers that are directly related to their agricultural operations would be eligible to borrow from a Farm Credit bank or association that operates under titles I or II of the Act. Regulatory restrictions that are unnecessary to implement or interpret sections 1.9(2), 1.11(c)(1), and 2.4(a)(3) of the Act would be eliminated.

In 1979, the FCA acknowledged in the preamble to § 613.3050 that neither the literal language of the statute nor its legislative history compel an eligible farm-related business to actually perform services on the customer's property.<sup>6</sup> At that time, however, the FCA did not delete the "on-farm" requirement from the definition of "custom-type" services in § 619.9120. The FCA now proposes to delete the definition of custom-type services

which should dispel confusion surrounding the "on-farm" requirement.

Furthermore, the Act does not specifically require eligible borrowers to furnish only "custom-type" services to farmers and ranchers. Although passages in the legislative history to the Farm Credit Act of 1971 contain examples of various custom services that farmers and ranchers may perform themselves, the FCA finds no evidence that sections 1.11(c)(1) or 2.4(a)(3) of the Act actually preclude the FCS from financing other types of services that are directly related to agricultural production. In fact, agricultural producers today rely on technologically advanced services that they cannot provide for themselves, such as computer mapping of soil and crop conditions, nutritional analysis for dairy production, and specialized animal husbandry records and services. These technologically advanced services enable farmers and ranchers to enhance their income by reducing costs, increasing productivity, and meeting the growing demand of consumers for improved food quality and specialty food products. The FCA believes the ability of the FCS to finance such service providers strengthens the agricultural economy of the United States.

A farm-related business is currently ineligible to borrow from a Farm Credit bank or association under § 613.3050(b)(2) unless substantially all of the goods sold are consumed in the services that the borrower provides to farmers and ranchers. As the FCA interprets sections 1.11(c)(1) and 2.4(a)(3) of the Act and their legislative history, a farm-related service business should not be automatically ineligible for FCS loans simply because it also sells some goods that are not incidental to its services. In the FCA's opinion, such a disqualification defeats the statutory purpose of providing credit to farm-related service businesses. For this reason, the FCA proposes to repeal current § 613.3050(b)(2).

The FCA proposes to rely on scope of financing provisions to ensure that FCS banks and associations finance only farm-related businesses that are eligible to borrow under sections 1.11(c)(1) and 2.4(a)(3) of the Act. Proposed § 613.3020(b) would require FCS banks and associations to determine the extent of financing for an eligible farm-related business by measuring the applicant's income on either a gross sales or a net sales basis. More specifically, proposed § 613.3020(b)(1) would authorize financing of all the business needs of an eligible farm-related business that derives more than 50 percent of its

<sup>6</sup> 44 FR 69631 (Dec. 4, 1979).

income, as determined on either a gross sales or net sales basis, from furnishing agricultural services to farmers and ranchers. A borrower who derives 50 percent or less of its income from furnishing agricultural services could obtain System financing under proposed § 613.3020(b)(2) only for the agricultural services portion of its business.

The FCA notes that this regulation would permit System banks and associations to measure each borrower's income consistently on either a gross sales or a net sales basis, as appropriate. System banks and associations should experience no difficulty in complying with § 613.3020(b) because gross and net sales information is normally provided in financial statements that a farm-related business submits to support its credit request.

The FCA believes that proposed § 613.3020 implements the requirements of the Act without imposing unnecessary regulatory burdens on the FCS or restricting its ability to offer competitive credit to farm-related businesses. The FCA believes that this proposal would provide System banks and associations and FCA examiners with clear and appropriate regulatory guidance, and it would protect the interests of System competitors by enforcing statutory restrictions.

The FCA proposes to delete § 613.3015, which directs a Farm Credit bank or association to determine the eligibility of an applicant who both conducts agricultural or aquatic operations and owns a farm-related business, using one or any combination of the criteria in the existing regulations. The existing regulation is not needed to interpret the Act nor to promote safety and soundness. Clearly, sections 1.11(a) and 2.4(a) of the Act and proposed § 613.3000 authorize FCS banks and associations to finance the "other credit needs" of bona fide farmers, ranchers, and aquatic producers and harvesters. For this reason, System banks and associations can finance farm-related businesses that are owned by eligible agricultural or aquatic producers under either proposed §§ 613.3000 or 613.3020. The FCA observes, however, that a System bank or association could not finance the "other credit needs" of an eligible farm-related business that is not owned by a bona fide farmer, rancher, or aquatic producer.

#### D. Non-farm Rural Home Loans

Sections 1.9(3), 1.11(b) and 2.4(b) of the Act authorize FCBs, ACBs, and their affiliated associations to finance single-family, moderately priced homes for residents of rural areas where the population does not exceed 2,500

inhabitants. Sections 1.11(b)(2) and 2.4(b)(2) generally restrict non-farm rural home loans to 15 percent of the total outstanding loans of each FCB, ACB, or association.

An existing regulation, § 613.3040, implements this statutory authority. The FCA now proposes to redesignate this regulation as § 613.3030 and revise it to provide greater flexibility to finance non-farm rural homes to the extent allowed by the Act. This proposal differs from the existing rural housing regulation in three ways. First, it clarifies that rural housing loans do not encompass loans to farmers and ranchers for their housing needs, because such loans are properly classified as agricultural loans. Second, the regulation revises and simplifies the criteria for determining whether a home is moderately priced and located in a rural area, as the law requires. Finally, the proposal eliminates regulatory restrictions that are not needed for safety and soundness. The FCA also addresses specific issues about non-farm rural home loans that commenters raised during the Regulatory Burden comment period and in other forums.

#### 1. Definition of Rural Homeowner

The FCA's proposal would clearly differentiate the authority of System banks and associations to finance homes for agricultural and aquatic producers from all other rural residents. Proposed § 613.3030(a)(1) would define an eligible rural homeowner as a person who is not a bona fide farmer, rancher, or aquatic producer or harvester within the meaning of proposed § 613.3000(a)(2). The definition of "rural home" in proposed § 613.3030 would no longer incorporate current § 613.3040(e)(1), which requires either that: (1) Property lack the capacity to produce agricultural products on a sustainable basis; or (2) borrower does not use the property for agricultural purposes. These provisions were the regulatory mechanism for ensuring that housing loans to farmers were considered agricultural loans rather than rural home loans. The proposed regulations addresses this issue by excluding farmers from the definition of rural homeowner. The FCA also proposes to repeal existing § 613.3040(e)(2), which applies the price, locality, and portfolio restrictions in sections 1.11(b) and 2.4 (b)(1), (b)(2), and (b)(3) of the Act to home loans that System banks and associations make to certain farmers, ranchers, and aquatic producers and harvesters.

The FCA believes that this new approach will clarify the authority of System lenders to finance homes for

both agricultural and aquatic producers and other rural residents and eliminate any confusion about the scope of home lending authority. Under the FCA's proposal, Farm Credit banks and associations would finance homes for both full-time and part-time farmers, ranchers, and aquatic producers under proposed § 613.3000(d), while proposed § 613.3030 would apply to home loans that System lenders make to all other rural residents.

Because the Act affords certain benefits and applies certain restrictions to agricultural loans and rural housing loans, it has been important to classify home loans to farmers correctly. For example, the homes of agricultural or aquatic producers are not required to be moderately priced or located in communities where the population does not exceed 2,500 inhabitants. In fact, neither the Act nor FCA regulations require agricultural producers to live on the land that they farm or ranch. As the FCA interprets the Act, home loans to farmers are not subject to the portfolio limitations applicable to rural housing loans.

The FCA notes that statutory borrower rights generally apply to all loans to farmers, ranchers, and aquatic producers, including loans for the purchase of a residence.<sup>7</sup> Borrower rights do not, however, apply to rural home loans.

All bona fide agricultural and aquatic producers are required by section 4.3A(c)(1)(D)(i) of the Act to own voting stock in the FCS bank or association that extends credit to them, including home loans. In contrast, non-farm rural residents hold non-voting participation certificates in FCS banks and associations.

#### 2. Definition of Rural Home

Proposed § 613.3030(a)(2) defines a "rural home" as a single-family moderately priced dwelling located in a rural area that will serve as the occupant's principal residence. Sections 1.11(b)(2) and 2.4(b)(1) of the Act explicitly limit the non-farm rural home financing authority of FCS banks and associations to single-family moderately priced houses. The proposed regulation deletes the requirement in existing

<sup>7</sup>In some instances, the protections of another Federal law will supplant the borrower rights provisions of the Act. For loans covered by the Federal Truth in Lending Act (TILA), 15 U.S.C. 1601, *et seq.*, FCS lenders must provide the disclosures required by the TILA in lieu of the effective interest rate disclosures that are otherwise applicable to loans pursuant to subpart K of part 614. The TILA applies to all loans for which the principal purpose is residential housing, regardless of whether the loan is classified as an agricultural or rural housing loan under FCA regulations.

regulations that System banks and associations finance only owner-occupied homes, because this limitation does not appear in the Act. The proposal retains, however, a requirement that the home be used as a primary residence. This requirement would implement the Act's stated intent that the System provide financing for housing for rural residents. The FCA is concerned that an infrequently occupied vacation home would not be compatible with Congressional intent. This change will enable the System to finance moderately priced rural homes that shall be used as the principal residence of either the borrower or another rural resident. Thus, a borrower who intends to occupy the home in the future, perhaps as a retirement residence, would be eligible for financing so long as the house was leased to a tenant, in the interim, as the tenant's principal residence.

The FCA proposes to remove the passage in § 613.3040(a)(2) that describes rural homes as "conventional housing, modular housing, or mobile homes which are related to a specific site." The FCA believes that any type of dwelling that is moderately priced and located in a rural area may be financed, so the passage is not necessary to implement the Act. Section 613.3030(b) retains a provision that allows a borrower to obtain financing from the System on only one home at any one time. This limitation, which derives from the Act's legislative history, prevents the System from financing rural housing developers.

The existing regulation, § 613.3040(c), allows FCS banks and associations to make loans to non-farm rural residents solely for the purpose of buying, building, remodeling, improving, repairing a rural home, and refinancing existing indebtedness thereon. System representatives have frequently petitioned the FCA to remove this restriction so that they can offer equity lines-of-credit loans to rural homeowners.

The FCA observes that although home equity loans were not generally available loan products when the rural home financing authority was granted to the FCS in 1971, neither the Act nor FCA regulations preclude revolving lines of credit secured by home equity. During the intervening years, however, the residential mortgage markets have developed so that home equity lines of credit are now standard loan products that mortgage lenders routinely offer to their clientele. Home equity loans would enable the rural home lending authority of the FCS to reflect current market practices and would allow rural

homeowners who borrow from the FCS to have more flexibility in financing and utilizing the equity in their homes.

The FCA believes line-of-credit loans are compatible with sections 1.11(b) and 2.4(b) of the Act and the current regulation, which authorize System institutions to finance the housing needs of non-farm rural residents. Furthermore, home equity loans would enable FCS banks and associations to fulfill their mission of providing for an adequate and flexible flow of credit for housing in rural areas. Homeowners in rural communities often lack affordable credit options that are widely available in metropolitan areas.

The FCA also observes that home equity loans are compatible with the existing authority of production credit associations (PCAs) and agricultural credit associations (ACAs) under section 2.4(b) of the Act to take either a first or second lien on a rural home. Under existing FCA regulations, FCBs, ACBs, Federal land credit associations (FLCAs), and ACAs can, for certain purposes, make a line-of-credit loan that is secured by a first lien on an unencumbered rural home that is occupied by the borrower. Furthermore, an FCS long-term mortgage lender that already holds the first lien on the property could take a second lien to secure the home equity line-of-credit loan.

For these reasons, proposed § 613.3030(b) would enable FCS banks and associations to offer home equity loans to non-farm rural residents in addition to the types of loans that are already authorized by existing § 613.3040(c). The FCA also proposes conforming revisions to § 614.4222. The FCA emphasizes that FCS lenders could only make home equity line-of-credit financing on rural homes that comply with the requirements of proposed § 613.3030. The FCA fully expects home equity loans to be prudently underwritten. The FCA notes that this proposal would grant FCS institutions reasonable flexibility to make rural home loans within the 15-percent portfolio limit that is imposed by statute.

### 3. Definition of Rural Area

The FCA proposes to revise the regulatory definition of "rural area" to provide a standard that is clear, consistent, and easy to apply. The proposed definition will also eliminate the need for System institutions to seek FCA guidance about whether a particular locality is a "rural area" within the meaning of these regulations. Proposed § 613.3030(a)(3) defines a "rural area" as a designated territory

within a State or the Commonwealth of Puerto Rico, including communities that have a population of not more than 2,500 inhabitants based on the latest decennial census of the United States.

The United States Bureau of Census is an expert, official, and neutral source for accurate and accessible information about the demographics of rural areas. The United States census examines the population density in each State and then classifies the territories with 2,500 or fewer inhabitants as "rural areas." The United States Bureau of the Census does not utilize political boundaries to determine whether an area is rural. The United States census often identifies rural pockets (with 2,500 inhabitants or fewer) that are located inside standard metropolitan statistical areas. The proposed regulation would enable FCS banks and associations to finance non-farm housing in such designated rural areas.

Proposed § 613.3030(a)(3) would replace the definition of "rural area" in current § 613.3040(a)(3). Census data satisfies all of the criteria for "rural areas" that are specified by existing § 613.3040(a)(3). This proposal would also delete the current regulatory requirement that the FCA approve rural areas that include "towns" where the population exceeds 2,500 people. Since 1971, the FCA has acted on only a few requests to approve rural areas including such towns. Moreover, the FCA believes that the Bureau of the Census designation of a "rural area" may provide significantly more reliable and flexible data for System institutions because it disregards political boundaries and is updated to reflect changing conditions.

### 4. Definition of Moderately Priced

The FCA also proposes to replace the definition of "moderately priced" housing in existing § 613.3040(c)(2) with new § 613.3030(a)(4). The revised definition would provide System banks and associations with a clear standard for determining whether a rural home is "moderately priced." The FCA proposes a two-part definition for "moderately priced" rural homes. The first part is a safe-harbor provision for rural home loans that qualify under section 8.0(1)(B) of the Act for programs of the Federal Agricultural Mortgage Corporation (Farmer Mac). Loans qualify as collateral for Farmer Mac securities if they are secured by rural homes that are located in communities of fewer than 2,500 inhabitants and have a purchase price of not more than \$100,000, as adjusted for inflation. Thus, a rural home would be considered "moderately priced" for the purposes of

proposed § 613.3030(a)(4)(i) if the loan complies with Farmer Mac's underwriting standards.

The second alternative, proposed § 613.3030(a)(4)(ii), allows Farm Credit banks and associations to finance rural homes that are below the 75th percentile of housing values, ranked from the lowest value to the highest value in the rural area where it is located, as published by the United States Bureau of the Census in the most recent edition of the Census of Housing, General Housing Characteristics. This provision will enable the FCS to finance homes valued in excess of \$100,000 in areas in which such homes are still properly considered as moderately priced.

The FCS relied on a similar model until the early 1980's. At the time, the FCA provided administrative guidance to the System by annually publishing an upper limit for moderately priced housing. The upper value of moderately priced housing was derived from housing prices throughout the United States, stratified from the lowest to the highest sales figures. The FCA's proposal provides a more appropriate and accurate measure of "moderately priced" housing, because it examines housing prices in the designated rural areas where the property is located, rather than the entire United States.

In most designated rural areas with a population between 1,000 and 2,499 persons, the 75th percentile for housing prices does not exceed the Farmer Mac threshold of \$100,000, as adjusted for inflation. As a result, most of the rural housing in the United States would satisfy either provision of proposed § 613.3030(a)(4). However, when the 75th percentile for home prices in designated rural areas exceeds \$100,000, as adjusted for inflation, System institutions could finance homes that satisfy the criteria of proposed § 613.3020(a)(4)(ii) and still comply with Congressional intent that the System finance only moderately priced homes.

The FCA proposes to delete § 613.3040(c), and instead rely on § 614.4210(b), which authorizes System mortgage lenders to lend up to 97 percent of the appraised value of the security property if the loan is guaranteed by a Federal, State, or other government agency. This would permit FCS mortgage lenders to finance low-equity rural home borrowers when the loan is guaranteed by a Federal, State or other government agency.

#### 5. Portfolio Limitations

Both new § 613.3030(c) and existing § 613.3040(d)(2) implement sections

1.11(b)(2) and 2.4(b)(2) of the Act, which limit non-farm rural home loans to 15 percent of the total outstanding loans of each FCS bank or association. Although the FCA has rewritten these provisions to enhance their clarity, the substantive requirements of existing § 613.3040(d)(2) remain the same. Proposed § 613.3030(c)(1) continues to restrict the rural home portfolio of each FCB or ACB to 15 percent of its total outstanding loans at any one time. Under proposed § 613.3020(c)(2), rural home loans by each direct lender association could not exceed 15 percent of its total outstanding loans at the end of its preceding fiscal year, except with the prior approval of its funding bank. Proposed § 613.3030(c)(3) restricts the aggregate of rural home loans made by all direct lender associations that are funded by the same Farm Credit bank to 15 percent of the total outstanding loans of all such associations at the end of the funding bank's preceding fiscal year.

#### 6. Other Deletions

The FCA proposes to delete the existing program limitations in § 613.3040(d)(1) and (d)(3). Existing § 613.3040(d)(1) is obsolete because it prohibits rural home lending in each Farm Credit district without the approval of the now-defunct district boards.<sup>8</sup> Moreover, no provision of the Act requires associations to obtain approval from their funding bank or the FCA before they can exercise their statutory authority to make rural home loans.

Finally, the FCA proposes to delete § 613.3040(d)(3), which states that "agricultural loans shall receive priority to the exclusion of rural home loans" if loan funds for the System are curtailed. This provision derives from a commitment that the FCA gave to Congress in 1971, when System banks and associations were first granted authority to finance non-farm rural homes.<sup>9</sup> The FCA continues to adhere to this commitment. However, existing § 613.3040(d)(3) is a policy statement, rather than an enforceable regulatory provision. If a crisis curtails the ability of the FCS to meet the credit demands of agricultural and aquatic producers, the FCA Board would use its statutory authorities to ensure that the credit needs of agricultural and aquatic producers are given priority.

<sup>8</sup>The district boards were abolished by Pub. L. No. 100-399, section 409(d), 102 Stat. 989, 1003, (August 17, 1988).

<sup>9</sup>S.R. 92-307, 92nd Cong., 1st Sess., (July 27, 1971), p. 6.

### III. Eligibility and Scope of Financing Under Title III of the Act

The FCA proposes to revise and clarify regulations that govern eligibility and scope of financing for BCs and ACBs. The proposed regulations will implement provisions of the Farm Credit Banks and Associations Safety and Soundness Act of 1992<sup>10</sup> (1992 Act) and the Farm Credit System Agricultural Export and Risk Management Act<sup>11</sup> (1994 Act) that expand the ability of BCs and ACBs to finance: (1) Cooperatives; (2) their parents, subsidiaries, and other entities in which eligible cooperatives hold an ownership interest; and (3) water and waste disposal facilities. The FCA also proposes to amend these regulations so that BC and ACB loans to rural electric and telecommunication utilities are compatible with recent revisions to the Rural Electrification Act of 1936, 7 U.S.C. 901 et seq.

This proposal retains the format in which the domestic lending authorities and international lending authorities of these banks are addressed in two separate regulations. The FCA proposes to redesignate current § 613.3110, however, as new § 613.3100, and to rearrange this regulation so it addresses eligibility, and when appropriate, purposes for financing for each of the following classes of domestic borrowers: (1) Cooperatives, their parents, subsidiaries, and other related entities that serve farmers, ranchers, and aquatic producers and harvesters; (2) electric and telecommunications utilities; (3) water and waste disposal facilities; and (4) domestic lessors. Similarly, the FCA proposes to redesignate § 613.3120 as new § 613.3200, which will clearly delineate eligibility and purposes for financing for the following categories of international loan transactions: (1) Imports; (2) exports; and (3) international business transactions.

Current § 613.3005(b) will be deleted by this proposal because it prescribes business objectives and management practices. From the FCA's perspective, § 613.3005(b) is not necessary to implement or interpret the Act or to promote safety and soundness.

#### A. Eligibility and Scope of Financing for Domestic Loans

##### 1. Cooperatives and Related Entities That Serve Agricultural and Aquatic Producers

Proposed § 613.3100 streamlines the provisions in current § 613.3110 which

<sup>10</sup>Pub. L. No. 102-552, 106 Stat. 4102, (Oct. 28, 1992).

<sup>11</sup>Pub. L. No. 100-376, 108 Stat. 3497, (Oct. 19, 1994).

authorize BCs and ACBs to lend to cooperatives and related entities that serve farmers, ranchers, and aquatic producers and harvesters. The eligibility provisions for this class of borrowers are scattered throughout paragraphs (a), (b), (c) and (d) of the current regulation. The FCA proposes to consolidate these requirements for agricultural and aquatic cooperatives, their parents, subsidiaries, and other related entities into § 613.3100(b). Except to the extent that proposed § 613.3100(b) incorporates recent statutory amendments that expand the authority of BCs and ACBs to lend to cooperatives and their affiliates, this reorganization is not intended to alter the substance of the current regulation.

Proposed § 613.3100(a)(1) defines a cooperative as any association of farmers, ranchers, producers or harvesters of aquatic products, or any federation of such associations, which conducts business for the mutual benefit of its members and has the power to: (1) Process, prepare for market, handle, or market farm or aquatic products; (2) purchase, test, grade, process, distribute, or furnish farm or aquatic supplies; or (3) furnish business or financially related services to their members.

The FCA proposes to revise the definition of service cooperative in current § 613.3110(a)(4) so that it more closely reflects the language of the Act. Under the current regulation, an eligible service cooperative is "predominately involved in providing specialized business services related to the agricultural or aquatic business operation of farmers, ranchers, or producers and harvesters of aquatic products, or cooperatives." This regulatory definition is more restrictive than section 3.8(a) of the Act, which only requires such cooperatives to furnish "farm or aquatic business services or services" to their members. Because the Act does not require eligible service cooperatives to serve only the agricultural or aquatic business operations of their members, proposed (and redesignated) § 613.3100(a)(5) would enable BCs and ACBs to finance service cooperatives that are predominately involved in providing both business services and financially related services to farmers, ranchers, aquatic producers and harvesters, or cooperatives. Cooperatives that satisfy the criteria in proposed § 613.3100(b)(1) are eligible to borrow from a BC or ACB.

Proposed § 613.3100(b)(1)(i) implements section 3.8(a)(4) of the Act, which requires agricultural and aquatic producers to hold a specified percentage of the voting control of an eligible cooperative. Generally, both the Act and

the regulation require agricultural and aquatic producers to hold at least 80 percent of the voting control of cooperatives that are eligible to borrow under title III of the Act. However, section 3.8(a)(4) of the Act and § 613.3100(b)(1)(i) reduce the minimum voting control threshold of agricultural and aquatic producers in service cooperatives and certain farm supply cooperatives to 60 percent. Both the current and proposed versions of this regulation allow the board of directors of a BC or ACB to adopt resolutions that impose a higher voting control threshold on any type of cooperative. The FCA proposes to delete the remainder of current § 613.3110(b)(2), which prescribes detailed procedures about how BCs and ACBs should: (1) Treat all eligible cooperatives equitably; (2) compel borrowers to make good faith representations about voting control by agricultural and aquatic producers; and (3) document voting control of eligible cooperatives in certain circumstances. Such regulatory prescriptions are deemed unnecessary for the enforcement of eligibility limitations.

Proposed § 613.3100(b)(1)(ii) retains, with minor stylistic revisions, the current statutory requirement that each cooperative deal in farm or aquatic products or products processed therefrom, farm or aquatic supplies, farm or aquatic business services, or financially related services with or for members in an amount at least equal in value to the total amount of such business that it transacts with or for nonmembers. Transactions with the United States, its agencies and instrumentalities, and public utilities are excluded from the amount of business that a cooperative conducts with either members or nonmembers. Redesignated § 613.3100(b)(1)(iii) retains, without substantive amendment, the requirements in section 3.8(a) of the Act and current § 613.3110(b)(4) that: (1) No member of an eligible cooperative has more than one vote because of the amount of stock or membership capital owned therein; or (2) an eligible cooperative restricts dividends on stock or membership capital to 10 percent per year, or the maximum percentage per year permitted by applicable State law, whichever is less.

Proposed § 613.3100(b)(2) enables legal entities that are affiliated with eligible cooperatives to borrow from BCs and ACBs. Under proposed § 613.3100(b)(2)(i), any legal entity that holds more than 50 percent of the voting control of any eligible cooperative may borrow from a BC or ACB as long as it uses the loan proceeds to fund the

activities of its cooperative subsidiary on the terms and conditions specified by the bank. Any legal entity in which an eligible cooperative has an ownership interest would be eligible to borrow from a BC or ACB under proposed § 613.3100(b)(2)(ii). This provision of the regulation reflects section 3(B) of the 1994 Act, which authorizes BCs and ACBs to finance, for the first time, legal entities in which the ownership interest of eligible cooperatives is less than 50 percent. However, the amount of financing that a BC or ACB can provide to entities in which eligible cooperatives hold less than a 50-percent ownership interest under section 3.7(b)(2)(A)(ii) of the Act and proposed § 613.3100(b)(2)(ii) cannot exceed the percentage that eligible cooperatives own in the entity multiplied by the value of the entity's total assets. For example, an entity with \$100 million in total assets that is 45-percent owned by eligible cooperatives could receive financing from a BC or ACB that does not exceed \$45 million.

Proposed § 613.3100(b)(2)(iii) derives from section 506 of the 1992 Act, which authorizes BCs and ACBs to finance creditworthy, non-profit service cooperatives and their subsidiaries, if they benefit agriculture in furtherance of the welfare of the farmers, ranchers, and aquatic producers and harvesters who are its members. Many of the cooperative eligibility criteria in § 613.3100(b)(1) apply to this new class of borrowers. First, only eligible service cooperatives and their subsidiaries qualify for loans under proposed § 613.3100(b)(2)(iii). The regulation requires farmers, ranchers, and aquatic producers and harvesters to hold at least 60 percent of the voting control in a service cooperative which is either the borrower, or the borrower's parent. Second, eligibility under proposed § 613.3100(b)(2)(iii) is predicated upon compliance with proposed § 613.3100(b)(1)(iii), which requires cooperatives to either: (1) Operate on the principle of one person, one vote; or (2) restrict dividends on stock or membership capital to 10 percent per year, or the maximum percentage per year permitted by applicable State law, whichever is less. Neither section 3.8(b)(1)(D) of the amended Act, nor § 613.3100(b)(2)(iii) of the proposed regulations require this category of borrowers to transact more business with members than non-members.

## 2. Electric, Telecommunications, and Cable Television Utilities

The FCA proposes to update and consolidate the regulations that authorize BCs and ACBs to finance

public utilities that provide electric, telecommunication, and cable television services in rural areas. Section 1322 of the Food Security Act of 1985<sup>12</sup> significantly expanded the authorities of the BCs (and subsequently the ACBs) to finance rural utilities. Prior to 1985, only electric and telephone cooperatives in which agricultural or aquatic producers held 60 percent of the voting control were eligible for loans under title III of the Act. After 1985, any rural electric or telephone utility that qualifies for financing from either the former Rural Electrification Administration (now the Rural Utilities Services (RUS)), or the Rural Telephone Bank (RTB) of the United States Department of Agriculture is eligible to borrow under section 3.8(b)(1)(A) of the Act. Section 3.8(b) of the Act allows the corporate parents, subsidiaries, and other related entities of such rural utilities to borrow from BCs and ACBs, as well.

The statutory eligibility standards for rural electric and telecommunication utilities are incorporated into § 613.3100(c)(1) of the proposed regulation, which consolidates all of the rural utilities eligibility and scope of financing provisions that are now scattered throughout paragraphs (c)(1), (c)(2), and (c)(3) of existing § 613.3110.

Utilities cooperatives in which at least 60 percent of the voting control vests with agricultural or aquatic producers continue to separately qualify for BC and ACB loans under section 3.8(a)(4)(A) of the Act. State laws usually require utilities to provide electric or telephone service to all inhabitants of a specific geographic territory. As a result of the growth of the non-farm population in rural areas, virtually no utility cooperative still satisfies the statutory requirement that farmers, ranchers, and aquatic producers comprise at least 60 percent of its membership. The FCA understands that BCs and ACBs no longer receive loan applications from borrowers who meet the criteria of section 3.8(a)(4)(A) of the Act. Therefore, the FCA proposes to delete specific references in the regulations to this class of borrowers. However, the FCA notes that utility cooperatives in rural areas almost always satisfy the less stringent eligibility criteria of the RUS or the RTB. As a result, BCs and ACBs now lend exclusively to borrowers who are eligible for RUS or RTB loans.

Redesignated § 613.3100(c)(1)(ii) makes minor stylistic edits to existing § 613.3110(c)(3), which authorizes BCs

and ACBs to finance any legal entity that holds more than 50 percent of the voting control of any eligible electric or telecommunication utility if the borrower uses the proceeds of the loan to fund the activities of its subsidiary on the terms and conditions specified by the bank. The subsidiaries and other entities in which eligible utility borrowers hold an ownership interest also qualify for BC and ACB loans under amended section 3.7(b)(2)(A)(ii) of the Act and proposed § 613.3100(c)(1). However, when eligible rural electric and telecommunication utilities own less than 50 percent of another entity, section 3.7(b)(2)(A)(ii) of the Act and proposed § 613.3100(c)(3) limit bank financing to an amount that does not exceed the ownership percentage multiplied by the total assets of such entity.

The FCA proposes that § 613.3100(a)(3) and (c) refer to "telecommunication," rather than "telephone" services. This proposed revision reflects the fact that Congress recently amended the definition of "telephone service" in section 203(a) of the Rural Electrification Act of 1936, 7 U.S.C. 924(a), to encompass new telecommunication technologies.<sup>13</sup> Whereas 7 U.S.C. 924(a) previously defined "telephone services" as communications "through the use of electricity between the transmitting and receiving apparatus," the statute now refers to communications "by wire, fiber, radio, light, or other visual or electromagnetic means." As a result, cellular, facsimile, cable television, speed data services and other technologically advanced communication services are increasingly available in rural areas. Accordingly, proposed § 613.3100(c)(2) authorizes BCs and ACBs to finance these new telecommunication technologies and services.

Proposed § 613.3100(c)(2) would authorize BCs and ACBs to extend credit to eligible borrowers so they can provide electric or telecommunication services in rural areas. Although the eligibility of rural utilities to borrow from a BC or ACB is now based primarily upon their eligibility for RUS or RTB loans, the purposes for financing for utilities is not directly governed by the Rural Electrification Act of 1936 as amended. Section 203(a) of the Rural Electrification Act of 1936, as amended, 7 U.S.C. 924(a) expressly prohibits cable television carriers from obtaining loans from the RUS or RTB. However, section 3.7(b)(2)(A)(ii) of the Act permits BCs

and ACBs to finance affiliated entities that facilitate the business operations of eligible rural electric or telephone utilities. For this reason, proposed § 613.3100(c)(2) would authorize BCs and ACBs to finance an eligible subsidiary of an electric or telecommunication utility that is licensed to provide cable television services in a designated rural community.

### 3. Water and Waste Disposal Facilities

In 1990, Congress added section 3.7(f) to the Act,<sup>14</sup> granting BCs and ACBs new authorities to finance water and waste disposal facilities in rural areas where the population does not exceed 20,000 inhabitants. The 1992 Act expanded the scope of financing so that BCs and ACBs could also finance the maintenance and operations of such water and waste disposal facilities.<sup>15</sup> The FCA proposes to add a provision to the regulation that will reflect this new statutory authority.

Under proposed § 613.3100(d)(1), a cooperative, or a public, quasi-public agency, body, or other public or private entity that under the authority of State or local law establishes and operates water and waste disposal facilities in a rural area would be eligible to borrow from a BC or ACB. For the purposes of proposed § 613.3100(d), a rural area is defined by statute as all territory of a State that is not within the outer boundary of any city or town having a population of more than 20,000 inhabitants based on the latest decennial census of the United States. Proposed § 613.3100(d)(2) would authorize BCs and ACBs to extend credit to these borrowers for the installation, maintenance, expansion, improvement, or operation of rural water and waste disposal facilities.

### 4. Loans to Domestic Lessors

The FCA proposes to redesignate existing § 613.3110(c)(4) as new § 613.3100(e). Under this provision, a BC or ACB may extend credit to domestic parties to finance the acquisition of facilities or equipment that will be leased to shareholders of the bank for use in their operations within the United States. The lease customers of eligible borrowers include any cooperative, rural electric or telecommunication utility, or water or waste disposal facility that is a shareholder of the BC or ACB. The corporate parents and subsidiaries of

<sup>14</sup> Pub. L. No. 101-624, section 2323(a), 104 Stat. 4013, (Nov. 28, 1990).

<sup>15</sup> Pub. L. 102-552, section 505, 106 Stat. 4131, (Oct. 28, 1992).

<sup>12</sup> Pub. L. No. 99-198, section 1322, 99 Stat. 1534 (Dec. 23, 1985).

<sup>13</sup> Pub. L. No. 101-624, section 2354, 104 Stat. 4039, (Nov. 28, 1990).

cooperatives and rural electric and telecommunication utilities may also lease from the borrower. The FCA observes that the authority of BCs and ACBs to make loans to domestic lessors is separate and distinct from the banks' authority to lease equipment to their shareholders under section 3.7(a) of the Act.

#### 5. Status of Certain Borrowers

Section 3.8(b)(4) of the Act preserves the eligibility of existing BC or ACB borrowers despite adverse changes in the law. Existing § 613.3110(b)(5) "grandfathers" parties who were actual BC borrowers on May 17, 1972. The FCA believes that it is no longer necessary for this regulation to contain a "grandfather" clause because the statute adequately protects such borrowers. The eligibility of current BC and ACB borrowers will not be adversely affected by the removal of this regulatory provision.

#### *B. Eligibility and Scope of Financing for International Loan Transactions*

The FCA proposes new § 613.3200, which implements the expanded statutory authority of BCs and ACBs to finance the import, export, and international business transactions of cooperatives and other eligible borrowers. The FCA proposes substantial revisions to the existing regulation in order to reflect the provisions in the 1994 Act and enhance the regulation's clarity. The FCA also proposes several conforming and technical amendments to §§ 614.4010(d), 614.4020(a), 614.4233, and subpart Q of part 614 to reflect the expanded international lending authorities of BCs and ACBs.

Proposed § 613.3200(a) would define "farm supplies" only for import and export loan transactions. Under this proposal, "farm supplies" refers to inputs that are used in a farming or ranching operation, but excludes agricultural processing equipment, machinery used in food manufacturing, or other capital goods which are not used in a farming or ranching operation. This definition of "farm supplies" is consistent with the legislative history of the 1994 Act which indicates that Congress did not intend the BCs and ACBs to use their international lending authorities to finance the import or export of capital equipment and machinery.<sup>16</sup>

<sup>16</sup> 140 Cong. Rec. S14236 (daily ed. Oct. 5, 1994) (Colloquy between Senators Leahy and Lugar).

#### 1. Import Transactions

The 1994 Act did not alter the eligibility and scope of financing requirements for agricultural, aquatic, and farm supply imports that are financed by a BC or ACB. Although the FCA's proposal restructures the existing regulation by consolidating all of the eligibility and scope of financing requirements for import transactions into § 613.3200(b), the FCA has not changed the substance of current § 613.3120. The proposed regulation continues to authorize BCs and ACBs to finance the import of agricultural commodities or products therefrom, aquatic products, and farm supplies into the United States for: (1) An eligible cooperative; (2) a counterparty with respect to a specific import transaction with a voting stockholder of the bank for the substantial benefit of the shareholder; and (3) any foreign or domestic legal entity in which eligible cooperatives hold an ownership interest.

#### 2. Export Transactions

Section 3 of the 1994 Act expanded the authority of the BCs and ACBs to finance parties who facilitate the export of agricultural and aquatic products and farm supplies from the United States to foreign countries. As amended, section 3.7(b)(2)(A) of the Act extends eligibility for such export loans beyond eligible cooperatives, their related entities and counterparties, to any domestic or foreign party, provided that the BC or ACB gives priority, to the extent feasible, to cooperatively sourced products, commodities, and supplies. The statute imposes limits on BC and ACB financing of exports that are not both: (1) Originally sourced from cooperatives; and (2) guaranteed or insured in an amount that equals or exceeds 95 percent of the loan amount by an entity of the United States Government.

These new statutory requirements are incorporated into proposed § 613.3200(c), which provides that the total amount of balances outstanding on loans that are not originally sourced from cooperatives and at least 95-percent guaranteed by the Federal government shall not, at any time, exceed 50 percent of the bank's capital. Furthermore, both the Act and the regulation require the board of directors of each BC and ACB to adopt policies and procedures that ensure that exports of agricultural products and commodities, aquatic products, and farm supplies which originate from eligible cooperatives are financed on a priority basis.

#### 3. International Business Transactions

Prior to 1994, section 3.7(b) of the Act authorized BCs and ACBs to finance only the domestic and foreign legal entities that facilitated the import and export transactions of their cooperative owners. As amended by section 3 of the 1994 Act, this statutory provision now authorizes BCs and ACBs to extend credit to any domestic or foreign legal entity that facilitates the foreign business operations of an eligible cooperative that holds an ownership interest in it. This new statutory authority is incorporated into proposed § 613.3200(d). The FCA observes that this new authority will enable BCs and ACBs to assist their cooperative customers in developing overseas markets for American agricultural and aquatic exports, which in turn, will ultimately increase the income of America's farmers, ranchers, and aquatic producers.

#### 4. Restrictions

Proposed § 613.3200(e) contains restrictions that the Act imposes on the international lending authorities of BCs and ACBs. When eligible cooperatives own less than 50 percent of a foreign or domestic legal entity, section 3.7(b)(2)(A)(ii) of the Act and proposed § 613.3200(e)(1) limit the amount of financing that a BC or ACB may provide to the affiliated entity for any import, export, or international business transaction, to the percentage of ownership that such cooperatives hold in such entity multiplied by the value of the entity's total assets. Furthermore, section 3.7(b)(2)(B) and proposed § 613.3200(e)(2) prohibit BCs and ACBs from financing the relocation of any plant or facility from the United States to a foreign country.

#### IV. Similar Entities

In 1992, Congress granted FCS banks operating under title III of the Act new authority to participate in loans made by non-System lenders to "similar entities."<sup>17</sup> Section 2 of the 1994 Act clarified this new authority,<sup>18</sup> while section 5 of the 1994 Act granted similar loan participation powers to Farm Credit banks operating under title I of the Act and direct lender associations.<sup>19</sup> As amended, sections 3.1(11)(B) and 4.18A of the Act grant System banks and associations broader authorities pertaining to eligibility and loan

<sup>17</sup> Pub. L. No. 102-552, section 502, 106 Stat. 4130 (Oct. 28, 1992).

<sup>18</sup> Pub. L. No. 103-376, section 2, 108 Stat. 3497, (Oct. 19, 1994).

<sup>19</sup> Pub. L. No. 103-376, section 5, 108 Stat. 3497, (Oct. 19, 1994).

participations. The FCA proposes § 613.3300 to provide FCS banks and direct lender associations with guidance about the scope of their new authorities.

Both sections 3.1(11)(B)(iv) and 4.18A(a)(1) of the Act define "participate" and "participation" to mean "multilender transactions, including syndications, assignments, loan participations, subparticipations, other forms of the purchase, sale, or transfer of interests in loans, or other extensions of credit, or other technical and financial assistance." The FCA proposes to incorporate this statutory definition into § 613.3300(a)(1). The FCA emphasizes that this definition would apply only to loan participations between FCS and non-System lenders under sections 3.1(11)(B) and 4.18A of the Act and proposed § 613.3300. For all transactions under sections 1.5(12), 2.2(13), and 3.1(11)(A) of the Act and subpart H of part 614, "loan participation" is defined by § 614.4325(a)(4) as a "fractional undivided interest in the principal amount of the loan."

The proposed regulation would authorize FCS banks and associations to provide related services to similar entities. The FCA observes that the plain language of sections 3.1(11)(B)(iv) and 4.18A(a)(1) of the Act permits FCS banks and associations to provide "technical and financial assistance" to similar entities. Accordingly, the FCA proposes a conforming amendment to § 618.8005 to reflect this new statutory authority. The FCA invites comments about whether the final regulation ought to provide further guidance about this financially related service authority.

Sections 3.1(11)(B)(ii) and 4.18A(a)(2) identify a "similar entity" as a party that is ineligible for a loan from an FCS bank or association, but has operations that are "functionally similar" to the activities of eligible borrowers. An entity is functionally similar to an eligible borrower if it derives a majority of its income from, or a majority of its assets are invested in, the conduct of the activities that are functionally similar to the activities that are conducted by eligible parties. The FCA proposes in § 613.3300(a)(2) a definition of similar entity that is closely aligned with the statutory definition.

Proposed § 613.3300(b) reflects sections 3.1(11)(B)(ii) and 4.18A(a)(2) of the Act, which the FCA interprets to mean that the borrower is ineligible under sections 1.9, 1.11, 2.4, 3.7 and 3.8 of the Act to borrow directly from a System bank or association, but has a credit need that an FCS lender could finance for an eligible borrower. Section 4.18A(b)(4) of the Act expressly

precludes Farm Credit banks operating under title I of the Act and direct lender associations from participating in rural home loans under this similar entity authority.

For illustration purposes, the parties who qualify as similar entities under sections 3.1(11)(B) and 4.18A of the Act and the proposed regulations are presented below. The FCA solicits comments about whether the final regulation should provide a specific listing of the parties who qualify as similar entities. Farm Credit banks and direct lender associations that operate under titles I or II of the Act would be authorized to participate with non-System lenders in loans to: (1) Parties who are ineligible to borrow under § 613.3000 but require financing for any agricultural or aquatic purpose; (2) any individual, cooperative, and other legal entity that processes or markets agricultural or aquatic products, but supplies no throughput from an agricultural or aquatic operation; (3) a processing or marketing operation in which farmers, ranchers or aquatic producers do not hold a controlling interest; and (4) parties who are ineligible to borrow under proposed § 613.3020, but operate farm or aquatic supply businesses that furnish services, farm or aquatic equipment, and other goods that are directly related to the agricultural or aquatic operations of farmers, ranchers, and aquatic producers or harvesters.

The FCA believes that title III lenders could participate in loans made by non-System lenders to four types of "similar entities." First, BCs and ACBs could participate in loans to any legal entity that is not part of a cooperative enterprise, but: (1) Processes, prepares for market, handles, or markets farm or aquatic products; (2) purchases, tests, grades, processes, distributes, or furnishes farm or aquatic supplies; or (3) furnishes business and financially related services primarily to farmers, ranchers, and aquatic producers or harvesters. Second, BCs and ACBs could participate in loans to electric utilities that provide some service in rural communities, but for some reason are ineligible to participate in RUS programs. Third, BCs and ACBs could participate in loans to independent power producers, so long as they sell more than 50 percent of the electricity that they generate to rural electric utilities that are eligible for RUS loans. Finally, BCs and ACBs could participate in loans that finance the import of agricultural commodities and products, aquatic products, and farm supplies for borrowers who are not eligible

cooperatives, their subsidiaries, or their counterparties.

Section 4.18A(b) of the Act allows each FCB, ACB, and direct lender association to "participate in any loan of a type *otherwise authorized under title I or II* made to a similar entity \* \* \*." The FCA interprets this passage to mean that similar entity loans should still be compatible with the basic lending powers of each Farm Credit bank or association. In other words, section 4.18A(b) of the Act would, for example, authorize FLCAs to participate only in similar entity loans that are: (1) Secured by a first lien on real estate; and (2) mature within not fewer than 5 years, nor more than 40 years. Similarly, this statutory provision would permit PCAs to participate only in operating loans that mature within the time prescribed in section 1.10(b) of the Act. Accordingly, § 613.3300(c) reflects the FCA's interpretation of section 4.18A(b) of the Act. In the FCA's opinion, the above-cited passage in section 4.18A(b) of the Act is compatible with sections 1.5(12)(C) and 2.2(13) of the Act, which authorize FCS banks and direct lender associations to participate with non-System lenders only in the type of loans that such FCS institutions could originate.

Proposed § 613.3300(d) implements the restrictions that sections 3.1(11)(B)(i) and 4.18A(b) of the Act impose on loan participations to similar entities. Proposed § 613.3300(d)(1) reflects statutory lending limits for loan participations to similar entities. Under proposed § 613.3300(d)(1)(i)(A), the total amount of all loan participations that any FCB, ACB, or direct lender association may have outstanding under proposed § 613.3300(b)(1) to a single credit risk could not exceed 10 percent of its total capital. However, proposed § 613.3300(d)(1)(i)(B) would authorize the shareholders of any FCB, ACB, or direct lender to approve a higher lending limit, provided it does not exceed 25 percent of the institution's total capital. This provision would implement section 4.18A(b)(1) of the Act, which authorizes the FCA to permit a higher limit that would apply if shareholders approve. This proposal is consistent with the lending limits that FCA has established for loans to borrowers under titles I and II of the Act. Under proposed § 613.3300(d)(1)(ii), the total amount of all loan participations that any BC or ACB may have outstanding under proposed § 613.3300(b)(2) to a single credit risk could not exceed 10 percent of its total capital.

Under proposed § 613.3300(d)(2), the participation interest in the same loan

held by one or more Farm Credit bank(s) or association(s) could not, at any time, equal or exceed 50 percent of the principal amount of the loan. This regulatory provision would implement sections 3.1(11)(B)(i)(I)(bb) and 4.18A(b)(2) of the Act. Sections 3.1(11)(B) and 4.18A of the Act also limit the amount of loan participations to similar entities that each FCS bank or direct lender association may hold at any time to 15 percent of its total outstanding assets. Therefore, proposed § 613.3300(d)(3) applies this 15-percent portfolio limit to FCBs, BCs, ACBs, and direct lender associations.

Proposed § 613.3300(e) would implement requirements of sections 3.1(11)(B) and 4.18A(c)(3) concerning approval by other FCS banks and associations. Proposed § 613.3300(e)(1) implements a statutory provision that requires a direct lender association to obtain approval from its funding bank before it participates with a non-System lender in a loan to a similar entity. The FCA believes that a funding bank's decision to grant or deny approval under section 4.18A(c)(3) of the Act and proposed § 613.3300(e)(1) should rest exclusively on safety and soundness considerations that the transaction would have on the bank's financial position. Direct lender associations have not previously participated with non-System lenders in syndications and other multilender transactions that provide credit to ineligible borrowers. The FCA solicits comments from interested parties about how the final regulation can best accord equitable treatment to both funding banks and their affiliated associations.

Proposed § 613.3300(e)(2) would require a Farm Credit bank operating under title I of the Act or a direct lender association to comply with § 614.4070 before it participates in a similar entity loan in the chartered territory of another FCS institution. These provisions are designed to prevent intra-System competition without the consent of affected institutions. Requiring consent for similar entity participations would be consistent with the FCA's policy for out-of-territory participations and loans to eligible borrowers. However, some System institutions have informed the Agency that obtaining consent is time-consuming and impedes their ability to engage in participation transactions. As the Act is silent on this point, the FCA seeks public comment on whether consent for out-of-territory participations to similar entities ought to be required.

Proposed § 613.3300(e)(3) would implement section 4.18A(c)(1) of the Act by requiring a FCB or direct lender

association to obtain BC or ACB approval before it participates in a loan to a similar entity that is eligible to borrow directly from a Farm Credit bank operating under title III of the Act. Both the Act and the proposed regulation require approval from the BC or ACB that, at the time of origination, has the greatest volume of loans (made under title III of the Act) in the State where the headquarters of the similar entity is located.

Similarly, proposed § 613.3300(e)(4) implements section 3.1(11)(B)(iii) of the Act by requiring a BC or ACB to obtain FCB approval before it participates with a non-System lender in a loan to a similar entity that is eligible to borrow directly from an FCB or a direct lender association under proposed §§ 613.3010 or 613.3030. The BC or ACB is required to obtain approval from the FCB(s) in whose chartered territory the similar entity conducts operations. As the FCA interprets section 3.1(11)(B)(iii) of the Act, approval by two FCBs would only be required when both banks are chartered to fund mortgage and short- and intermediate-term operating loans in the same chartered territory. When one FCB discounts production loans in a territory where another FCB funds solely mortgage loans, the BC or ACB would only be required to obtain consent from the FCB with the authority to finance the similar entity.

Pursuant to sections 3.1(11)(B)(iii) and 4.18A(c)(2) of the Act, proposed § 613.3300(e)(5) grants FCS institutions broad latitude to negotiate agreements that confer intra-System consents required by the Act and FCA regulations.

Proposed § 613.3300(f) reflects the FCA's determination that borrower rights do not apply to participation interests that FCBs, ACBs, and associations hold in similar entity loans. Sections 4.14A(a)(5) and 4.14A(a)(6)(A) of the Act require Farm Credit banks (operating under title I of the Act) and associations to accord borrower rights on loans to eligible borrowers that they make to bona fide farmers, ranchers, and aquatic producers and harvesters. Borrower rights would not apply to similar entity loans because the borrower is ineligible to borrow directly from an FCS bank or association and the loan is originated by a non-System lender.

The capitalization requirements for similar entity loan participations is addressed by proposed § 613.3300(g). This provision of the proposed regulation would require the capitalization bylaws of each Farm Credit bank and association to address whether, and to what extent, non-voting

stock or participation certificates should be required for participation interests in similar entity loans. Proposed § 613.3300(g) is consistent with section 4.3A of the Act and § 615.5220.

## V. Miscellaneous

The FCA proposes to delete existing § 613.3060, which simply states that direct lender associations and other financing institutions (OFIs) are eligible to borrow from FCBs and ACBs. Regulations in subparts C and P of part 614 specifically implement the authority of FCBs and ACBs to fund and discount loans for direct lender associations and OFIs under section 1.7 of the Act rendering this section redundant.

The FCA also proposes to delete the following regulations: §§ 619.9025; 619.9030; 619.9040; 619.9065; 619.9080; 619.9090; 619.9100; 619.9120; 619.9150; 619.9160; 619.9190; 619.9220; 619.9270; 619.9280; 619.9300; and 619.9310. These regulations define certain terms that pertain to eligibility and scope of financing. Many of these definitions are not identical to either the existing or proposed regulations in part 613. This deletion will reduce duplication and potential for confusion.

Finally, the FCA proposes to relocate the nondiscrimination in lending regulations in subpart E of part 613 to a new part 626. Nondiscrimination is unrelated to eligibility and scope of financing, and therefore, the FCA believes that this topic should be addressed in a separate part of the regulations.

## List of Subjects

### 12 CFR Part 613

Agriculture, Banks, Banking, Credit, Rural areas.

### 12 CFR Part 614

Agriculture, Banks, Banking, Foreign Trade, Reporting and recordkeeping requirements, Rural areas.

### 12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistances.

### 12 CFR Part 619

Agriculture, Banks, Banking, Rural areas.

### 12 CFR Part 626

Advertising, Aged, Agriculture, Banks, Banking, Civil rights, Credit, Fair housing, Marital status discrimination, Sex discrimination, Signs and symbols.

For the reasons stated in the preamble, parts 613, 614, 618, 619, and

626 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

**PART 613—ELIGIBILITY AND SCOPE OF FINANCING**

1. The authority citation for part 613 is revised to read as follows:

**Authority:** Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

2. Subparts A, B, C, and D of part 613 are revised to read as follows:

**Subpart A—Financing Under Titles I and II of the Farm Credit Act**

Sec.

613.3000 Financing for farmers, ranchers, and aquatic producers or harvesters.

613.3010 Financing for processing or marketing operations.

613.3020 Financing for farm-related businesses.

613.3030 Rural home financing.

**Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act**

613.3100 Domestic lending.

613.3200 International lending.

**Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act**

613.3300 Participations and other interests in loans to similar entities.

**Subpart A—Financing Under Titles I and II of the Farm Credit Act**

**§ 613.3000 Financing for farmers, ranchers, and aquatic producers or harvesters.**

(a) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Agricultural land* means land that is devoted to or available for the production of agricultural or aquatic products.

(2) *Bona fide farmer, rancher, or producer or harvester of aquatic products* means an individual or legal entity that either:

(i) Produces agricultural products or produces or harvests aquatic products to generate income; or

(ii) Owns agricultural land.

(3) *Individual* means a natural person who is either:

(i) A citizen of the United States; or  
(ii) A foreign national who has been lawfully admitted into the United States for permanent residency pursuant to 8 U.S.C. 1101(a)(20) or on a visa pursuant to a provision in 8 U.S.C. 1101(a)(15) that authorizes such individual to own property or operate or manage a business.

(4) *Legal entity* means any partnership, corporation, trust, estate, or

other legal entity, excluding legal entities eligible under title III of the Act, that is established pursuant to the laws of the United States, any State thereof, the Commonwealth of Puerto Rico, or the District of Columbia and is legally authorized to conduct a business.

(b) *Eligible borrowers.* A bona fide farmer, rancher, or producer or harvester of aquatic products is eligible to borrow under either title I or II of the Act.

(c) *Financing for agricultural or aquatic needs.* Any borrower who is eligible under paragraph (b) of this section may obtain financing for any agricultural or aquatic purpose.

(d) *Financing for other credit needs.*

(1) Individual eligible borrowers who are either citizens or permanent residents of the United States and are actively engaged in agricultural or aquatic production may also obtain financing for:

(i) Housing and domestic needs; and

(ii) Other business needs in an amount that does not exceed the market value of their agricultural or aquatic assets.

(2) Individual eligible borrowers who either own agricultural land as an investment, or are non-resident foreign nationals, may obtain total financing for their housing, domestic and other business needs in an amount that does not exceed the market value of their agricultural or aquatic assets.

(3) Legal entities may obtain financing for their other credit needs in an amount that does not exceed the market value of their agricultural assets only if:

(i) The securities of the borrower are not traded on a public exchange; and

(ii) More than 50 percent of the assets of the borrowing legal entity are used in agricultural or aquatic production.

**§ 613.3010 Financing for processing or marketing operations.**

(a) *Eligible borrowers.* A borrower is eligible for financing for a processing or marketing operation under titles I and II of the Act, only if the borrower meets the following requirements:

(1) The borrower is either a bona fide farmer, rancher, or producer or harvester of aquatic products or is a legal entity in which eligible borrowers under § 613.3000(b) hold a controlling interest; and

(2) The borrower or an owner of a borrowing legal entity consistently produces some portion of the throughput used in the processing or marketing operation.

(b) *Portfolio restrictions for certain processing and marketing loans.*

Processing or marketing loans to eligible borrowers who supply, on a consistent

basis, less than 20 percent of the throughput are subject to the following restrictions:

(1) *Bank limitation.* The aggregate of such processing and marketing loans made by a Farm Credit bank shall not exceed 15 percent of all its outstanding retail loans at the end of the preceding fiscal year.

(2) *Association limitation.* The aggregate of such processing and marketing loans made by all direct lender associations affiliated with the same Farm Credit bank shall not exceed 15 percent of the aggregate of their outstanding retail loans at the end of the preceding fiscal year. Each Farm Credit bank, in conjunction with all its affiliated direct lender associations, shall ensure that such processing or marketing loans are equitably allocated among its affiliated direct lender associations.

(3) *Calculation of outstanding retail loans.* For the purposes of this paragraph, "outstanding retail loans" include loans, loan participations, and other interests in loans that are either bought without recourse or sold with recourse.

**§ 613.3020 Financing for farm-related businesses.**

(a) *Eligibility.* An individual or legal entity that furnishes services to farmers and ranchers that are directly related to their agricultural operations is eligible to borrow under titles I and II of the Act.

(b) *Purposes of financing.* An eligible farm-related business may obtain financing for its business needs, subject to the following requirements:

(1) An eligible farm-related business that derives more than 50 percent of its income (as consistently measured on either a gross sales or net sales basis) from furnishing services that are directly related to the agricultural operations of farmers and ranchers may obtain financing for all of its business needs.

(2) An eligible farm-related business that derives 50 percent or less of its income (as consistently measured on either a gross sales or net sales basis) from furnishing services that are directly related to the agricultural operations of farmers and ranchers may obtain financing only for those credit needs that are related to the provision of farm-related services.

**§ 613.3030 Rural home financing.**

(a) *Definitions.*

(1) *Rural homeowner* means an individual who is not a bona fide farmer, rancher, or producer or harvester of aquatic products.

(2) *Rural home* means a single-family moderately priced dwelling located in a

rural area that will be the occupant's principal residence.

(3) *Rural area* means a designated rural area within a State or the Commonwealth of Puerto Rico including communities that have a population of not more than 2,500 inhabitants based on the latest decennial census of the United States.

(4) *Moderately priced* means the price of any rural home that either:

(i) Satisfies the criteria in section 8.0 of the Act pertaining to rural home loans that collateralize securities that are guaranteed by the Federal Agricultural Mortgage Corporation; or

(ii) Is below the 75th percentile of housing values, ranked from the lowest value to the highest value in the rural area where it is located in accordance with the most recent edition of the Census of Housing, General Housing Characteristics published by the United States Bureau of the Census. System institutions may obtain copies of this document from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(b) *Eligibility*. Any rural homeowner is eligible to obtain financing on a rural home. No borrower shall have a loan from the Farm Credit System on more than one rural home at any one time.

(c) *Portfolio limitations*. (1) The aggregate of retail rural home loans by any Farm Credit Bank or agricultural credit bank shall not exceed 15 percent of the total of all of its outstanding loans at any one time.

(2) The aggregate of rural home loans made by each direct lender association shall not exceed 15 percent of the total of its outstanding loans at the end of its preceding fiscal year, except with the prior approval of its funding bank.

(3) The aggregate of rural home loans made by all direct lender associations that are funded by the same Farm Credit bank shall not exceed 15 percent of the total outstanding loans of all such associations at the end of the funding bank's preceding fiscal year.

### Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

#### § 613.3100 Domestic lending.

##### (a) Definitions.

(1) *Cooperative* means any association of farmers, ranchers, producers or harvesters of aquatic products, or any federation of such associations, which conducts business for the mutual benefit of its members and has the power to:

(i) Process, prepare for market, handle, or market farm or aquatic products;

(ii) Purchase, test, grade, process, distribute, or furnish farm or aquatic supplies; or

(iii) Furnish business and financially related services to its members.

(2) *Farm or aquatic supplies and farm or aquatic business services* are any goods or services normally used by farmers, ranchers, or producers and harvesters of aquatic products in their business operations, or improve the welfare or livelihood of such persons.

(3) *Public utility* means a cooperative or other entity that is licensed under Federal, State, or local law to provide electric, telecommunication, cable television, water, or waste treatment services.

(4) *Rural area* means all territory of a State that is not within the outer boundary of any city or town having a population of more than 20,000 inhabitants based on the latest decennial census of the United States.

(5) *Service cooperative* means a cooperative that is predominately involved in providing business and financially related services (other than public utility services) to farmers, ranchers, aquatic producers or harvesters, or their cooperatives.

(b) *Cooperatives and other entities that serve agricultural or aquatic producers*. (1) *Eligibility for cooperatives*. A cooperative is eligible to borrow from a bank for cooperatives or an agricultural credit bank only if the following requirements are satisfied:

(i) Unless the bank's board of directors establishes by resolution a higher voting control threshold for any type of cooperative, the percentage of voting control of the cooperative held by farmers, ranchers, producers or harvesters of aquatic products, or cooperatives shall be 80 percent except:

(A) Sixty (60) percent for a service cooperative;

(B) Sixty (60) percent for local farm supply cooperatives that have historically served the needs of a community that would not be adequately served by other suppliers and have experienced a reduction in the percentage of membership by agricultural or aquatic producers due to changed circumstances beyond their control; and

(C) Sixty (60) percent for local farm supply cooperatives that shall provide needed services to a community, and shall compete with a cooperative specified in § 613.3100(b)(1)(i)(B);

(ii) The cooperative deals in farm or aquatic products, or products processed therefrom, farm or aquatic supplies, farm or aquatic business services, or financially related services with or for members in an amount at least equal in

value to the total amount of such business it transacts with or for nonmembers, excluding from the total of member and non-member business, transactions with the United States, or any agencies or instrumentalities thereof, or services or supplies furnished by a public utility; and

(iii) The cooperative conforms with one of the following two conditions:

(A) No member of the cooperative shall have more than one vote because of the amount of stock or membership capital owned therein; or

(B) The cooperative restricts dividends on stock or membership capital to 10 percent per year or the maximum percentage per year permitted by applicable State law, whichever is less.

(2) *Other eligible entities*. The following entities are eligible to borrow from banks for cooperatives and agricultural credit banks:

(i) Any legal entity that holds more than 50 percent of the voting control of a cooperative that is an eligible borrower under paragraph (b)(1) of this section, and it uses the proceeds of the loan to fund the activities of its cooperative subsidiary on the terms and conditions specified by the bank;

(ii) Any legal entity in which an eligible cooperative has an ownership interest, *provided that* if such interest is less than 50 percent, financing shall not exceed the percentage that the eligible cooperative owns in such entity multiplied by the value of the total assets of such entity; or

(iii) Any creditworthy private entity operated on a non-profit basis that satisfies the requirements for a service cooperative and complies with the requirements of paragraphs (b)(1)(i)(A) and (b)(1)(iii) of this section, and any subsidiary of such entity. An entity that is eligible to borrow under this paragraph shall be organized to benefit agriculture in furtherance of the welfare of the farmers, ranchers, and aquatic producers and harvesters who are its members.

(c) *Electric, telecommunication, and cable television utilities*.—(1) *Eligibility*. A bank for cooperatives or an agricultural credit bank may lend to:

(i) Cooperatives, other entities, or the subsidiaries of such cooperatives or other entities that:

(A) Have received a loan, loan commitment, insured loan, or loan guarantee from the Rural Utilities Service of the United States Department of Agriculture to finance rural electric and telecommunication services;

(B) Have received a loan or a loan commitment from the Rural Telephone

Bank of the United States Department of Agriculture; or

(C) Have been certified by the Rural Utilities Service of the United States Department of Agriculture to be eligible for a loan, loan commitment, or loan guarantee; or

(ii) Any legal entity that holds more than 50 percent of the voting control of any public utility that is an eligible borrower under paragraph (c)(1)(i) of this section, and uses the proceeds of the loan to fund the activities of the eligible subsidiary on the terms and conditions specified by the bank for cooperatives or agricultural credit bank.

(2) *Purposes for financing.* A bank for cooperatives or agricultural credit bank may extend credit to entities that are eligible to borrow under paragraph (c)(1) of this section in order to provide electric or telecommunication services that are generally compatible with the Rural Electrification Act of 1936, as amended, 7 U.S.C. 901 *et seq.*, and regulations that the Secretary of Agriculture promulgates in 7 CFR parts 1610, 1710, 1712, 1714, 1735, 1737, 1739, and 1751. A subsidiary that is eligible to borrow under paragraph (c)(1) of this section may also obtain financing from a bank for cooperatives or agricultural credit bank to operate a licensed cable television utility.

(3) *Restriction.* When an eligible utility, as defined in paragraph (c)(1)(i) of this section, owns less than 50 percent of any legal entity, the amount of financing provided by the bank for cooperatives or agricultural credit bank to the entity shall not exceed the percentage that the eligible cooperatives own in such entity multiplied by the value of the total assets of such entity.

(d) *Water and waste disposal facilities.—(1) Eligibility.* A cooperative or a public, quasi-public agency, body, or other public or private entity that, under the authority of State or local law, establishes and operates water and waste disposal facilities in a rural area, as that term is defined by paragraph (a)(5) of this section, is eligible to borrow from a bank for cooperatives or an agricultural credit bank.

(2) *Purposes for financing.* A bank for cooperatives or agricultural credit bank may extend credit to entities that are eligible under paragraph (d)(1) of this section solely for installing, maintaining, expanding, improving, or operating water and waste disposal facilities in rural areas.

(e) *Domestic lessors.* A bank for cooperatives or agricultural credit bank may lend to domestic parties to finance the acquisition of facilities or equipment that will be leased to shareholders of the

bank for use in their operations located inside of the United States.

#### **§ 613.3200 International lending.**

(a) *Definition.* For the purpose of this section only, the term “farm supplies” refers to inputs that are used in a farming or ranching operation, but excludes agricultural processing equipment, machinery used in food manufacturing or other capital goods which are not used in a farming or ranching operation.

(b) *Import transactions.* The following parties are eligible to borrow from a bank for cooperatives or an agricultural credit bank pursuant to section 3.7(b) of the Act for the purpose of financing the import of agricultural commodities or products therefrom, aquatic products, and farm supplies into the United States:

(1) An eligible cooperative as defined by § 613.3100(b);

(2) A counterparty with respect to a specific import transaction with a voting stockholder of the bank for the substantial benefit of the shareholder; and

(3) Any foreign or domestic legal entity in which eligible cooperatives hold an ownership interest.

(c) *Export transactions.* Pursuant to section 3.7(b)(2) of the Act, a bank for cooperatives or an agricultural credit bank is authorized to finance the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country. The board of directors of each bank for cooperatives and agricultural credit bank shall adopt policies that ensure that exports of agricultural products and commodities, aquatic products, and farm supplies which originate from eligible cooperatives are financed on a priority basis. The total amount of balances outstanding on loans made under this paragraph shall not, at any time, exceed 50 percent of the capital of any bank for cooperatives or agricultural credit bank for loans that:

(1) Finance the export of agricultural commodities and products therefrom, aquatic products, or farm supplies that are not originally sourced from an eligible cooperative; and

(2) At least 95 percent of the loan amount is not guaranteed by a department, agency, bureau, board, or commission of the United States or a corporation that is wholly owned directly or indirectly by the United States.

(d) *Transactions involving international business operations.* A bank for cooperatives or an agricultural

credit bank may finance a domestic or foreign entity which is at least partially owned by eligible cooperatives described in § 613.3100(b), and facilitates the international business operations of such cooperatives.

(e) *Restrictions.* (1) When eligible cooperatives own less than 50 percent of a foreign or domestic legal entity, the amount of financing that a bank for cooperatives or agricultural credit bank may provide to the entity for any import, export, or international business transaction shall not exceed the percentage of ownership that eligible cooperatives hold in such entity multiplied by the value of the total assets of such entity; and

(2) A bank for cooperatives or agricultural credit bank shall not finance the relocation of any plant or facility from the United States to a foreign country.

#### **Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act**

##### **§ 613.3300 Participations and other interests in loans to similar entities.**

(a) *Definitions.*

(1) *Participate and participation,* for the purpose of this section, refer to multilender transactions, including syndications, assignments, loan participations, subparticipations, other forms of the purchase, sale, or transfer of interests in loans, or other extensions of credit, or other technical and financial assistance.

(2) *Similar entity* means a party that is ineligible for a loan from a Farm Credit bank or association, but has operations that are functionally similar to the activities of eligible borrowers in that a majority of its income is derived from, or a majority of its assets are invested in, the conduct of activities that are performed by eligible borrowers.

(b) *Similar entity transactions.* A Farm Credit bank or a direct lender association may participate with a lender that is not a Farm Credit System institution in loans to a similar entity that is not eligible to borrow directly under §§ 613.3000, 613.3010, 613.3020, 613.3100, or 613.3200, for purposes similar to those for which an eligible borrower could obtain financing from the participating FCS institution.

(c) *Compatibility with lending authorities under titles I and II of the Act.* Each direct lender association may participate in loans to similar entities under paragraph (b) of this section only to the extent that such loans are compatible with the association's applicable long-term real estate lending

authority under sections 1.7(a) and 1.10(a) of the Act or its short- and intermediate-term lending authorities under sections 1.10(b) and 2.4 of the Act.

(d) *Restrictions.* Participations by a Farm Credit bank or association in loans to a similar entity under this section are subject to the following limitations:

(1) *Lending limits.*

(i) *Farm Credit banks operating under title I of the Act and direct lender associations.* The total amount of all loan participations that any Farm Credit Bank, agricultural credit bank, or direct lender association has outstanding under paragraph (b) of this section to a single credit risk shall not exceed:

(A) Ten (10) percent of its total capital; or  
 (B) Twenty-five (25) percent of its total capital if a majority of the shareholders of the respective Farm Credit bank or direct lender association so approve.

(ii) *Farm Credit banks operating under title III of the Act.* The total amount of all loan participations that any bank for cooperative or agricultural credit bank has outstanding under paragraph (b) of this section to a single credit risk shall not exceed 10 percent of its total capital;

(2) *Percentage held in the principal amount of the loan.* The participation interest in the same loan held by one or more Farm Credit bank(s) or association(s) shall not, at any time, equal or exceed 50 percent of the principal amount of the loan; and

(3) *Portfolio limitations.* The total amount of participations that any Farm Credit bank or direct lender association has outstanding under paragraph (b) of this section shall not exceed 15 percent of its total outstanding assets at the end of its preceding fiscal year.

(e) *Approval by other Farm Credit System institutions.* (1) No direct lender association shall participate in a loan to a similar entity under paragraph (b) of this section without the approval of its funding bank. A funding bank shall deny such requests only for safety and soundness reasons affecting the bank.

(2) No Farm Credit bank operating under title I of the Act or a direct lender association shall participate in a loan under paragraph (b) of this section to a similar entity that is located outside of its chartered territory unless it complies with the requirements of § 614.4070 of this chapter.

(3) No Farm Credit Bank or direct lender association shall participate in a loan to a similar entity that is eligible to borrow under § 613.3100(b) without the prior approval of the bank for cooperatives or agricultural credit bank

that, at the time the loan is made, has the greatest volume of loans made under title III of the Act in the State where the headquarters office of the similar entity is located.

(4) No bank for cooperatives or agricultural credit bank shall participate in a loan to a similar entity that is eligible to borrow under §§ 613.3010 or 613.3020 without the prior consent of the Farm Credit Bank(s) in whose chartered territory the similar entity conducts operations.

(5) All approvals required under paragraph (e) of this section may be granted on an annual basis and under such terms and conditions as the various Farm Credit System institutions may agree.

(f) *Borrower rights.* The borrower rights requirements in title IV of the Act and § 614.4336 and subparts K, L and N of part 614 of this chapter do not apply to participations in loans to similar entities under paragraph (b) of this section.

(g) *Borrower stock requirements.* Pursuant to section 4.3A of the Act and § 615.5220 of this chapter, the capitalization bylaws of each Farm Credit bank and association shall determine whether, and to what extent, non-voting stock or participation certificates shall be required for participations in loans to similar entities.

**Subpart E—Nondiscrimination in Lending**

**§§ 613.3145, 613.3150, 613.3151, 613.3152, 613.3160, 613.3170, 613.3175 (Subpart E) [Redesignated]**

3. Subpart E of part 613, consisting of §§ 613.3145, 613.3150, 613.3151, 613.3152, 613.3160, 613.3170, and 613.3175 is redesignated as new part 626, consisting of §§ 626.6000, 626.6005, 626.6010, 626.6015, 626.6020, 626.6025, and 626.6030 respectively.

**PART 614—LOAN POLICIES AND OPERATIONS**

4. The authority citation for part 614 is revised to read as follows:

**Authority:** 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2,

2279f, 2279f-1, 2279aa, 2279aa-5); sec. 413 of Pub. L. 100-233, 101 Stat. 1568, 1639.

**Subpart A—[Amended]**

5. Subpart A of part 614 is amended by removing the reference “613.3020” each place it appears and adding in its place “613.3000”; by removing the reference “613.3045” each place it appears and adding in its place “613.3010”; by removing the reference “613.3040” each place it appears and adding in its place “613.3030”; by removing the reference “613.3050” each place it appears and adding in its place “613.3020”; by removing the reference “613.3110” each place it appears and adding in its place “613.3100(b)(1)”; and by removing the reference “613.3110(c)” each place it appears and adding in its place “613.3100(b)(2), (c), and (d).”

6. Section 614.4010 is amended by removing the words “export or” each place they appear in paragraphs (d)(4) and (d)(5); by removing the reference “(d)(3)” and adding in its place “(d)(4)” in paragraph (d)(5); and by adding new paragraphs (d)(6) and (d)(7) to read as follows.

**§ 614.4010 Agricultural credit banks.**

\* \* \* \* \*  
 (d) \* \* \*  
 \* \* \* \* \*

(6) Any party, subject to the requirements in § 613.3200(c) of this chapter, for the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country, in accordance with § 614.4233 and subpart Q of this part 614; and

(7) Domestic or foreign parties in which eligible cooperatives, as defined in § 613.3100 of this chapter, hold an ownership interest, for the purpose of facilitating the international business operations of such cooperatives pursuant to the requirements of § 613.3200(d) and (e) of this chapter.

\* \* \* \* \*

7. Section 614.4020 is amended by removing the words “export or” each place they appear in paragraphs (a)(4) and (a)(5); by adding after the words “bank’s board”, the reference “, § 614.4233,” in paragraph (a)(4); by removing the words “board policy” and adding in their place, the words “policies of the bank’s board, § 614.4233,” in paragraph (a)(5); and by adding new paragraphs (a)(6) and (a)(7) to read as follows:

**§ 614.4020 Banks for cooperatives.**

(a) \* \* \*  
 \* \* \* \* \*

(6) Any party, subject to the requirements in § 613.3200(c) of this chapter, for the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country, in accordance with § 614.4233 and subpart Q of this part 614; and

(7) Domestic or foreign parties in which eligible cooperatives, as defined in § 613.3100 of this chapter, hold an ownership interest, for the purpose of facilitating the international business operations of such cooperatives pursuant to the requirements in § 613.3200(d) and (e) of this chapter.

\* \* \* \* \*

#### Subpart E—Loan Terms and Conditions

8. Section 614.4222 is revised to read as follows:

##### § 614.4222 Rural home loans.

A long-term real estate loan, including a revolving line of credit, on a rural home shall be secured by a first lien on the property, pursuant to § 614.4210, except that it may be secured by a second lien if the institution also holds the first lien on the property. A short- or intermediate-term loan on a rural home, including a revolving line of credit, must be secured by a lien on the property unless the financing is provided exclusively for repairs, remodeling, or other improvements to the rural home, in which case the credit may be secured by other property or unsecured if warranted by the creditworthiness of the borrower.

9. Section 614.4233 is amended by revising the introductory paragraph to read as follows:

##### § 614.4233 International loans.

Term loans made by banks for cooperatives and agricultural credit banks under the authority of section 3.7(b) of the Act and § 613.3200 of this chapter to foreign or domestic parties who are not shareholders of the bank shall be subject to following conditions:

\* \* \* \* \*

#### Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

##### § 614.4610 [Amended]

10. Section 614.4610 is amended by removing the words “a association in the district” and adding in their place, the words “any association funded by the bank” in the first sentence and removing the reference “§ 613.3040(d)(2)” and adding in its

place the reference “§§ 613.3010(b)(1) and 613.3030(c)(2)”.

#### Subpart Q—Banks for Cooperatives Financing International Trade

11. The heading for subpart Q is amended by adding after the words “Banks for Cooperatives” the words “and Agricultural Credit Banks”.

##### § 614.4700 [Amended]

12. Section 614.4700 is amended by adding after the words “banks for cooperatives” the words “and agricultural credit banks” each place they appear in paragraphs (a), (b), and (h).

##### § 614.4710 [Amended]

13. Section 614.4710 is amended by adding after the words “banks for cooperatives” the words “and agricultural credit banks” each place it appears in the introductory paragraph and paragraph (c); by adding after the words “bank for cooperatives” the words “or agricultural credit bank’s” in paragraph (a)(1)(ii); by adding after the words “bank for cooperatives” the words “or an agricultural credit bank” each place they appear in paragraphs (a)(1), (a)(1)(i), (a)(3), (a)(5) and (b)(1).

##### § 614.4720 [Amended]

14. Section 614.4720 is amended by adding after the words “Banks for cooperatives” the words “and agricultural credit banks” in the first sentence of the introductory paragraph.

##### § 614.4800 [Amended]

15. Section 614.4800 is amended by adding after the words “A bank for cooperatives” the words “or an agricultural credit bank” in the first sentence.

##### § 614.4810 [Amended]

16. Section 614.4810 is amended by adding after the words “banks for cooperatives” the words “and agricultural credit banks” each place they appear in paragraphs (a) and (b).

##### § 614.4900 [Amended]

17. Section 614.4900 is amended by adding after the words “a bank for cooperatives” the words “or an agricultural credit bank” each place they appear in paragraphs (a) through (d); and by adding after the words “banks for cooperatives” the words “and agricultural credit banks” in the first sentence of paragraph (i).

#### PART 618—GENERAL PROVISIONS

18. The authority citation for part 618 continues to read as follows:

**Authority:** Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

#### Subpart A—Related Services

##### § 618.8005 [Amended]

19. Section 618.8005 is amended by removing the reference “§§ 613.3010, 613.3020 (a)(1), (a)(2), (b), and 613.3045” in paragraph (a) and adding in its place, the reference “§§ 613.3000 (a) and (b), 613.3010, and 613.3300” and by removing the reference “§§ 613.3110 and 613.3120” and adding in its place, the reference “§§ 613.3100, 613.3200, and 613.3300” in paragraph (b).

#### PART 619—DEFINITIONS

20. The authority citation for part 619 is revised to read as follows:

**Authority:** Secs. 1.7, 2.4, 4.9, 5.9, 5.12, 5.17, 5.18, 7.0, 7.6, 7.7, 7.8 of the Farm Credit Act (12 U.S.C. 2015, 2075, 2160, 2243, 2246, 2252, 2253, 2279a, 2279b, 2279b-1, 2279b-2).

**§§ 619.9025, 619.9030, 619.9040, 619.9065, 619.9080, 619.9090, 619.9100, 619.9120, 619.9150, 619.9160, 619.9190, 619.9220, 619.9270, 619.9280, 619.9300, and 619.9310 [Removed]**

21. Sections 619.9025, 619.9030, 619.9040, 619.9065, 619.9080, 619.9090, 619.9100, 619.9120, 619.9150, 619.9160, 619.9190, 619.9220, 619.9270, 619.9280, 619.9300, and 619.9310 are removed.

#### PART 626—NONDISCRIMINATION IN LENDING

22. The authority citation for part 626 is added to read as follows:

**Authority:** Secs. 1.5, 2.2, 2.12, 3.1, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2073, 2093, 2122, 2243, 2252); 42 U.S.C. 3601 *et seq.*; 15 U.S.C. 1691 *et seq.*; 12 CFR 202, 24 CFR 100, 109, 110.

##### § 626.6025 [Amended]

23. Newly designated § 626.6025 is amended by removing the reference “§ 613.3160(b)” and adding in its place, the reference “§ 626.6020(b)” in paragraph (b).

\* \* \* \* \*

Dated: September 5, 1995.

**Floyd Fithian,**

*Secretary, Farm Credit Administration Board.*  
[FR Doc. 95-22313 Filed 9-8-95; 8:45 am]

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