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Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Definitions; Disclosure to Shareholders; Nondiscrimination in Lending; Capital Adequacy and Customer Eligibility

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) through the FCA Board (Board) adopts amendments (final rule) to the current regulations governing the capital adequacy provisions and the customer eligibility provisions for Farm Credit System (Farm Credit, FCS, or System) institutions. This rule adds core surplus and total surplus standards for banks, associations, and the Farm Credit Leasing Services Corporation (Leasing Corporation); adds a collateral ratio for banks; and adds procedures for setting higher capital standards for individual institutions and for issuing capital directives, when warranted. The rule also incorporates recent amendments to the Farm Credit Act of 1971, as amended (Act), which govern the eligibility rules for lending under title III of the Act and provide Farm Credit banks and associations with new authorities to participate with non System lenders in loans to similar entities. The final rule eliminates restrictions in the current eligibility regulations that are not required by the Act and makes other technical, clarifying, and conforming changes. The final rule relocates the nondiscrimination in lending regulations to a new part without change.

DATES: This regulation shall become effective 30 days after publication in the Federal Register during which either or both houses of Congress are in session. Notice of the effective date will be published in the Federal Register.

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SUPPLEMENTARY INFORMATION: The FCA proposed amendments to the capital provisions of its regulations for FCS institutions on July 25, 1995 (60 FR 38521) and to the customer eligibility provisions on September 11, 1995 (60 FR 47103). In response to comments received, the FCA combined the two proposals and published proposed amendments to the capital adequacy and customer eligibility provisions of its regulations for Farm Credit institutions on August 13, 1996 (reproposed rule). See 61 FR 42092. The 30-day comment period expired on September 12, 1996.

I. Summary of the Changes in the Final Rule

A. The capital provisions of the final rule contain the following changes from the reproposed rule:

1. Associations may include in their core surplus allocated equities that are includible in their total surplus and that are not scheduled to be revolved in the next 3 years. Such equities may comprise up to 2 percentage points of an association's 3.5-percent minimum core surplus to risk-adjusted assets requirement, with the remaining 1.5 percent in unallocated surplus and includible perpetual stock.

2. Banks for cooperatives (BCs) and agricultural credit banks (ACBs) may include nonqualified allocated equities that are issued to non-System entities and that do not have an established plan or practice of revolvement. Such equities may comprise up to 2 percentage points of a BC's or ACB's 3.5-percent minimum core surplus requirement, with the remaining 1.5 percent in unallocated surplus and includible perpetual stock.

3. If specifically provided for in an institution's capital adequacy plan, the institution may retire or cancel purchased and allocated equities includible in core surplus for application against the indebtedness on a defaulted loan without causing similar remaining equities to be excluded from the core surplus ratio. The institution may also pay out allocated equities in the event of the death of a former borrower whose loan has been repaid. In both cases, the institution board must determine that retirement or revolvement is in the best interest of the institution.

4. Retirement of less than an entire class or series of equities includible in core surplus, other than in the circumstances described in item 3 above, will result in the disallowance of remaining similar equities from core surplus.

5. If approved by the FCA, a capital instrument or a particular balance sheet account issued to or related to another System institution may be included in an institution's core or total surplus.

6. The Leasing Corporation may include its C Stock issued to Farm Credit banks in the total surplus ratio.

B. The eligibility provisions applicable to title I and title II lenders incorporate the following changes from the reproposed rule:

1. The final regulation retains the existing definition of *bona fide* farmer or rancher in § 613.3010(a). This and the other definitions in § 613.3010 are redesignated as § 613.3000(a) in order to replace the reproposed definitions. The reproposed definitions for agricultural assets and agricultural land, § 613.3000(a)(1) and (2), are withdrawn. The existing definition of agricultural land is retained without change in § 619.9025. Reproposed § 613.3000(d), addressing limitations on financing a farmer's other credit needs under the reproposed definitions, is also withdrawn.

2. Existing § 613.3005(a) is retained as final § 613.3005 to determine the scope of financing for farmers, ranchers, and producers or harvesters of aquatic products.

3. The final rule offers some flexibility in the use of the 75th percentile of local housing values to establish what constitutes moderately priced housing. It requires each FCS institution to support its determination with appropriate documentation whenever the institution adopts a value above the 75th percentile of housing values in the rural area where it is located.

II. Public Comments Received

The FCA received 1591 comment letters in response to the reproposed rule concerning capital adequacy and customer eligibility provisions. There were 1079 comments addressing the customer eligibility rules and 580 comments addressing the reproposed capital adequacy provisions.[1]

The FCA received 881 comments from System institutions and their members/borrowers, including a comment letter from the System's Presidents' Finance Committee, which reflected the views of System banks and associations (System joint comment) concerning the capital adequacy rules, as well as a letter from the Farm Credit Council (FCC), also on behalf of the System institutions, on the customer eligibility provisions. Of the remaining comments, 723 were from commercial banks, 26 from trade associations, 22 from members of Congress who transmitted constituent letters, and three from State government agencies. The national trade associations, in addition to the FCC, that commented included: the American Bankers Association (ABA), the Independent Bankers Association of America (IBAA), the Credit Union National Association (CUNA), and the National Farmers Union (NFU). The States from which banking chapters and affiliates of their national associations submitted comments included Virginia, Wisconsin, Nebraska, Pennsylvania, Arizona, California, Alaska, Hawaii, Montana, New Mexico, Nevada, Oregon, Utah, Washington, Idaho, Colorado, Michigan, New York, Indiana, Georgia, Maine, Louisiana, and South Dakota. In addition to the written comments received, a group of System representatives made an oral presentation of its views to Agency staff concerning the capital adequacy provisions.

III. The Final Rule

After carefully considering the comments received on the reproposed rule and further deliberation, the FCA adopts a rule governing capital adequacy and customer eligibility for FCS financing. The FCA responds to the specific concerns of the commenters as it explains the provisions of the rule.

A. Capital Adequacy Provisions

Of the 580 written comments received on the capital provisions, six were from System banks (AgFirst FCB (two letters), Western FCB, AgriBank FCB, CoBank ACB, and St. Paul BC), one was from the Leasing Corporation, 35 were from System associations, 532 were from borrowers/shareholders of several agricultural credit associations (ACAs), one was from the System's Presidents' Planning Committee on behalf of System institutions (System joint comment), four were from various State and national cooperative councils, and one was from the ABA on behalf of its commercial bank members.

Responses to the capital provisions varied widely. Of the five System banks that commented, one bank fully supported the reproposal and urged the FCA not to diminish required levels by lowering ratios or widening the definition of eligible capital. Two System banks supported the reproposal as revised by minor changes suggested in the System joint comment. Those changes are more fully described below. The other two System banks suggested changes to the reproposal primarily as it affected associations operating on a Subchapter T basis for tax purposes. Of the System associations that submitted comments, a few supported the reproposal, but the majority asked for changes in the core surplus requirement. Likewise, the cooperative councils and the association borrowers opposed the core surplus ratio components as applied to associations. The ABA commented that it supported the stiffening of capital requirements for System institutions and offered a general opinion that the reproposal was not stringent enough.

1. Core Surplus Ratio Capital Standard

The majority of the comments on capital pertained to the core surplus ratio in the reproposed rule. A System bank, the Leasing Corporation, and several associations supported the core surplus ratio as reproposed, and other System institutions generally supported the ratio with minor revisions.

Many other respondents, including System associations, made the same criticisms of the core surplus ratio that they had made of the unallocated surplus ratio in the originally proposed capital regulations. They asserted that the core surplus ratio was contrary to cooperative principles, unfairly differentiated between unallocated surplus and allocated surplus, and discouraged institutions from operating as Subchapter T cooperatives. They stated their belief that an institution with allocated equities in addition to a minimum level of unallocated surplus was a stronger institution than one with the same amount of unallocated surplus but no allocated equities. For a detailed description of these comments, see 61 FR 42092, 42094 (Aug. 13, 1996). Most of these respondents did not address specifically the inclusion of nonqualified allocated equities in the core surplus ratio.

A System bank that did address the inclusion of nonqualified allocated equities disagreed with the FCA's statement that inclusion of such equities would eliminate most of the disincentives to operate on a Subchapter T basis and stated that single taxation is an extremely important tool for managing tax liabilities on association earnings.

An association objected to the requirement that associations deduct the net investment in the affiliated bank from the core surplus ratio. Another association stated that an association should not have to deduct this investment unless the bank does not meet its minimum capital requirements.

A respondent questioned the meaning of the statement in the reproposal preamble that the FCA expected a ''healthy portion'' of core surplus to be made up of unallocated surplus. *See* 61 FR 42095–96 (Aug. 13, 1996). The respondent stated that ''healthy'' appeared to be a subjective evaluation and asserted that ''[t]he requirement of a 'healthy' sum of unallocated surplus runs contrary to the cooperative nature of the System.''

Two System associations stated that the risk monitoring systems already in place—the Farm Credit System Insurance Corporation, the Market Access Agreement, the Contractual Interbank Performance Agreement, general financing agreements, and ''a very aggressive regulator''—were sufficient to control risk.

A System bank recommended that the core surplus of associations be calculated by means of two separate ratios: first, measure unallocated retained earnings (URE) with no deduction for the investment in the bank; second, measure total surplus with a deduction for the investment in the bank. The bank pointed out that ''[t]he only situation in which the member's investment would be impaired at the point in which losses exceeded association unallocated surplus *net of its investment in the bank*

[1] The total number of comments received on the individual provisions of the final rule does not total 1591 because several commenters responded to both capital and customer provisions in a single comment letter.

would be one in which the association's investment in the bank was impaired at the same time.'' The bank also stated that tax considerations, not capital requirements, should be the basis on which an institution should decide whether to allocate equities on a nonqualified or a qualified basis. Several associations recommended that the core surplus for associations be calculated on a more broadly defined basis by including all permanent capital less the investment in the bank.

The System, in its joint comment, recommended that the FCA permit a call on preferred stock when a bank is overcapitalized or in a declining rate environment. It also recommended that the FCA include in core surplus, on a case-by-case basis, newly developed or modified equities or accounts held by other System institutions.

One commenter requested that the FCA permit revolvements of nonqualified allocated equities as long as the revolvements do not result in failure to meet the core surplus requirement. Another commenter stated that it agreed with the FCA's rationale for including nonqualified allocated equities in core surplus but suggested that redemptions be permitted when a borrower dies or defaults on a loan. The commenter also stated that nonqualified allocations between System institutions ought to be includible by one institution in core surplus and suggested that the allocations be included in the core surplus of the issuing institution.

In response to the comments, and upon further deliberation about the components and quality of core surplus, the FCA has made several changes to the core surplus requirement in the final rule. The principal change is that associations with allocated equities, which are primarily associations that operate as Subchapter T cooperatives, may include certain longer-term qualified as well as nonqualified allocated equities. However, allocated equities may comprise no more than 2 percentage points of the association's minimum 3.5-percent core surplus requirement. Includible longer-term equities are allocated equities not subject to a revolvement plan or subject to a revolvement plan of at least 5 years and not scheduled for distribution during the next 3 years. The remaining 1.5 percentage points of the minimum core surplus requirement must be made up of unallocated retained earnings and perpetual stock not subject to a revolvement plan or practice.

This decision reflects the FCA's judgment that a formula including allocated equities that are not scheduled for retirement within the next 3 years provides a method for achieving a stable capital base for associations without discouraging patronage distributions. Longer-term allocated equities, while they may not be perpetual in nature, do provide important capital protection for as long as they are held, and an institution's board can delay a scheduled distribution when it is in the best interest of the institution. By counting allocated equities only when they are not within 3 years of revolvement, institutions are less likely to have to interrupt scheduled revolvements to meet their capital standards in times of adversity because they have 3 years in which to adjust continuing allocations or take other protective measures. Similarly, if an institution suffers because many of its borrowers are experiencing adverse economic circumstances, a sufficient amount of unallocated surplus will better enable the institution to continue to make planned distributions during the next 3 years, at a time when its borrowers may need cash distributions most. In addition, permitting an association to count both qualified and nonqualified allocations in the core surplus ratio gives an association flexibility to select which type of allocation to make based primarily on business considerations rather than regulatory considerations.

For the BC and any ACB which, like Subchapter T associations, also have equities allocated to non-System borrowers, the Agency decided not to allow inclusion in core surplus of any qualified allocated equities or of nonqualified allocated equities scheduled for revolvement for several reasons.[2] Such banks have higher lending limits—from 35 to 50 percent of the lending limit base for certain BC loans compared to a 25-percent limit for all other Farm Credit institutions. The BC and any ACB carry greater interest rate risk than associations and carry certain forms of operational risk from which associations are largely insulated. Unlike associations, these banks are jointly and severally liable on Systemwide obligations. In addition, the existing BC and ACB have made a significant portion of their credit extensions to relatively few borrowers, a situation that results in a concentration of risk. Finally, the BC and ACB have only the single exclusion of qualified and revolving nonqualified allocated equities from their core surplus ratio, whereas associations must also deduct their net investment in their affiliated bank. Therefore, the FCA has determined that it is appropriate that such banks maintain a core surplus ratio of at least 3.5 percent, comprised of unallocated surplus and nonqualified allocated equities with no plan or practice of retirement. Nonqualified allocated equities may comprise no more than 2 percentage points of the institution's minimum 3.5-percent core surplus requirement. As with associations, the remainder must be comprised of unallocated retained earnings and perpetual stock.

When an institution's ratio of unallocated surplus together with any perpetual stock includible in core surplus to risk-adjusted assets amounts to less than 1.5 percent, the institution may not count more than 2 percentage points of allocated equities in determining compliance with the 3.5-percent core surplus requirement. For example, if an institution's unallocated surplus and includible perpetual stock were 1.4 percent of risk-based assets, and its ratio of long-term allocated equities were 5 percent, its core surplus ratio would be 3.4 percent, because allocated equities could be counted only up to 2 percentage points. If the institution's ratio of unallocated surplus and perpetual stock were 1.6 percent and its ratio of long-term allocated equities were 5 percent, however, its core surplus ratio would be 6.6 percent. In this instance, the entire amount of long-term allocated equities would be included in the core surplus ratio because at least 1.5 percent of the institution's minimum requirement was comprised of unallocated surplus and perpetual stock. The FCA notes that the restriction on the use of allocated equities in the computation of the core surplus ratio applies only to the components in the computation of the core surplus ratio and is not intended to limit the use of such allocated equities in building and maintaining other required capital levels.

In establishing the minimum core surplus requirement at 3.5 percent, the FCA expects institutions to treat the core surplus requirement and its components as a regulatory minimum and to establish a target or goal for adequate capital based on their particular circumstances. There may be circumstances where the FCA considers the institution's component levels of surplus to be inadequate, even when its core surplus ratio is at or above 3.5 percent (because the operations of the institution are of higher risk), and may take supervisory action, as warranted.

The final rule permits all institutions to retire equities and apply the proceeds against indebtedness on a defaulted loan

[2] This same rule by its language also applies to the FCBs; however, the effect of this rule on FCBs is expected to be minimal.

without disallowance of remaining equities of the same class or series from treatment as core surplus, subject to the following conditions: (1) The institution must specifically provide for such retirements in the capital adequacy plan approved by its board of directors and the circumstances under which they may occur; (2) the institution must charge off an amount of the indebtedness on the loan equal to the amount of the equities that are retired or canceled; and (3) the institution board must determine that each such retirement is in the best interest of the institution. Retirable equities include purchased stock as well as allocated stock and surplus. The Agency made this change to accommodate foreclosure laws of States that preclude the recovery of a deficiency in certain situations. In these cases, it may be more advantageous to the institution to retire a borrower's equities. In other cases, it will be in the best interest of the institution not to retire equities. Institutions are required to make this determination before the equities are retired.

The final rule also permits institutions to retire allocated stock and equities in the event of the death of a holder of such equities who did not have a loan outstanding with the institution at the time of his or her death, without disallowing remaining equities from treatment as core surplus, provided that the institution's capital adequacy plan specifically authorizes such retirements and that the institution determines that these retirements are in the best interest of the institution. This provision enables institutions to make retirements to help liquidate a former borrower's estate, especially in cases where the allocated equities may not be transferable. The provision, however, does not apply to retirements of purchased stock, which the statute requires to be transferable. Title to such stock and the accruing benefits thereto, including dividends, can be transferred by the estate executor to the heirs of the former borrower's estate. Although these provisions allow an institution to retire equities in these circumstances without disqualifying equities of the same class, they do not relieve the institution of its obligation to meet its regulatory capital standards and to maintain such higher levels of capital as may be needed in its particular circumstance.

The FCA has deleted from the final rule provisions that would have enabled an institution to retire a *pro rata* amount of a class or series of stock or equities without causing the remaining class or series of stock or equities to be disallowed from treatment as core surplus. The Agency reconsidered those provisions and determined that the partial retirements or revolvements would raise an implication that the equities are not considered to be a permanent source of capital by the institution. If partial retirements of includible perpetual stock were commonplace, the FCA believes that this practice would undermine stockholders' perception of the perpetual character of the stock or equities. Therefore, if an institution retires includible stock or equities other than in connection with a section 4.14B restructuring or the death or default of a borrower, the remaining equities of the same class or series will be disallowed from treatment as core surplus.

The FCA has expanded a reproposed provision, permitting inclusion of a newly developed or modified capital instrument or particular balance sheet account with FCA approval, to include existing capital instruments and balance sheet accounts as well. Existing equities issued or allocated to other System institutions will continue to be excluded from an institution's core surplus as a general principle. But the FCA will consider including existing equities as well as any newly developed or modified capital instrument or a particular balance sheet account related to another System institution in core surplus on a case-by-case basis. The FCA is not presently aware of any existing equities held by other System institutions that it believes would be appropriate to include in an institution's core surplus, but it may consider the appropriateness of including any such equities in the future.

The FCA did not make any other changes recommended by commenters to the core surplus ratio. The final rule continues to require associations to deduct the net investment in the bank from core surplus, for the reasons set forth in the preamble to the reproposed rule at 61 FR 42096 (Aug. 13, 1996). With respect to the comment that current risk monitoring systems are sufficient to control risk, the FCA was not convinced that the current risk monitoring systems assure that institutions have adequate high quality capital. The FCA believes this final rule does provide such assurances. The suggestion that the core surplus ratio for associations be replaced by ratios that separately measure local surplus and unallocated surplus was rejected because compliance with the ratios could be achieved by an association that has no local unallocated surplus (and equivalent perpetual equities) and, as the commenter observes, would not assure sufficient capital in the event that the bank is financially stressed at the same time the affiliated association is stressed. For a fuller explanation of the need for local unallocated surplus, see 60 FR 38523 (July 25, 1995). With respect to the suggestion in the System joint comment that a call on preferred stock would be prohibited, the FCA notes that redemption of perpetual preferred stock was neither strictly prohibited in the reproposed rule nor prohibited in the final rule.

In the final rule, the core surplus ratio must be calculated by the institution as of each monthend. A summary of the core surplus computation follows:

The ratio numerator:

Undistributed earnings/unallocated surplus (as defined in the FCA Call Report instructions) less: for associations only, the net investment in its affiliated bank, which is—

Total investment in a System bank:

Less: Investment in association by such bank, up to an amount equal to the association's investment in the bank;

Less: Agency/servicing investment in such bank;

Less: Participation investment in such bank;

Plus: Perpetual common or noncumulative preferred stock held by non-System entities and not purchased as a condition of obtaining a loan, provided that the institution has no established plan or practice of retiring the stock;

Plus: any other equities or accounts approved by the FCA for inclusion in core surplus;

Plus: for banks only, nonqualified patronage allocations held by persons or entities other than System institutions, provided that the institution has no established plan or practice of retiring such allocations;

Plus: for associations only, nonqualified and qualified patronage allocations held by persons or entities other than other System institutions, provided that either the allocations are subject to a revolvement plan of at least 5 years and will not be distributed within the next 3 years, or the institution has no established plan or practice of retiring such patronage;

Less: investments in the Leasing Corporation and goodwill as required in the computation of the institution's permanent capital ratio (§ 615.5210(e)(6) and (7)); Divided by—

The ratio denominator:

Risk-adjusted asset base per the permanent capital regulations.

2. Total Surplus Ratio Capital Standard

Commenters raised two issues with regard to the reproposed total surplus

ratio: the treatment of the Leasing Corporation's C Stock and the inclusion of certain subordinated debt. The preamble to the reproposed regulations stated that the Class C Stock issued by the Leasing Corporation could not be included in the Leasing Corporation's total surplus because the level of stock fluctuates, somewhat similarly to borrower stock, based on lease volume. The Leasing Corporation commented that its C Stock should be included in the total surplus calculation because it is held by System banks, which also fund the leases. Because a customer of the Leasing Corporation has no equity at risk in the corporation, any decision either to conduct additional business with the corporation or to terminate existing leasing relationships does not involve a consideration by the customer of the capital level of the corporation. Therefore, the risk of borrower flight based on concerns about stock impairment is non-existent.

The FCA concludes that the basic characteristics of the C Stock have many similarities to other FCS institutions' stock and equities that are includible in total surplus. Therefore, the C Stock should be included in the Leasing Corporation's total surplus computation.

In its joint comment, the System requested that subordinated debt with characteristics of preferred stock be included in permanent capital and total surplus, on the ground that commercial banks and thrifts are permitted to include this type of subordinated debt in their Tier 2 capital. The issue of the treatment of subordinated debt in any capital ratios for System institutions was not addressed in the reproposal or in the 1995 capital proposal, and the FCA believes that it would be inappropriate to include this in the final rule. The Agency is considering this issue as part of the next phase of its review of the capital regulations.

Upon reaching these conclusions, the FCA determines the total surplus ratio will be calculated by the institution as of each month end, with a minimum requirement of 7 percent. A summary of the computation is as follows:

The ratio numerator:

Undistributed earnings/unallocated surplus per FCA Call Report;

Plus: certain perpetual common or noncumulative perpetual preferred stock held by non-System entities and not purchased as a condition of obtaining a loan;

Plus: certain nonqualified and qualified allocated equities with revolvement cycles, if any, of at least 5 years;

Plus: term stock with an original maturity of at least 5 years (reduced by 20 percent per year during the last 5 years of its term);

Plus: any other equities or accounts approved by the FCA for inclusion in total surplus;

Less: any equities or accounts required by the FCA to be deducted from total surplus;

Less: any deductions for goodwill and investments in the Leasing Corporation as required in the computation of the institution's permanent capital ratio pursuant to § 615.5210(e) (6) and (7);

Less: for associations only, an amount equal to the amount of allocated bank equities counted as permanent capital by the bank;

Less: for banks only, an amount equal to the amount of bank equities counted as association permanent capital.

Divided by—

The ratio denominator:

Risk-adjusted asset base per the permanent capital regulations.

3. Collateral Ratio Capital Standard for Banks

A System bank opposed a collateral ratio that excludes allocated capital counted by associations for two reasons: the allotment agreement does not change the actual liquidity position of the bank, and the deduction appears to be premised on the belief that the allotment agreements are enforceable and that every association will call on the bank to retire such capital at the same time.

As explained in the preamble to the reproposal, the exclusion of allocated capital counted as association permanent capital is intended to eliminate the double-leveraging of shared capital and is not based on assumptions about the enforceability of the allotment agreements. Inclusion of this capital would enable banks and associations to double-leverage the same capital for the permanent capital and collateral ratios. The FCA has decided to adopt the collateral ratio as reproposed without changes for the reasons expressed here and as found in 61 FR 42097–98 (Aug. 13, 1996). Under the final rule, the net collateral ratio is calculated as follows:

The ratio numerator is a bank's net collateral, which equals:

A bank's total eligible collateral as defined by § 615.5050 (except that eligible investments as described in § 615.5140 are to be valued at their amortized cost),

Less: an amount equal to that portion of the allocated investments of affiliated associations that is not counted as permanent capital of the bank.

Divided by—

The ratio denominator, which equals:

The bank's total liabilities.

4. Borrower Stock Retirement Provisions

The FCA received no comments on the reproposal's provisions enabling institutions to delegate the retirement of borrower stock under certain conditions. However, the final rule clarifies the board's obligation to determine that the institution's capital position will remain adequate after any stock retirements made under delegated authority.

5. Individual Institution Capital Ratios and Capital Directives

The FCA received no comments on the reproposal's provisions establishing procedures for setting individual institution capital ratios and issuing capital directives. The FCA adopts these provisions without change.

6. Other Capital Issues

The System, in its joint comment, recommended that the existing permanent capital regulations be harmonized with the reproposal to include term preferred stock in permanent capital. The FCA agrees that term preferred stock, which is includible in total surplus, should also be permanent capital on the same basis as it is considered to be total surplus. That is, the stock must have an original maturity of 5 years or more, and in each of the last 5 years before maturity will be counted in permanent capital at a discount of 20 percent. Thus, at the beginning of 5 years before maturity the discount will be 20 percent; at the beginning of 4 years prior to maturity the discount will be 40 percent; and so forth until there is a 100-percent discount at the beginning of one year prior to maturity. The FCA has added a stipulation that the institution must have the option to defer payment of dividends on such preferred stock. This qualification is consistent with the qualification placed on the type of preferred stock that may be included in the regulatory capital (Tier 2) of national banks.

In addition, the FCA added language to the definitions of total surplus and core surplus to clarify that deductions required in the computation of an institution's permanent capital ratio must also be made in the computation of the institution's surplus ratios. Goodwill and the investment by a Farm Credit bank in the Leasing Corporation must be deducted from a bank's surplus ratios just as they are deducted from the bank's permanent capital.

Several System associations inquired regarding the inclusion in core surplus of a tax-deferred asset representing taxes

paid on nonqualified allocated equities. The FCA notes that, based on generally accepted accounting principles (GAAP), in circumstances where redemption is sufficiently ascertainable, the tax benefits associated with nonqualified allocations may be recorded as an asset. In the final rule, this tax-deferred asset is includible in the core surplus of institutions if the related nonqualified allocated equities are included in core surplus. The FCA notes that it is presently reviewing the treatment of this and all other types of tax-deferred assets in the minimum capital requirements and will address this issue in the next phase of its review of the capital regulations.

A System association inquired whether a purchase of stock by a System bank in its affiliated association would have the effect of reducing an association's ''net investment in the bank,'' thereby increasing the association's core surplus correspondingly. The FCA agrees that this is a correct interpretation of the reproposal and notes that the Agency would treat such an investment as financial assistance or paid-in capital subject to prior FCA approval under § 615.5171.

7. Basis for Conclusions and Positions Taken in the Final Capital Adequacy Provision

The FCA believes that the changes in the final rule are consistent with its views of the purposes of capital and the need for high quality capital, as set forth in the supplementary information to the originally proposed capital amendments. *See* 60 FR at 38522–27 (July 27, 1995). The FCA incorporates that information herein by reference. At that time, the Agency explained its position that a mixture of capital components is necessary to achieve a sound capital structure and that each institution should have a minimum amount of secure capital, exclusive of borrower stock, that is not at risk at another System institution. Compliance with the permanent capital and total surplus ratios may be achieved with a variety of components—most types of capital meet the definition of permanent capital, and the total surplus measurement includes both perpetual and preferred stock, as well as both unallocated and allocated surplus. The need for a minimum amount of secure capital is addressed by the core surplus ratio, which generally excludes capital at risk at other System institutions.

The additions made to the components of core surplus in the final rule reflect the FCA's recognition that some equities allocated to non-System entities are close to unallocated surplus as a source of quality capital. Nonqualified allocated equities with no plan or practice of retirement are considered highly stable and have low borrower expectations of distribution. Revolving allocated equities, being somewhat less stable, are only partially included, and the associations that may include them are required to maintain a positive level of local unallocated surplus in order to meet the 3.5-percent requirement.

The FCA believes that the core and total surplus and bank collateral standards embody the principles set forth in the 1988 international Basle Accord that provide for minimum levels of risk-based high quality and supplementary capital. Capital standards for commercial banks and thrifts were adopted by their Federal banking regulators in 1989 based on Basle Accord recommendations, and subsequent studies have shown that such standards, which also include a leverage ratio, are an improvement over the previous flat-rate standards alone.[3] In the FCA's view, the capital requirements in the final rule in their overall effect are very similar to the standards applied to the commercial banks and thrifts.

The FCA believes that the capital provisions in the final rule establish standards that encourage the building of a sound capital structure in System institutions, which will improve the likelihood of an institution's survival during periods of economic stress and thereby improve the safety and soundness of the System as a whole. The FCA believes that these regulations provide a meaningful measure of capital adequacy and are appropriate for all System institutions to which they apply.

B. Customer Eligibility Provisions

1. General Comments

Generally, FCS institutions and their borrowers endorsed the FCC's comment letter, which favored the reproposed rule but recommended certain modifications. One State agency supported the reproposed rule while another opposed it. All other non-System commenters and one FCS borrower opposed the reproposed regulations. Many commercial bank commenters and their trade associations urged the FCA to abandon all efforts to amend the existing eligibility regulations.

Some commenters suggested that the FCA postpone rulemaking action on customer regulations until such time that Congress might address this issue. The FCA has consulted with the Senate and House Agriculture Committee staff about these customer regulations during the past 6 months. Based on these discussions and comments received during two public comment periods, the FCA has determined that it is appropriate to proceed with the final customer regulations.

While many comments focused on specific provisions of the reproposed regulations, other comments raised public policy issues about the role of government-sponsored enterprises (GSEs) and the extent to which they should be allowed to compete with other credit providers. All comments were categorized and will be addressed according to topics that follow.

a. *Role of the FCS*. The role of the FCS, as a GSE, and the extent to which it should be allowed to compete with other non-GSE credit providers were issues that were frequently raised by commercial bankers in opposition to the reproposed regulations. These commenters asserted that the FCS should provide credit only to certain segments of the agricultural and rural economy that are not served adequately by other lenders. These same commenters also state that the FCA should allow the FCS to expand only into certain rural credit markets that have been neglected by the private sector.

The FCA finds that these customer regulations enable FCS banks and associations to exercise their express statutory powers appropriately. Neither the Act nor its legislative history support claims by commercial bankers that the FCS is a lender of last resort that may serve only those rural credit markets that have been abandoned by other lenders. Rather, the Act requires the FCS to maintain a presence in rural credit markets at all times, thereby assuring the availability of adequate credit for agriculture, aquaculture, and other specified sectors of the rural economy. The FCS fulfills this function by financing agriculture, farm-related businesses, non-farm rural homeowners, cooperatives, and rural utilities in both good and bad economic times. The presence of the System promotes

[3] *See* John P. O'Keefe, Risk-Based Capital Standards for Commercial Banks: Improved Capital Adequacy Standards? FDIC Bank Review, Spring/Summer 1993, vol. 6, no. 1, 1–13. More recently, economists at the Federal Reserve Bank of Boston reviewed the capital ratios used to trigger regulatory intervention. They concluded that the current bank risk-based and leverage ratios are lagging indicators of a bank's financial health and suggested that a workable solution would be to raise the capital thresholds for taking prompt corrective action. *See* Joe Peek and Eric A. Rosengren, The Use of Capital Ratios to Trigger Intervention in Problem Banks: Too Little, Too Late, The New England Economic Review, September/October 1996, 49–58.

competitive behavior among other lenders that serve these markets and contributes to the preservation of a well functioning capital market for agriculture and other rural credit needs. The FCA believes that farmers would not continue to have ready access to reliable and competitive credit if the FCS ceased to exist.

The comment letters reveal a widespread misunderstanding about the System's purpose and relationship to the Federal government and to the public. Contrary to the beliefs of many commenters, the Farm Credit System is not a taxpayer-funded, government loan program. The Federal government: (1) Holds no capital stock in FCS institutions; (2) appoints no members to the boards of directors of any FCS bank or association; and (3) appropriates no funds to the System. Rather, FCS banks and associations are cooperatives that are owned and controlled by their member-borrowers.

In response to claims that commercial bankers face significantly greater regulatory burdens than the FCS, the FCA observes that its examination, enforcement, and regulatory powers over the FCS are comparable to the authorities of other Federal bank regulatory agencies. Additionally, FCS lenders are subject to regulatory capital requirements, lending limits, and loan underwriting requirements. FCS lenders are also generally subject to the same consumer credit laws as commercial bankers, such as the Truth-In-Lending Act, Real Estate Settlement Procedures Act, Equal Credit Opportunity Act, and the Home Mortgage Disclosure Act. The requirements of section 4.19 of the Act to implement specific programs to assist small, beginning, and young farmers are not dissimilar from the obligations imposed on commercial banks under the Community Reinvestment Act. Finally, the Act requires titles I and II lenders to comply with numerous borrower rights requirements for agricultural loans, which are compliance obligations unique to FCS institutions.

Comments focused on Federal guarantees of System debt and the tax status of FCS institutions also reflected many misconceptions. Certain liabilities of both FCS banks and commercial banks are insured. The financial obligations of FCS banks are insured by the Farm Credit System Insurance Corporation (FCSIC), while the deposit liabilities, up to $100,000 per depositor, of commercial banks and savings associations are insured by the Federal Deposit Insurance Corporation (FDIC). The FCA observes that the FDIC insurance fund is backed by the full faith and credit of the United States whereas the FCSIC Insurance Fund is not. Thus, there is no express Federal guarantee of System debt. In contrast, commercial banks have an explicit Federal guarantee of their deposit liabilities.

Although many commenters assume that the FCS is tax-exempt, System institutions that are chartered under sections 2.0, 3.0, 7.0, and 7.8 of the Act (PCAs, BCs, ACBs, and ACAs) are subject to Federal taxation. Thus, FCS institutions holding 63 percent of total System assets, as of September 30, 1996, are subject to Federal taxation.

b. *Safety and Soundness.* Many commercial bank commenters assert that the new customer regulations will undermine the solvency of the FCS and expose the taxpayers to risk by encouraging System lenders to expand rapidly into credit markets in which they lack expertise. The FCA has found no factual basis for this concern. The FCS has 40 years of experience in making loans for housing and other non-agricultural purposes. Strict capital requirements and improved loan underwriting standards, as well as effective regulatory oversight, will ensure that System lenders appropriately manage the risks associated with their loans. The capital provisions of this rule impose strict capital requirements on all FCS lenders which will prevent unchecked growth in System loan portfolios. The FCA has proposed new loan underwriting regulations that will require each System institution to adopt specific underwriting standards that contain measurable criteria appropriate for the type of loan and the institution's risk-bearing capacity. In addition to the strengthened capital requirements contained in this rule, the FCSIC Insurance Fund (which currently exceeds $1 billion) and the joint and several liability of all System banks on System obligations further insulate investors in System obligations.

2. Financing for Bona Fide Farmers and Ranchers

Reproposed § 613.3000 contained new definitions and provisions that addressed the System's authorities to finance the housing, domestic, and non-agricultural business needs of *bona fide* farmers, ranchers, and aquatic producers and harvesters. It would have established specific limitations on the amount of credit FCS institutions could provide for housing and domestic needs and for non-agricultural business purposes depending on whether the borrower was actively engaged in agricultural or aquatic production and other factors.

The reproposed definition of a *bona fide* farmer, rancher, or aquatic producer or harvester would have distinguished ''active farmers'' from those who owned agricultural land but are not engaged in cultivating it. The FCA received comments about this definition from the FCC, five commercial bank trade associations, and 342 commercial banks. All commenters sought modifications to § 613.3000(a)(3).

The FCC asserted that the reproposed rule defined *bona fide* farmer and rancher more restrictively than current § 613.3010(a). More specifically, the commenter claimed that the active/passive concept in reproposed § 613.3000 would unduly limit the System's ability to finance all classes of farm owners and operators. The FCC asserted that the active/passive distinction ignores the current economic realities of agriculture because it would favor parties who conduct agricultural operations over those who own land where agricultural operations take place. The FCC suggested specific revisions to § 613.3000(a)(3) that would address System concerns.

Many commercial bank commenters and their trade associations urged the FCA to abandon all efforts to amend the existing regulations. Two commercial bank trade associations objected to reproposed § 613.3000(a)(3)(i) because it would not impose a minimal amount or percentage of income that a farmer must generate from agricultural production in order to become an eligible FCS borrower. Many commercial bank commenters expressed concern that this definition would allow farmers with minimal agricultural production to borrow from the FCS for non-agricultural purposes. Two commercial bank commenters offered specific recommendations for revising the definition of a *bona fide* farmer so that only farmers who derived a significant amount of their income from agricultural production would be eligible to borrow from the FCS.

The extent to which FCS institutions could finance the other credit needs of *bona fide* farmers and ranchers generated more comments than any other provision of the reproposed regulations. Commercial banks and their trade associations asked the FCA to withdraw its proposal and retain the existing regulation. These commenters asserted that reproposed § 613.3000(d) would convert FCS banks and associations into full-service financial institutions that would primarily extend non-agricultural credit to a vastly increased number of borrowers. These

commenters state that Congress never intended for the FCS to supplant commercial banks as the principal provider of non-agricultural credit to farmers. Two commercial bank trade associations asserted that the reproposed regulation would be incompatible with Congressional intent unless, at a minimum, it required each borrower to have an outstanding agricultural or aquatic loan with a System lender.

In the event that the FCA chose to adopt the reproposed regulation, some commercial bank commenters sought revisions to § 613.3000(d) that would address their concerns about the System's ability to finance the other credit needs of farmers. Several commenters suggested that the FCA impose specific restrictions of the System's authority to finance housing for both active and passive farmers. Many commercial bank commenters suggested that only active farmers should be allowed to borrow from the FCS for their domestic needs. One commercial bank commenter stated that System institutions should be permitted to finance only basic necessities for families that live and work on farms, and suggested that the final regulation should specifically forbid farmers from borrowing from the FCS for luxuries that are unrelated to their agricultural activities.

System comments focused on the provisions of the reproposed regulation that authorize FCS banks and associations to finance the non-agricultural business needs of eligible farmers. The FCC asserted the proposed limitation on non-agricultural business financing unreasonably restricts farmer access to a reliable source of credit and the ability of the System to meet its mission. This commenter stated that the reproposed regulation would ignore the importance of off-farm employment and off-farm income to the viability and continuity of most farming operations. In the FCC's view, the limitation also conflicted with the plain language of the Act, which places no limitation on the financing of a borrower's other credit needs. The FCC suggested that the final regulation authorize System institutions to finance the non-agricultural business needs of eligible farmers to the full extent of creditworthiness.

In view of the widespread negative response to the proposed change in definitions and the accompanying limitations on financing other credit needs, the FCA has decided not to proceed with its proposed changes to the definitions or to the rules governing System financing of farmers' other credit needs. The FCA has decided to retain the definition of *bona fide* farmer or rancher in existing § 613.3010(a), redesignated as § 613.3000(a)(1) and the scope of financing provisions of § 613.3005(a), redesignated as § 613.3005.

The final regulation will continue to define a ''bona fide farmer or rancher'' as ''a person owning agricultural land, or engaged in the production of agricultural products, including aquatic products under controlled conditions.'' The FCA also retains the existing definition of ''producer or harvester of aquatic products'' in § 613.3010(d), but it has redesignated this provision as final § 613.3000(a)(4).

Existing § 613.3005(a) will continue to govern the scope of financing for both agricultural and non-agricultural purposes. The FCA recognizes that the proper role of the System in providing credit to farmers is an important policy issue on which there are different views. The Agency will continue to consider how this regulation can address both the appropriate scope of FCS lending and the significant changes in the agricultural environment, and this issue may be the subject of future rulemakings.

The FCA has deleted § 613.3005 (b) and (c) and redesignated § 613.3005(a) as final § 613.3005. Paragraphs (b) and (c) of § 613.3005 pertain to banks for cooperatives and loan policy development, respectively, and are not necessary in the final regulation. As a conforming amendment, the FCA adopts final § 613.3000(b), which clarifies (in accordance with sections 1.11 and 2.4 of the Act) that FCBs, ACBs, and direct lender associations are authorized to finance the agricultural, aquatic and other credit needs of *bona fide* farmers, ranchers and aquatic producers or harvesters. Final § 613.3000(b) replaces reproposed § 613.3000(b), (c) and (d), and it connects the definition and eligibility provision in final § 613.3000 to the scope of financing provisions in § 613.3005. Because commercial bank commenters have indicated that existing § 613.3005 addresses their concerns about System financing of the other credit needs of farmers, the FCA finds it unnecessary to address alternative solutions that these commenters offered.

Reproposed § 613.3000(a)(1) contained a definition of ''agricultural assets'' that would have determined the amount of non-agricultural credit that *bona fide* farmers, ranchers, and aquatic producers or harvesters could obtain from FCS banks and associations. Under final § 613.3005, a borrower's access to the FCS for non-agricultural credit is not dependent on the ownership of agricultural assets. As a result, a regulatory definition of ''agricultural assets'' is no longer needed, and therefore, it has been omitted from the final regulation. Under the circumstances, the FCA need not address specific suggestions by the commenters to refine reproposed § 613.3000(a)(1). The FCA has also decided not to incorporate the definition of ''agricultural land'' in reproposed § 613.3000(a)(2) into the final regulation. Rather, § 619.9025 will continue to define ''agricultural land.'' This approach is consistent with the FCA's decision to retain most of the definitions in the existing eligibility regulations.

3. Eligibility of Non-Resident Foreign Nationals

Some commercial banks and their trade associations repeated their earlier claims that the Act does not authorize non-resident foreign nationals to borrow from the FCS. The preamble to the reproposed regulation explained that the Act does not deny foreign nationals access to the FCS. In fact, FCA regulations have permitted some foreign nationals to borrow from the FCS for the past 20 years. *See* 61 FR 42103 (Aug. 13, 1996).

For this reason, final and redesignated § 613.3000(a)(3) authorizes FCS institutions to extend credit to non-resident foreign nationals who have been lawfully admitted to the United States on a visa that authorizes them to own property or operate a business. As a result, individuals who are non-resident foreign nationals would be permitted to obtain FCS financing for their agricultural or aquatic operations and other needs in the United States on the same basis as citizens and permanent residents.

4. Eligibility of Corporate Entities

Three commercial bank trade associations opposed § 613.3000 (a)(5) and (d)(4), which establishes eligibility criteria and loan purpose restrictions for legal entities that borrow from FCS banks and associations. These commenters believe that the FCS should be authorized to finance only the on-farm production activities of legal entities and, even then, only when the legal entities are wholly owned by active farmers.

The FCA notes that these recommendations are more restrictive than the requirements in existing § 613.3020(b), which neither required farmers to own all of the voting stock or equity in an eligible legal entity, nor precluded System lenders from financing the non-agricultural activities of such borrowers. The FCA had

proposed to repeal the restrictions on eligibility in existing § 613.3020(b) because they were not required by the Act. However, to address commercial bank concerns, the reproposal placed limitations on the scope of financing for other credit needs for legal entities related to ownership and involvement in agriculture. While the final rule does not include the specific restrictions on eligibility of legal entities in existing § 613.3020(b), it retains existing § 613.3005(a) (redesignated as § 613.3005), which defines the scope of lending according to the degree of involvement in agriculture.

The FCA adopts reproposed § 613.3000(a)(5) as final but redesignates it as § 613.3000(a)(2). As a result, all legal entities, including those organized under Native American tribal law, will now be eligible for FCS financing on the same basis as other farmers.

5. Financing for Processing and Marketing Operations

The FCA received comments about its reproposed processing and marketing regulation, § 613.3010, from the ABA, IBAA, and CoBank, ACB. The two commercial bank trade associations opposed provisions in the regulation that govern the level of farmer ownership of a processing and marketing unit and the requirements regarding the farmer's throughput contribution. CoBank expressed concern about intra-System competition for processing and marketing loans.

a. *Farmer Control.* The ABA and IBAA asserted that a separate processing and marketing unit is ineligible for financing under sections 1.11(a) and 2.4(a) of the Act unless *bona fide* farmers, ranchers, or aquatic producers and harvesters own 100 percent of its equity. The preamble to reproposed § 613.3010(a)(1) responded to this argument. *See* 61 FR 42106 (Aug. 13, 1996). As previously noted in that preamble, a passage in the legislative history indicates that Congress expressly contemplated joint processing and marketing ventures between agricultural producers and investors so long as ineligible parties do not ''exercise substantial control of the facility or activity financed by the loan.'' [4] Because § 613.3010(a)(1) requires agricultural or aquatic producers to own more than 50 percent of the voting stock or equity of an eligible processing and marketing operation, investors or employees who are not farmers cannot exercise ''substantial control'' over the borrower. The FCA disagrees with the opinion that any ownership by parties who are not agricultural or aquatic producers renders a processing and marketing operation ineligible for FCS financing under sections 1.11(a) and 2.4(a) of the Act.

The ABA also asserted that the regulation violates the Act because it allows a passive farm owner to obtain a processing and marketing loan from a System bank or association that operates under title I or II of the Act. A processing and marketing operation qualifies for FCS financing under the Act and § 613.3010 only if it is ''directly related'' to the borrower's agricultural or aquatic operations. Passive owners of agricultural land do not conduct a farming or ranching operation, and in such situations, they would not satisfy the eligibility criteria for a processing and marketing loan. Therefore, the FCA adopts § 613.3010(a)(1) as a final regulation without revision.

b. *Throughput Requirements.* Two commercial bank trade associations addressed the throughput requirements of § 613.3010(a)(2). The ABA asserted that allowing the FCS to finance a processing and marketing operation where the borrower provides only a minimal portion of the throughput is not authorized by the Act. The IBAA comment acknowledged that the Act permits lending to borrowers who provide minimal throughput but believes the FCA should encourage loans to applicants whose throughput exceeds 20 percent. Both commenters asked the FCA to retain the detailed paperwork requirements on FCS banks and associations in former § 613.3045.

The preambles to the proposed and reproposed regulations responded to these arguments. *See* 60 FR 47107 (Sept. 11, 1995); 61 FR 42107 (Aug. 13, 1996). The FCA concludes that the new regulation implements the Act by requiring that the processing and marketing operations be ''directly related'' to the borrower's agricultural or aquatic activities and requiring the borrower or its owner to contribute ''some portion'' of the throughput. Compliance with the eligibility requirements for processing and marketing loans is adequately assured through the internal policies of FCS institutions and the FCA's examination and enforcement powers. Furthermore, it should be noted that the statute limits loans where less than 20 percent of throughput is provided by the borrower to 15 percent of outstanding loans.

c. *Intra-System Competition.* CoBank, ACB opposed the FCA's decision to rescind its original proposal to prohibit titles I and II lenders from financing borrowers who are eligible for credit under title III of the Act. CoBank's most recent comments about intra-System competition focused exclusively on processing and marketing loans. The commenter cited passages in the legislative history that indicate that titles I and II lenders were not granted new authorities to finance the processing and marketing operations of previously ineligible borrowers. The commenter also relied on other passages in the legislative history that indicate that Congress did not contemplate full-scale competition for processing and marketing loans between FCS institutions that operate under different titles of the Act.

The Act sets forth different eligibility criteria for processing and marketing operators that are financed by FCBs and direct lender associations from those financed by title III banks. Final § 613.3010 implements these statutory provisions, and therefore, it prevents unrestrained intra-System competition for processing and marketing loans. FCBs and their affiliated associations currently finance some of those few processing and marketing operators that are simultaneously able to satisfy the eligibility criteria in title I or II and title III of the Act. The FCA is disinclined to adopt regulatory provisions that would restrict FCBs' and associations' exercise of their statutory authorities.

6. Financing Farm-Related Businesses

Four commercial bank trade associations and 15 commercial banks submitted comments to the FCA about reproposed § 613.3020, which authorizes FCS banks and associations that operate under titles I and II of the Act to finance farm-related businesses. Although one commenter acknowledged that the FCA had revised § 613.3020 to address many of the concerns that commercial bankers expressed about the original proposal, several commenters continued to raise objections to other provisions of the reproposed regulations regarding farm-related businesses.

a. *On-Farm Requirement.* One commercial bank trade association opposed the repeal of § 619.9120, which requires an eligible farm-related business to furnish services on the farms and ranches of its customers. This commenter believes that this ''on farm'' requirement is mandated by sections 1.11(c)(1) and 2.4(a)(3) of the Act and their legislative history. The FCA has concluded that neither the literal language of the statute nor its legislative history require an eligible farm-related business to actually perform services on the customer's property. *See* 44 FR 69631 (Dec. 4, 1979); 60 FR 47108 (Sept.

[4] Colloquy between Senators Stewart and Zorinsky, 126 Cong. Rec. 16560 (Dec. 13, 1980).

11, 1995); 61 FR 42107 (Aug. 13, 1996). The commenter cited a passage in the legislative history that indicates that off-farm storage and processing facilities qualify as eligible farm-related businesses. Accordingly, the FCA retains language of the reproposed regulation. *See* 61 FR 42119 (Aug. 13, 1996).

b. *Custom-Type Services.* Commercial bank commenters continued to oppose the FCA's decision to repeal existing regulatory provisions that require eligible borrowers to furnish ''custom-type'' services to farmers and ranchers. Custom-type services are tasks that farmers and ranchers can perform for themselves, but instead hire outside contractors to perform. Although sections 1.11(c)(1) and 2.4(a)(3) of the Act do not mention custom-type services, some commenters insist that the statute requires eligible farm-related business borrowers to perform only such services. Another commenter disputed statements in the earlier preambles that the Act authorizes System lenders to finance businesses that offer farmers and ranchers technologically advanced services, such as the aerial or computer mapping of crop and soil conditions.

Sections 1.11(c)(1) and 2.4(a)(3) of the Act require that eligible borrowers furnish farm-related services that are ''directly related'' to the on-farm operating needs of farmers and ranchers. Examples of permissible farm-related services mentioned in the legislative history are clearly illustrative and do not exclude other services, including technologically advanced services that directly assist farmers and ranchers in agricultural production. Indeed, a commercial bank trade association noted a passage in the legislative history that aerial crop dusting would be a permissible service, yet this presumably is not an activity that most farmers typically perform themselves.

Two commercial bank trade associations suggested that the FCA incorporate a specific list of eligible farm-related businesses into the final regulation. The suggested approach could prevent FCS banks and associations from financing farm-related businesses that are eligible to borrow under sections 1.11(c)(1) and 2.4(a)(3) of the Act. Although the previous preambles contained examples of permissible services, they were illustrative only, and not intended as a complete list of permissible services. Even if it were possible to compile a comprehensive list today, dynamic advances in the farm services industry would quickly render it obsolete.

For this reason, and those previously provided, the FCA adopts as final the repeal of the requirement that eligible farm-related businesses furnish only ''custom-type'' services to farmers and ranchers. *See* 60 FR 47108 (Sept. 11, 1995); 61 FR 42107 (Aug. 13, 1996).

c. *Whole-Firm Financing.* Three commercial bank trade associations objected to the regulatory provisions that authorize: (1) ''Whole firm'' financing to a business that derives more than 50 percent of its income from furnishing farm-related services; and (2) financing only for the farm-related services portion of a business that derives less than 50 percent of its income from furnishing such services. Two commenters claim that the Act authorizes FCS lenders to extend credit only to parties who derive a majority of their income from farm-related services. Three commenters also claimed that § 613.3020 is unenforceable because money is fungible, and businesses generally do not keep separate sets of books for services and sales of goods. Under these circumstances, the commenters argue that the FCA will be unable to monitor the borrower's use of FCS funds to ensure that only farm-related activities are financed.

The FCA concludes that final § 613.3020 complies with the Act because it restricts the FCS to financing entities that are primarily devoted to farm-related service activities or if the borrower is not primarily devoted to farm-related services, financing is restricted to a level that such activities are accomplished in relation to the whole business. The FCA has sufficient examination and enforcement powers to ensure that FCS institutions comply with these regulations. As is the case with all loans, routine examination of loan files will determine whether each FCS institution has documented the eligibility of borrowers who obtain financing for a farm-related business.

7. Financing Non-Farm Rural Homes

The FCC, two FCS associations, five commercial bank trade associations, and two commercial banks commented about various aspects of reproposed § 613.3030, which governs non-farm rural home loans.

a. *Owner-Occupied Dwellings.* Three commercial bank trade associations and one commercial bank opposed the proposed elimination of the existing regulatory requirement that the borrower occupy the dwelling. According to these commenters, the Act does not authorize FCS institutions to finance non-farm rural homes that are tenant-occupied.

The FCA observes that neither sections 1.9(3), 1.11(b), and 2.4(b) of the Act nor their legislative history require the borrower to occupy a house which is financed by the FCS. As the FCA observed in the preamble to the reproposed regulation, the repeal of the owner-occupancy requirement advances the rationale of the System's rural home finance authority, which is to ensure the availability of affordable housing for rural residents. *See* 61 FR 42109 (Aug. 13, 1996). The statutory requirement that the FCS finance housing for rural residents is satisfied because the regulation requires either the owner or a tenant to occupy the rural home as a principal residence.

b. *Definition of Rural Area.* Under reproposed § 613.3030(a)(3), a ''rural area'' is defined as ''open country within a State or the Commonwealth of Puerto Rico, which may include a town or village that has a population of not more than 2,500 persons.'' The FCA received comments about this definition from the FCC and the IBAA. For the reasons explained below, the FCA adopts the language of § 613.3030(a)(3) as reproposed.

The FCA proposed the repeal of a provision in existing § 613.3040(a)(3) that authorized FCS lenders to make home loans in open agricultural areas within the political boundaries of ''towns'' where the population exceeds 2,500 inhabitants, subject to Agency prior approval. The FCC asked the FCA to reinstate a provision in the final rule that would allow FCS lenders to make loans in open, undeveloped countryside which is devoted to agricultural production even if it has been annexed by a ''town'' with more than 2,500 inhabitants. In the commenter's opinion, the fact that this authority has been rarely used in the past does not justify its repeal. If this provision is omitted from the final regulation the FCC asked the FCA to ''grandfather'' all exemptions that have already been granted under § 613.3040(a)(3).

The FCA declines to retain the regulatory provision that permits FCS banks and associations to finance non-farm rural housing in ''towns'' where the population exceeds 2,500 inhabitants. As the FCA explained in the preamble to the reproposed regulation, the existing provision is confusing and this exception has rarely been used. *See* 61 FR 42110 (Aug. 13, 1996). All exemptions that the FCA granted under former § 613.3040(c) will continue to be areas in which rural home loans may be made as long as they meet the conditions upon which they were approved.

The IBAA requested that the FCA amend § 613.3030(a)(3) so it authorizes FCS institutions to make non-farm rural housing loans only in areas where agricultural enterprises predominate. The commenter believes that this restriction is necessary so FCS institutions do not finance housing in metropolitan areas. The commenter's concern is already addressed, however, because § 613.3030(a)(3) defines a rural area as ''open country'' and limits System rural home lending to communities where the population does not exceed 2,500 inhabitants. These restrictions effectively prevent FCS lenders from financing housing in urban and suburban areas.

c. *Moderately Priced Housing.* Reproposed § 613.3030(a)(4) established a two-tier definition of ''moderately priced housing.'' Under reproposed § 613.3030(a)(4)(i), a rural home is moderately priced if it satisfies the criteria in section 8.0 of the Act, thereby qualifying as collateral for securities that are guaranteed by the Federal Agricultural Mortgage Corporation (Farmer Mac). In the alternative, § 613.3030(a)(4)(ii) would allow FCS lenders to finance rural homes that are below the 75th percentile of housing values for the rural area where they are located, as determined by data from a credible, independent, and recognized national or regional source, such as a Federal, State, or local government agency, or an industry source. The FCA received no comments about the Farmer Mac standard in § 613.3030(a)(4)(i), but the FCC, two FCS associations, and two commercial bank trade associations sought revisions to § 613.3030(a)(4)(ii).

The FCC petitioned the FCA to omit the 75th percentile ceiling from the final regulation and rely, instead, on the overriding requirement that the FCS finance only moderately priced housing. The commenter expressed concern that the regulatory ceiling may unnecessarily curtail the System's ability to finance moderately priced rural housing. As an alternative, the commenter suggested that the final regulation establish the 75th percentile as a general guideline, while maintaining the overriding standard that financing provided would be on moderately priced homes.

In response to the comments, the final regulation provides that non-farm rural housing is automatically deemed to be moderately priced if it meets either the Farmer Mac criteria, or it falls below the 75th percentile of housing values for the area where it is located, as determined by a credible, independent, and recognized national or regional source. In addition, FCS institutions will be permitted to finance rural housing that exceeds the 75th percentile of housing values in a rural area only if they determine that the housing in question is moderately priced for the rural community where it is located, using data from a credible, independent, and recognized national or regional source. The FCA expects System institutions to fully document information that justifies a decision to finance homes as moderately priced that exceed the 75th percentile for housing values in the locale where such loans are made. This approach will give System institutions the flexibility to serve non-farm rural homeowners, while implementing the statutory requirement that the FCS finance only moderately priced homes.

Two FCS associations suggested that Federal Home Loan Mortgage Corporation (Freddie Mac) or Federal National Mortgage Association (Fannie Mae) limits determine the moderately priced standard for FCS rural home lending. The FCA previously declined this recommendation. *See* 61 FR 42111 (Aug. 13, 1996). Freddie Mac and Fannie Mae maximum loan amounts may not be generally representative of moderately priced housing in rural areas because they include housing values in urban and suburban communities. Furthermore, the Freddie Mac and Fannie Mae maximum loan amounts are not universally accepted measures of moderately priced housing. Instead, they are based on loan amounts.

Two commercial bank trade associations do not believe that § 613.3030(a)(4)(ii) should allow FCS institutions to determine moderately priced housing values in their territories. These commenters expressed concern that the FCA will not be able to take corrective action against System institutions that have closed loans on expensive homes prior to examination. As an alternative, these commenters asked the FCA to adopt a uniform national standard so that FCS rural home lending is specifically targeted to low and middle income rural residents. The commenters did not explain whether they wanted the FCA to prescribe a single price that would apply nationwide or a nationally recognized standard that takes regional variations of prices into account.

The FCA has incorporated Farmer Mac's national standard for moderately priced rural housing into the final regulation. As long as FCS institutions adhere to the statutory requirement that they finance only moderately priced rural homes, the FCA believes that they should be allowed to select other measures of moderately priced housing that are supported by data from a credible, independent, and recognized national or regional source. The FCA has not been able to identify a regionally focused standard for valuing moderately priced homes that is not influenced by housing values in metropolitan areas. Although the FCA originally proposed that FCS institutions use the most recent edition of the Census of Housing, General Housing Characteristics, published by the United States Bureau of Census to determine moderately priced housing in their territories, (*See* 60 FR 47118 (Sept. 11, 1995)), the FCA subsequently withdrew this proposal in large measure because commercial banks asserted that Census data inflated housing values in rural areas that are near metropolitan areas. *See* 61 FR 42110 (Aug. 13, 1996). Commercial bank commenters have not identified any credible or reliable national standard that reflects moderately priced rural home values.

The FCA believes that § 613.3030(a)(4)(ii) will effectively restrain FCS lenders from financing rural homes that are not moderately priced. The regulation requires each FCS lender to demonstrate that it used a credible, independent, and recognized source to ascertain moderately priced housing values in the specific locale where it makes rural home loans. Any rural home loan for a home that is not moderately priced is an ineligible loan. The FCA's enforcement powers are sufficient to deter such violations. For these reasons, the FCA adopts § 613.3030(a)(4) as a final regulation without revision.

d. *Loan Purposes.* The FCA's original proposal would have imposed no restrictions on the use of the proceeds from a loan that was secured by the borrower's rural home. *See* 60 FR 47110 (Sept. 11, 1995). The FCA responded to commercial bank concerns by rescinding this proposal and restoring the loan purpose restrictions in the existing regulation. *See* 61 FR 42111 (Aug. 13, 1996). As a result, reproposed § 613.3030(c) states that FCS institutions may make loans to rural homeowners for the purpose of buying, building, remodeling, improving, repairing rural homes, and refinancing the existing indebtedness thereon. The preamble to the reproposed regulation explained that System lenders are not precluded from offering revolving credit lines to eligible rural home borrowers so long as such loans are limited to purposes specified in § 613.3030(c). *See* 61 FR 42111 (Aug. 13, 1996).

The FCC and three FCS associations opposed the FCA's decision to reinstate the purpose restrictions into the regulation because the System will not be allowed to offer a full range of loan

products to non-farm rural homeowners. System commenters opined that the FCA's original proposal is compatible with both the Act and safe and sound lending practices. For these reasons, System commenters petitioned the FCA to omit the purpose restrictions from the final regulation. As an alternative, these commenters suggested that the final regulation require that the loan must be predominately for the purposes specified in § 613.3030(c).

The final regulation retains the purpose restrictions in § 613.3030(c) without revision. The FCA has decided at this time that rural homeowners qualifying under § 613.3030 should be required to use the proceeds of a System loan for the dwelling only.

The ABA and the IBAA challenged the preamble statement about the System's authority to offer revolving credit lines to non-farm rural homeowners if the loan proceeds are used for the purposes specified in § 613.3030(c). These commenters believe that the FCA is granting System lenders new authorities to expand into the home equity mortgage market, which they claim is adequately served by other lenders. Because non-farm rural home loans cannot exceed 15 percent of each FCS institution's loan portfolio, one commenter suggested that the FCA should require System banks and associations to finance only the purchase and construction of rural homes. Both commenters inquired how the FCA will ensure that loan proceeds are not diverted for purposes that are not authorized by the regulation.

Contrary to the commenters' beliefs, neither § 613.3030(c) nor its preamble confer new powers on FCS banks and associations. Instead, they restate the System's existing rural home lending authorities. The Act and other FCA regulations do not restrict the types of loan products that System institutions may offer their customers for permissible loan purposes. For this reason, both the existing and new regulations allow non-farm rural homeowners to obtain revolving credit lines from FCS banks and associations so long as the loan proceeds are used for specified housing purposes. As before, FCS institutions will still be required to maintain policies, procedures, and sufficient loan controls that prevent non-farm rural home borrowers from using loan proceeds for purposes that are not authorized by the regulation. The FCA will continue to use its examination and enforcement powers to ensure that FCS institutions comply with § 613.3030(c).

Neither the Act nor its legislative history support commercial bank claims that the FCS cannot offer home repair and improvement loans to rural residents who are not farmers unless such credit is unavailable elsewhere. Several passages of the legislative history confirm that Congress specifically contemplated that the FCS would finance the repair, improvement, and remodeling of non-farm rural homes.[5] The legislative history also reveals that Congress specifically considered and rejected proposals that would have required credit to be unavailable from other mortgage lenders before rural residents who were not farmers, ranchers, or aquatic producers and harvesters could obtain FCS financing for their housing needs.[6]

8. Financing Domestic and International Activities by Title III Lenders

CoBank, the ABA, and IBAA commented on §§ 613.3100 and 613.3200, which govern domestic and international lending by title III banks. While CoBank acknowledged that the FCA had addressed its concerns about the original proposal, and it sought no further changes to these regulations, the two bank trade associations continued to oppose § 613.3100(a)(5) because it would allow a BC or ACB to finance cooperatives that provide business and financially related services to their members. These two trade associations repeated their claim that Congress intended for title III banks to finance only cooperatives that aid production agriculture. The FCA responded to this opinion in the preamble to the reproposed regulation, which documented that § 613.3100(a)(5) is supported by both the plain language of section 3.8(a) of the Act and its legislative history. *See* 61 FR 42112 (Aug. 13, 1996).

However, the IBAA's most recent comment letter relies on a statement that a Senator made in 1971 to allege that the FCA misconstrued the statute. The Senator stated that the Act does not allow title III banks to finance cooperatives unless a majority of its members ''are in fact engaged in agricultural or aquatic pursuits as their major function.'' [7]

The Senator's comments address eligibility, not scope of financing, for cooperatives that borrow from title III banks. Accordingly, the Senator's statement does not support the claim that title III banks lack authority to finance eligible service cooperatives that provide business and financially related services to farmers, ranchers, aquatic producers and harvesters, and their cooperatives.

Both the Act and its legislative history reveal that Congress specifically contemplated that title III banks would finance cooperatives that provide electricity, telephone service, and insurance services to farmers. Furthermore, in 1980 and 1996, Congress relaxed the farmer-membership requirements for service cooperatives. The FCA adopts §§ 613.3100 and 613.3200 as final regulations without revision.

9. Participating in Similar Entity Loans

Reproposed § 613.3300 implements the recently added authority for FCS banks and associations to participate in loans that non-System lenders make to similar entities, i.e. ineligible persons whose operations are functionally similar to those of eligible borrowers. Two commercial bank trade associations opposed this regulation because they believe that the new customer regulations confer eligibility on parties that Congress regards as similar entities. As a result, these commenters claim that the new similar entity regulation will permit FCS institutions to participate in non-agricultural loans. One of these commenters requested that the FCA identify parties who will qualify as similar parties under § 613.3300.

The FCA has already responded to these concerns in the preambles to both the proposed and reproposed regulations. The FCA again reaffirms that § 613.3300 is within the parameters of the Act, and it closely tracks the language of the statute. Furthermore, § 613.3300(b) expressly prohibits FCS institutions from participating in non-agricultural loans to similar entities, and the FCA previously denied System requests to delete this purpose restriction from the regulation. *See* 61 FR 42116 (Aug. 13, 1996). Finally, the preamble to the proposed regulation identified four parties who qualify as similar entities for FCS banks and associations that operate under titles I and II of the Act. *See* 60 FR 47115 (Sept. 11, 1995). The FCA declines to incorporate a list of similar entities into the regulation for the reasons explained in the preamble to the reproposed regulation. *See* 61 FR 42115 (Aug. 13, 1996). The commenters have raised no other issues about similar entities, and the FCA now adopts § 613.3300 as a final regulation without further amendment.

[5] See 117 Cong. Rec. S12496 (Jul. 29, 1971); 117 Cong. Rec. S19970 (Dec. 1, 1971).

[6] H.R. Rep. 92–593, 92nd Cong., 1st. Sess., (Oct. 23, 1971), p.12.

[7] 117 Cong. Rec. S12498 (July 29, 1971).

10. Other Proposed Amendments

The FCA received no comments about the proposed amendments to parts 614, 618, 619, and 626. These regulations are now adopted as final regulations without revision, except for amendments to conform regulation citations in subpart A of part 614 and § 619.9025 in part 619. The conforming changes to subpart A of part 614 will be addressed within FCA's final rule on loan underwriting and § 619.9025 is retained without revision.

IV. Regulatory Impact and FCA Regulatory Philosophy

These final regulations are consistent with the FCA Board's Policy Statement on Regulatory Philosophy and achieve the Board's objective of creating an environment that promotes the confidence of borrowers/shareholders, investors and the public in the System's financial strength and future viability. *See* 60 FR 26034 (May 16, 1995). The objective of the final revisions to the capital adequacy regulations is to establish standards that encourage the building of a sound capital structure by System institutions. The building of a sound capital structure at each institution would improve the likelihood of an institution's survival during periods of economic stress and thereby improve the safety and soundness of the System as a whole. The FCA believes that these final regulations provide a meaningful measurement of capital adequacy and would be appropriate for all System institutions to which they apply.

The capital adequacy provisions of this rule would apply to all System banks, associations, and the Leasing Corporation. During the last 5 years, most of these institutions have been steadily increasing both types of surplus identified by the reproposed regulations, and the FCA estimates that most, if not all, of the institutions would achieve the minimum standards in less than 7 years if these trends continue.

The final amendments to the customer eligibility regulations would remove some of the existing restrictions that are not required by the Act or necessary to implement it.

List of Subjects

12 CFR Part 613

Agriculture, Banks, Banking, Credit, Rural areas.

12 CFR Part 614

Agriculture, Banks, Banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, Banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

12 CFR Part 619

Agriculture, Banks, Banking, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, Banking, Reporting and recordkeeping requirements, 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, 615, 618, 619, 620, and 626 of chapter VI, title 12 of the Code of Federal Regulations are amended 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. Subpart D (§§ 613.3110 and 613.3120) is removed.

Subpart E—Nondiscrimination in Lending

§§ 613.3145, 613.3150, 613.3151, 613,3152, 613.3160, 613.3170, 613.3175 (Subpart E) [Redesignated as Part 626]

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.

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

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

Sec.

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

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

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) *Bona fide farmer or rancher* means a person owning agricultural land or engaged in the production of agricultural products, including aquatic products under controlled conditions.

(2) *Legal entity* means any partnership, corporation, estate, trust, or other legal entity that is established pursuant to the laws of the United States, any State thereof, the Commonwealth of Puerto Rico, the District of Columbia, or any tribal authority and is legally authorized to conduct a business.

(3) *Person* means an individual who is a citizen of the United States or a foreign national who has been lawfully admitted into the United States either 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 or a legal entity.

(4) *Producer or harvester of aquatic products* means a person engaged in producing or harvesting aquatic products for economic gain in open waters under uncontrolled conditions.

(b) *Eligible borrower.* Farm Credit institutions that operate under titles I or II of the Act may provide financing to a bona fide farmer or rancher, or producer or harvester of aquatic products for any agricultural or aquatic purpose and for other credit needs.

§ 613.3005 Lending objective.

It is the objective of each bank and association, except for banks for cooperatives, to provide full credit, to the extent of creditworthiness, to the full-time bona fide farmer (one whose primary business and vocation is farming, ranching, or producing or harvesting aquatic products); and conservative credit to less than full-time farmers for agricultural enterprises, and more restricted credit for other credit

requirements as needed to ensure a sound credit package or to accommodate a borrower's needs as long as the total credit results in being primarily an agricultural loan. However, the part-time farmer who needs to seek off-farm employment to supplement farm income or who desires to supplement off-farm income by living in a rural area and is carrying on a valid agricultural operation, shall have availability of credit for mortgages, other agricultural purposes, and family needs in the preferred position along with full-time farmers. Loans to farmers shall be on an increasingly conservative basis as the emphasis moves away from the full-time bona fide farmer to the point where agricultural needs only will be financed for the applicant whose business is essentially other than farming. Credit shall not be extended where investment in agricultural assets for speculative appreciation is a primary factor.

§ 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) own more than 50 percent of the voting stock or equity; and

(2) The borrower or an owner of the borrowing legal entity regularly 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 regularly supply 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'' includes loans, loan participations, and other interests in loans that are either bought without recourse or sold with recourse.

§ 613.3020 Financing for farm-related service businesses.

(a) *Eligibility.* An individual or legal entity that furnishes farm-related services to farmers and ranchers that are directly related to their agricultural production is eligible to borrow from a Farm Credit bank or association that operates under titles I or II of the Act.

(b) *Purposes of financing.* A Farm Credit Bank, agricultural credit bank, or direct lender association may finance:

(1) All of the farm-related business activities of an eligible borrower who derives more than 50 percent of its annual income (as consistently measured on either a gross sales or net sales basis) from furnishing farm-related services that are directly related to the agricultural production of farmers and ranchers; or

(2) Only the farm-related services activities of an eligible borrower who derives 50 percent or less of its annual income (as consistently measured on either a gross sales or net sales basis) from furnishing farm-related services that are directly related to the agricultural production of farmers and ranchers.

§ 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 open country within a State or the Commonwealth of Puerto Rico, which may include a town or village that has a population of not more than 2,500 persons.

(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 otherwise determined to be moderately priced for housing values for the rural area where it is located, as documented by data from a credible, independent, and recognized national or regional source, such as a Federal, State, or local government agency, or an industry source. Housing values at or below the 75th percentile of values reflected in such data will be deemed moderately priced.

(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) *Purposes of financing.* Loans may be made to rural homeowners for the purpose of buying, building, remodeling, improving, repairing rural homes, and refinancing existing indebtedness thereon.

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

(1) *Cooperative* means any association of farmers, ranchers, producers or harvesters of aquatic products, or any federation of such associations, or a combination of such associations and farmers, ranchers, or producers or harvesters of aquatic products that 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 to 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 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 of cooperatives.* A bank for cooperatives or an agricultural credit bank may lend to a cooperative that satisfies the following requirements:

(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 provide or will provide needed services to a community, and are or will be in competition 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 non-members, 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 complies 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.

(iv) Any cooperative that has received a loan from a bank for cooperatives or an agricultural credit bank shall, without regard to the requirements in paragraph (b)(1)(i) of this section, continue to be eligible for as long as more than 50 percent (or such higher percentage as is established by the bank board) of the voting control of the cooperative is held by farmers, ranchers, producers or harvesters of aquatic products, or other eligible cooperatives.

(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 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 either paragraphs (b)(1)(i)(A) and (b)(1)(iii) of this section, or paragraph (b)(1)(iv) 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 or harvesters who are its members.

(c) *Electric and telecommunication utilities.*

(1) *Eligibility.* A bank for cooperatives or an agricultural credit bank may lend to:

(i) Electric and telephone cooperatives as defined by section 3.8(a)(4)(A) of the Act that satisfy the eligibility criteria in paragraph (b)(1) of this section;

(ii) Cooperatives and 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) Are eligible under the Rural Electrification Act of 1936, as amended, for a loan, loan commitment, or loan guarantee from the Rural Utilities Service or the Rural Telephone Bank.

(iii) The subsidiaries of cooperatives or other entities that are eligible under paragraph (c)(1)(ii) of this section.

(iv) 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)(ii) 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.

(v) Any legal entity in which an eligible utility under paragraph (c)(1)(ii) of this section has an ownership interest, provided that if such interest is less than 50 percent, financing shall not exceed the percentage that the eligible utility owns in such entity multiplied by the value of the total assets of such entity.

(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 in a rural area. A subsidiary that is eligible to borrow under paragraph (c)(1)(iii) of this section may also obtain financing from a bank for cooperatives or agricultural credit bank to operate a licensed cable television utility.

(d) *Water and waste disposal facilities.*

(1) *Eligibility.* A cooperative or a public agency, 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) *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 imports, exports, or international business operations 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 multi-lender 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) *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 cooperatives 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.

(d) *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 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.

(3) 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.

(4) All approvals required under paragraph (d) 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.

PART 614—LOAN POLICIES AND OPERATIONS

4a. The authority citation for part 614 continues 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, 2279–2, 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. 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.

* * * * *

6. 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

7. 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]

8. Section 614.4610 is amended by removing the words ''an 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(d)''.

Subpart Q—Banks for Cooperatives Financing International Trade

9. The heading for subpart Q is amended by adding after the words ''Banks for Cooperatives'' the words ''and Agricultural Credit Banks''.

§ 614.4700 [Amended]

10. 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) introductory text, (b), and (h).

§ 614.4710 [Amended]

11. Section 614.4710 is amended by adding after the words ''banks for cooperatives'' the words ''and agricultural credit banks'' each place they appear 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) introductory text, (a)(1)(i), (a)(3), (a)(5) and (b)(1).

§ 614.4720 [Amended]

12. 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]

13. 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]

14. 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) introductory text and (b).

§ 614.4900 [Amended]

15. Section 614.4900 is amended by adding after the words ''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 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

16. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

17. Section 615.5200 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 615.5200 General.

(a) The Board of Directors of each Farm Credit System institution shall determine the amount of total capital, core surplus, total surplus, and unallocated surplus needed to assure the institution's continued financial viability and to provide for growth necessary to meet the needs of its borrowers. The minimum capital standards specified in this part are not meant to be adopted as the optimal capital level in the institution's capital adequacy plan. Rather, the standards are intended to serve as minimum levels of capital that each institution must maintain to protect against the credit and other general risks inherent in its operations.

(b) Each Board of Directors shall establish, adopt, and maintain a formal written capital adequacy plan as a part of the financial plan required by § 618.8440 of this chapter. The plan shall include the capital targets that are necessary to achieve the institution's capital adequacy goals as well as the minimum permanent capital and surplus standards. The plan shall address any projected dividends, patronage distribution, equity retirements, or other action that may decrease the institution's capital or the components thereof for which minimum amounts are required by this part. The plan shall set forth the circumstances in which retirements or revolvements of stock or equities may occur. If the plan provides for retirement or revolvement of equities included in core surplus, in connection with a loan default or the death of a former borrower, the plan must require the institution to make a prior determination that such retirement or revolvement is in the best interest of the institution, and also require the institution to charge off an amount of the indebtedness on the loan equal to the amount of the equities that are retired or canceled. In addition to factors that must be considered in meeting the minimum standards, the board of directors shall also consider at least the following factors in developing the capital adequacy plan:

* * * * *

§ 615.5201 [Amended]

18. Section 615.5201 is amended by adding the words ''Federal land credit association,'' after the words ''Federal land bank association,''; and by removing the words ''National Bank for Cooperatives,'' and adding in their place, the words ''agricultural credit bank,'' in paragraph (g); and redesignating paragraphs (j)(5) and (j)(6) as paragraphs (j)(6) and (j)(7); and by adding a new paragraph (j)(5) to read as follows:

§ 615.5201 Definitions.

* * * * *

(j) * * *

(5) Term preferred stock with an original maturity of at least 5 years and on which, if cumulative, the board of directors has the option to defer dividends, provided that, at the beginning of each of the last 5 years of the term of the stock, the amount that is eligible to be counted as permanent capital is reduced by 20 percent of the original amount of the stock (net of redemptions);

* * * * *

19. Section 615.5205 is revised to read as follows:

§ 615.5205 Minimum permanent capital standard.

Each institution shall at all times maintain permanent capital at a level of at least 7 percent of its risk-adjusted asset base.

20. Section 615.5210 is amended by removing paragraphs (f)(2)(i)(D) and (f)(2)(v)(D); redesignating paragraph (f)(2)(v)(E) as new paragraph (f)(2)(v)(D); adding a new paragraph (e)(10); and revising paragraphs (e)(7) and (f)(2)(i)(C) to read as follows:

§ 615.5210 Computation of the permanent capital ratio.

* * * * *

(e) * * *

(7) Each institution shall deduct from its total capital an amount equal to all goodwill, whenever acquired.

* * * * *

(10) The permanent capital of an institution shall exclude the net impact of unrealized holding gains or losses on available-for-sale securities.

(f) * * *

(2) * * *

(i) * * *

(C) Goodwill.

* * * * *

§ 615.5216 [Removed and reserved]

21. Section 615.5216 is removed and reserved.

Subpart I—Issuance of Equities

§ 615.5220 [Amended]

22. Section 615.5220 is amended by removing paragraph (f), redesignating existing paragraphs (g), (h), and (i) as paragraphs (f), (g), and (h), respectively; by removing the words ''may be more than, but'' each place they appear in paragraphs (d) and (e); by adding the words '', agricultural credit banks (with respect to loans other than to cooperatives),'' after the words ''For Farm Credit Banks'' in paragraph (d); by adding the words ''and agricultural credit banks (with respect to loans to cooperatives)'' after the words ''For banks for cooperatives'' in paragraph (e); and by removing the words ''(including interim standards)'' in newly designated paragraph (f).

§ 615.5230 [Amended]

23. Section 615.5230 is amended by removing the words ''preferred stock to be issued to the Farm Credit System Financial Assistance Corporation and'' in paragraph (b)(1).

24. Section 615.5240 is amended by removing paragraph (b); redesignating the introductory paragraph and paragraph (a) introductory text as paragraphs (a) and (b) introductory text, respectively; adding new paragraphs (b)(3) and (c); and revising newly designated paragraphs (a) and (b)(2) to read as follows:

§ 615.5240 Permanent capital requirements.

(a) The capitalization bylaws shall enable the institution to meet the minimum permanent capital adequacy standards established under subparts H and K of this part and the total capital requirements established by the board of directors of the institution.

(b) * * *

(2) For perpetual preferred stock issued to persons other than the Farm Credit System Financial Assistance Corporation:

* * * * *

(3) For term preferred stock:

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain, other than the original maturity date, or upon the happening of any event, such as repayment of the loan;

(ii) Retirement must be at not more than book value;

(iii) Dividends may be cumulative, but the board of directors must have the option to defer payment; and

(iv) Disclosure must have been made pursuant to § 615.5250 of the nature of the investment and the terms and conditions under which it is issued.

(c) Once an institution's board of directors has made a determination that the institution's capital position is adequate, the institution's board of directors may delegate to management the decision whether to retire borrower stock, provided that:

(1) Any such retirements are in accordance with the institution's capital adequacy plan or capital restoration plan;

(2) The institution's permanent capital ratio will be in excess of 9 percent after any such retirements;

(3) The institution meets and maintains all applicable minimum surplus and collateral standards; and

(4) The aggregate amount of stock purchases, retirements, and the net effect of such activities are reported to the board of directors each quarter.

§ 615.5250 [Amended]

25. Section 615.5250 is amended by removing paragraph (c); redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively; by removing the words ''(including interim standards)'' in paragraphs (a)(4)(ii) and newly designated (c)(3); and by removing the words '', including interim standards'' in paragraph (a)(4)(iii).

Subpart J—Retirement of Equities

§ 615.5260 [Amended]

26. Section 615.5260 is amended by adding the word ''or'' at the end of paragraph (a)(2)(i); removing ''; or'' at the end of paragraph (a)(2)(ii) and inserting a period in its place; and by removing paragraphs (a)(2)(iii) and (d).

§ 615.5270 [Amended]

27. Section 615.5270 is amended by removing the words ''(including interim standards)''; and adding the words ''or term stock at its stated maturity'' after the reference ''§ 615.5290'' in paragraph (b).

28. Subpart K is revised to read as follows:

Subpart K—Surplus and Collateral Requirements

Sec.

Subpart K—Surplus and Collateral Requirements

§ 615.5301 Definitions.

For the purposes of this subpart, the following definitions shall apply:

(a) The terms *institution, permanent capital, risk-adjusted asset base,* and *total capital* shall have the meanings set forth in § 615.5201.

(b) *Core surplus.*

(1) Core surplus means:

(i) Undistributed earnings/unallocated surplus less, for associations only, an amount equal to the net investment in the bank;

(ii) Nonqualified allocated equities that are not distributed according to an established plan or practice, *provided that,* in the event that a nonqualified patronage allocation is distributed, other than as required by section 4.14B of the Act, or in connection with a loan default or the death of an equityholder whose loan has been repaid (to the extent provided for in the institution's capital adequacy plan), any remaining nonqualified allocations that were allocated in the same year will be excluded from core surplus.

(iii) Perpetual common or noncumulative perpetual preferred stock that is not retired according to an established plan or practice, *provided that,* in the event that stock held by a borrower is retired, other than as required by section 4.14B of the Act or in connection with a loan default to the extent provided for in the institution's capital plan, the remaining perpetual stock of the same class or series shall be excluded from core surplus;

(iv) A capital instrument or a particular balance sheet entry or account that the Farm Credit Administration has determined to be the functional equivalent of a component of core surplus. The Farm Credit Administration may permit an institution to include all or a portion of such instrument, entry, or account as core surplus, permanently or on a temporary basis, for purposes of this subpart.

(2) For associations only, other allocated equities may also be included in the core surplus ratio to the extent permitted by § 615.5330(b)(3) if the following conditions are met:

(i) The allocated equities are includible in total surplus; and

(ii) The allocated equities, if subject to revolvement, are not scheduled for revolvement during the next 3 years.

(3) The deductions required to be made by an institution in the computation of its permanent capital pursuant to § 615.5210(e) (6) and (7) shall also be made in the computation of its core surplus.

(4) Core surplus shall not include equities held by other System institutions unless approved pursuant to paragraph (b)(1)(iv) of this section.

(5) The net impact of unrealized holding gains or losses on available-for-sale securities shall be excluded from core surplus.

(6) The Farm Credit Administration may, if it finds that a particular component, balance sheet entry, or account has characteristics or terms that diminish its contribution to an institution's ability to absorb losses, require the deduction of all or a portion of such component, entry, or account from core surplus.

(c) *Net collateral* means the value of a bank's collateral as defined by § 615.5050 (except that eligible investments as described in § 615.5140 are to be valued at their amortized cost), less an amount equal to that portion of the allocated investments of affiliated associations that is not counted as permanent capital by the bank.

(d) *Net collateral ratio* means a bank's net collateral, divided by the bank's total liabilities.

(e) *Net investment in the bank* means the total investment by an association in its affiliated bank, less reciprocal investments and investments resulting from a loan originating/service agency relationship, including participations.

(f) *Nonqualified allocated equities* means allocations of earnings designated to the institution's members that are not deducted from the gross taxable income of the allocating institution at the time of allocation.

(g) *Perpetual stock or equity* means stock or equity not having a maturity date, not redeemable at the option of the holder, and having no other provisions that will require the future redemption of the issue.

(h) *Qualified allocated equities* means allocations of earnings that are deducted from the gross taxable income of the allocating institution and designated to the institution's members.

(i) *Total surplus* means:

(1) Undistributed earnings/unallocated surplus;

(2) Allocated equities, including allocated surplus and stock which, if subject to revolvement or retirement, have an original planned revolvement or retirement date of not less than 5 years and are eligible to be included in permanent capital pursuant to § 615.5201(j)(4)(iv); and

(3) Stock that is not purchased or held as a condition of obtaining a loan, provided that it is either perpetual stock or term stock with an original maturity of at least 5 years, and provided that the institution has no established plan or practice of retiring such perpetual stock or of retiring such term stock prior to its stated maturity. The amount of term stock that is eligible to be included in total surplus shall be reduced by 20 percent (net of redemptions) at the beginning of each of the last 5 years of the term of the instrument.

(4) The total surplus of an institution shall exclude the net impact of unrealized holding gains or losses on available-for-sale securities.

(5) A capital instrument or a particular balance sheet entry or account that the Farm Credit

Administration has determined to be the functional equivalent of a component of total surplus. The Farm Credit Administration may permit one or more institutions to include all or a portion of such instrument, entry, or account as total surplus, permanently or on a temporary basis, for purposes of this subpart.

(6) The Farm Credit Administration may, if it finds that a particular component, balance sheet entry, or account has characteristics or terms that diminish its contribution to an institution's ability to absorb losses, require the deduction of all or a portion of such component, entry, or account from total surplus.

(7) Any deductions made by an institution in the computation of its permanent capital pursuant to § 615.5210(e) (6) and (7) shall also be made in the computation of its total surplus.

§ 615.5330 Minimum surplus ratios.

(a) *Total surplus.*

(1) Each institution shall achieve and maintain a ratio of at least 7 percent of total surplus to the risk-adjusted asset base.

(2) Each association shall compute its total surplus ratio by deducting an amount equal to the amount of allocated bank equities counted as permanent capital by the bank;

(3) Each Farm Credit bank shall compute its total surplus ratio by deducting an amount equal to the amount of the bank's equities counted as association capital.

(b) *Core surplus.*

(1) Each institution shall achieve and maintain a ratio of core surplus to the risk-adjusted asset base of at least 3.5 percent, of which no more than 2 percentage points may consist of allocated equities otherwise includible pursuant to § 615.5301(b)(2).

(2) Each association shall compute its core surplus ratio by deducting an amount equal to the net investment in its affiliated Farm Credit bank from its core surplus.

(c) An institution shall compute its total surplus and core surplus ratios as of the end of each month.

§ 615.5335 Bank net collateral ratio.

(a) Each bank shall achieve and maintain a net collateral ratio of at least 103 percent.

(b) A bank shall compute its net collateral ratio as of the end of each month.

§ 615.5336 Compliance and reporting.

(a) *Noncompliance and reporting.* An institution that meets the minimum applicable surplus ratios and net collateral ratio established in §§ 615.5330 and 615.5335 at or after the end of the quarter in which these regulations become effective and subsequently falls below one or more minimum requirements shall be in violation of the applicable regulations. Such institution shall report its noncompliance to the Farm Credit Administration within 20 calendar days following the month end in which the institution initially determines that it is not in compliance with the requirements.

(b) *Initial compliance and reporting requirements.*

(1) An institution that fails to satisfy one or more of its minimum applicable surplus and net collateral ratios at the end of the quarter in which these regulations become effective shall report its initial noncompliance to the Farm Credit Administration within 20 days following such quarter end and shall also submit a capital restoration plan for achieving and maintaining the standards, demonstrating appropriate annual progress toward meeting the goal, to the Farm Credit Administration within 60 days following such quarter end. If the capital restoration plan is not approved by the Farm Credit Administration, the Agency shall inform the institution of the reasons for disapproval, and the institution shall submit a revised capital restoration plan within the time specified by the Farm Credit Administration.

(2) *Approval of compliance plans.* In determining whether to approve a capital restoration plan submitted under this section, the FCA shall consider the following factors, as applicable:

(i) The conditions or circumstances leading to the institution's falling below minimum levels, the exigency of those circumstances, and whether or not they were caused by actions of the institution or were beyond the institution's control;

(ii) The overall condition, management strength, and future prospects of the institution and, if applicable, affiliated System institutions;

(iii) The institution's capital, adverse assets (including nonaccrual and nonperforming loans), allowance for loss, and other ratios compared to the ratios of its peers or industry norms;

(iv) How far an institution's ratios are below the minimum requirements;

(v) The estimated rate at which the institution can reasonably be expected to generate additional earnings;

(vi) The effect of the business changes required to increase capital;

(vii) The institution's previous compliance practices, as appropriate;

(viii) The views of the institution's directors and senior management regarding the plan; and

(ix) Any other facts or circumstances that the FCA deems relevant.

(3) An institution shall be deemed to be in compliance with the surplus and collateral requirements of this subpart if it is in compliance with a capital restoration plan that is approved by the Farm Credit Administration within 180 days following the end of the quarter in which these regulations become effective.

29. Subparts L and M are added to read as follows:

Subpart L—Establishment of Minimum Capital Ratios for an Individual Institution

Sec.

Subpart M—Issuance of a Capital Directive

Subpart L—Establishment of Minimum Capital Ratios for an Individual Institution

§ 615.5350 General—Applicability.

(a) The rules and procedures specified in this subpart are applicable to a proceeding to establish required minimum capital ratios that would otherwise be applicable to an institution under §§ 615.5205, 615.5330, and 615.5335. The Farm Credit Administration is authorized to establish such minimum capital requirements for an institution as the Farm Credit Administration, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the institution. Proceedings under this subpart also may be initiated to require an institution having capital ratios greater than those set forth in §§ 615.5205, 615.5330, or 615.5335 to continue to maintain those higher ratios.

(b) The Farm Credit Administration may require higher minimum capital ratios for an individual institution in view of its circumstances. For example,

higher capital ratios may be appropriate for:

(1) An institution receiving special supervisory attention;

(2) An institution that has, or is expected to have, losses resulting in capital inadequacy;

(3) An institution with significant exposure due to operational risk, interest rate risk, the risks from concentrations of credit, certain risks arising from other products, services, or related activities, or management's overall inability to monitor and control financial risks presented by concentrations of credit and related services activities;

(4) An institution exposed to a high volume of, or particularly severe, problem loans;

(5) An institution that is growing rapidly; or

(6) An institution that may be adversely affected by the activities or condition of System institutions with which it has significant business relationships or in which it has significant investments.

§ 615.5351 Standards for determination of appropriate individual institution minimum capital ratios.

The appropriate minimum capital ratios for an individual institution cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on subjective judgment grounded in Agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(a) The conditions or circumstances leading to the Farm Credit Administration's determination that higher minimum capital ratios are appropriate or necessary for the institution;

(b) The exigency of those circumstances or potential problems;

(c) The overall condition, management strength, and future prospects of the institution and, if applicable, affiliated institutions;

(d) The institution's capital, adverse assets (including nonaccrual and nonperforming loans), allowance for loss, and other ratios compared to the ratios of its peers or industry norms; and

(e) The views of the institution's directors and senior management.

§ 615.5352 Procedures.

(a) *Notice.* When the Farm Credit Administration determines that minimum capital ratios greater than those set forth in §§ 615.5205, 615.5330, or 615.5335 are necessary or appropriate for a particular institution, the Farm Credit Administration will notify the institution in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable) and will provide an explanation of why the ratios proposed are considered necessary or appropriate for the institution.

(b) *Response.*

(1) The institution may respond to any or all of the items in the notice. The response should include any matters which the institution would have the Farm Credit Administration consider in deciding whether individual minimum capital ratios should be established for the institution, what those capital ratios should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the designated Farm Credit Administration official within 30 days after the date on which the institution received the notice. In its discretion, the Farm Credit Administration may extend the time period for good cause. The Farm Credit Administration may shorten the time period with the consent of the institution or when, in the opinion of the Farm Credit Administration, the condition of the institution so requires, provided that the institution is informed promptly of the new time period.

(2) Failure to respond within 30 days or such other time period as may be specified by the Farm Credit Administration shall constitute a waiver of any objections to the proposed minimum capital ratios or the deadline for their achievement.

(c) *Decision.* After the close of the institution's response period, the Farm Credit Administration will decide, based on a review of the institution's response and other information concerning the institution, whether individual minimum capital ratios should be established for the institution and, if so, the ratios and the date the requirements will become effective. The institution will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish individual minimum capital requirements for the institution.

(d) *Submission of plan.* The decision may require the institution to develop and submit to the Farm Credit Administration, within a time period specified, an acceptable plan to reach the minimum capital ratios established for the institution by the date required.

(e) *Reconsideration based on change in circumstances.* If, after the Farm Credit Administration's decision in paragraph (c) of this section, there is a change in the circumstances affecting the institution's capital adequacy or its ability to reach the required minimum capital ratios by the specified date, either the institution or the Farm Credit Administration may propose a change in the minimum capital ratios for the institution, the date when the minimums must be achieved, or the institution's plan (if applicable). The Farm Credit Administration may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the Farm Credit Administration's original decision and any plan required under that decision shall continue in full force and effect.

§ 615.5353 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the required minimum capital ratios for an institution may be established or revised through a written agreement or cease and desist proceedings under part C of title V of the Act, or as a condition for approval of an application.

§ 615.5354 Enforcement.

An institution that does not have or maintain the minimum capital ratios applicable to it, whether required in subparts H and K of this part, in a decision pursuant to this subpart, in a written agreement or temporary or final order under part C of title V of the Act, or in a condition for approval of an application, or an institution that has failed to submit or comply with an acceptable plan to attain those ratios, will be subject to such administrative action or sanctions as the Farm Credit Administration considers appropriate. These sanctions may include the issuance of a capital directive pursuant to subpart M of this part or other enforcement action, assessment of civil money penalties, and/or the denial or condition of applications.

Subpart M—Issuance of a Capital Directive

§ 615.5355 Purpose and scope.

(a) This subpart is applicable to proceedings by the Farm Credit Administration to issue a capital directive under sections 4.3(b) and 4.3A(e) of the Act. A capital directive is an order issued to an institution that does not have or maintain capital at or greater than the minimum ratios set forth in §§ 615.5205, 615.5330, and 615.5335; or established for the institution under subpart L, by a written agreement under part C of title V of the Act, or as a condition for approval of an

application. A capital directive may order the institution to:

(1) Achieve the minimum capital ratios applicable to it by a specified date;

(2) Adhere to a previously submitted plan to achieve the applicable capital ratios;

(3) Submit and adhere to a plan acceptable to the Farm Credit Administration describing the means and time schedule by which the institution shall achieve the applicable capital ratios;

(4) Take other action, such as reduction of assets or the rate of growth of assets, restrictions on the payment of dividends or patronage, or restrictions on the retirement of stock, to achieve the applicable capital ratios; or

(5) A combination of any of these or similar actions.

(b) A capital directive may also be issued to the board of directors of an institution, requiring such board to comply with the requirements of section 4.3A(d) of the Act prohibiting the reduction of permanent capital.

(c) A capital directive issued under this rule, including a plan submitted under a capital directive, is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final as defined in section 5.25 of the Act. Violation of a capital directive may result in assessment of civil money penalties in accordance with section 5.32 of the Act.

§ 615.5356 Notice of intent to issue a capital directive.

The Farm Credit Administration will notify an institution in writing of its intention to issue a capital directive. The notice will state:

(a) The reasons for issuance of the capital directive;

(b) The proposed contents of the capital directive, including the proposed date for achieving the minimum capital requirement; and

(c) Any other relevant information concerning the decision to issue a capital directive.

§ 615.5357 Response to notice.

(a) An institution may respond to the notice by stating why a capital directive should not be issued and/or by proposing alternative contents for the capital directive or seeking other appropriate relief. The response shall include any information, mitigating circumstances, documentation, or other relevant evidence that supports its position. The response may include a plan for achieving the minimum capital ratios applicable to the institution. The response must be in writing and delivered to the Farm Credit Administration within 30 days after the date on which the institution received the notice. In its discretion, the Farm Credit Administration may extend the time period for good cause. The Farm Credit Administration may shorten the 30-day time period:

(1) When, in the opinion of the Farm Credit Administration, the condition of the institution so requires, provided that the institution shall be informed promptly of the new time period;

(2) With the consent of the institution; or

(3) When the institution already has advised the Farm Credit Administration that it cannot or will not achieve its applicable minimum capital ratios.

(b) Failure to respond within 30 days or such other time period as may be specified by the Farm Credit Administration shall constitute a waiver of any objections to the proposed capital directive.

§ 615.5358 Decision.

After the closing date of the institution's response period, or receipt of the institution's response, if earlier, the Farm Credit Administration may seek additional information or clarification of the response. Thereafter, the Farm Credit Administration will determine whether or not to issue a capital directive, and if one is to be issued, whether it should be as originally proposed or in modified form.

§ 615.5359 Issuance of a capital directive.

(a) A capital directive will be served by delivery to the institution. It will include or be accompanied by a statement of reasons for its issuance.

(b) A capital directive is effective immediately upon its receipt by the institution, or upon such later date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, or terminated by the Farm Credit Administration.

§ 615.5360 Reconsideration based on change in circumstances.

Upon a change in circumstances, an institution may request the Farm Credit Administration to reconsider the terms of its capital directive or may propose changes in the plan to achieve the institution's applicable minimum capital ratios. The Farm Credit Administration also may take such action on its own motion. The Farm Credit Administration may decline to consider requests or proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the capital directive and plan shall continue in full force and effect.

§ 615.5361 Relation to other administrative actions.

A capital directive may be issued in addition to, or in lieu of, any other action authorized by law, including cease and desist proceedings, civil money penalties, or the conditioning or denial of applications. The Farm Credit Administration also may, in its discretion, take any action authorized by law, in lieu of a capital directive, in response to an institution's failure to achieve or maintain the applicable minimum capital ratios.

PART 618—GENERAL PROVISIONS

30. 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]

31. 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).

Subpart J—Internal Controls

§ 618.8440 [Amended]

32. Section 618.8440 is amended by removing the reference ''§ 615.5200(b)'' and adding in its place, the references ''§§ 615.5200(b), 615.5330 (c) or (d), and 615.5335(b)'' in paragraph (b)(6).

PART 619—DEFINITIONS

33. The authority citation for part 619 continues 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).

§§ 619.9030, 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]

34. Sections 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 620—DISCLOSURE TO SHAREHOLDERS

35. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart B—Annual Report to Shareholders

36. Section 620.5 is amended by revising paragraphs (d)(1)(ix) and (g)(4)(ii) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(d) * * *

(1) * * *

(ix) The statutory and regulatory restriction regarding retirement of stock and distribution of earnings pursuant to § 615.5215, and any requirements to add capital under a plan approved by the Farm Credit Administration pursuant to §§ 615.5330, 615.5335, 615.5351, or 615.5357.

* * * * *

(g) * * *

(4) * * *

(ii) Describe any material trends or changes in the mix and cost of debt and capital resources. The discussion shall consider changes in permanent capital, core and total surplus, and net collateral requirements, debt, and any off-balance-sheet financing arrangements.

* * * * *

PART 626—NONDISCRIMINATION IN LENDING

37. 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]

38. 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: January 23, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–2058 Filed 1–29–97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–025–FOR]

Texas Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Texas regulatory program and abandoned mine land reclamation plan (hereinafter referred to as the ''Texas program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas is proposing to recodify the Texas Surface Coal Mining and Reclamation Act. Texas intends to reclassify and rearrange its statutes into a format that will accommodate further expansion of the law and to eliminate repealed, invalid, and duplicated provisions in order to make the statutes more understandable and usable without altering the meaning or effect of the law.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas regulatory program. Background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, Federal Register (45 FR 12998). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 943.10, 943.15, and 943.16.

On June 23, 1980, the Secretary of the Interior approved the Texas abandoned mine plan as submitted on April 24, 1980, and amended on May 30, and June 2 and 4, 1980. Information pertaining to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings and the disposition of comments can be found in the June 23, 1980, Federal Register (45 FR 41940). Subsequent actions concerning plan amendments can be found at 30 CFR 943.25.

II. Submission of the Proposed Amendment

By letter dated August 24, 1995 (Administrative Record No. TX–594), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposed to recodify the Texas Surface Coal Mining and Reclamation Act (TSCMRA) as enacted by Senate Bill (S.B.) 959 (Section 12.02), 74th Texas Legislature (1995). S.B. 959 codified, with revisions, the TSCMRA at Chapter 134 of Title 4, Natural Resources Code, and it repealed Article 5920–11, Vernon's Texas Civil Statutes with exceptions, including Sections 11 (b), (c), and (d).

OSM announced receipt of the proposed amendment in the October 16, 1995, Federal Register (60 FR 53569), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on November 15, 1995.

During its review of the amendment, OSM identified concerns relating to: (1) A definition for ''permit applicant'' or ''applicant'' [Article 5920–11, Section 3(2)]; (2) repeal of the exemption for surface coal mining operations affecting two acres or less [Article 5920–11, Section 35(2) and Chapter 134, Section 134.005(a)(2), as recodified]; (3) coal exploration operations being subject to penalties for violating statutes and/or regulations [Article 5920–11, Section 27(c) and Chapter 134, Section 134.014, as recodified]; (4) the determination date on which surface coal mining operations are exempted from being subject to designations of areas unsuitable for mining [Article 5920–11, Section 33(e) and Chapter 134, Section 134.022, as recodified]; (5) notices of violations that permit applicants are required to disclose when applying for a coal mining permit [Article 5920–11, Section 21(c) and Chapter 134, Section 134.068, as recodified]; (6) performance standards regarding the elimination of all highwalls and spoil piles [Article 5920–11, Section 23(b)(3) and Chapter 134, Section 134.092(a)(2), as recodified]; (7) violations not creating