proposing amendments to conform our regulations to recent changes in the Farm Credit Act of 1971, as amended (Act), to address comments we received requesting that the FCA reduce regulatory burden, ensure compliance with the Act, and clarify certain regulations.

DATES: Please send your comments to the FCA by June 20, 2003.

ADDRESSES: You may send comments by electronic mail to "reg-comm@fca.gov," through the Pending Regulations section of FCA’s Web site, "http://www.fca.gov/" or through the government-wide “http://www.regulations.gov” portal. You may also send comments to Robert E. Donnelly, Acting Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:
Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4434; or James Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4434.

SUPPLEMENTARY INFORMATION:

I. Objectives

The primary objectives of our proposal are to conform our regulations to recent statutory amendments and to reduce regulatory burden imposed on System institutions, while ensuring compliance with the Act and FCA regulations. We expect our amendments to improve the flow of credit to System borrowers. Because the Act does not authorize financing activities broader and scope of financing for domestic borrowers because §613.3100(1)(i) appears to prohibit loans to subsidiaries of certain eligible borrowers. Because the Act does not prohibit financing subsidiaries or other entities in which an eligible utility or an eligible cooperative has an ownership interest, we propose to clarify our regulations to permit a title III bank to provide limited financing to such entities. The financing provided shall not exceed the percentage of ownership attributable to the eligible cooperative or utility, multiplied by the value of the total assets of such entity.

In addition, CoBank asked that we amend §613.3000(c)(2) to clarify that it authorizes financing activities broader than those permitted under the Rural Electrification Act. The legislative history of the Farm Credit Act of 1971, as amended, clearly demonstrates that Congress intended for banks for cooperatives (BCs) and agricultural credit banks (ACBs) to provide financing for “non act” purposes.2 This legislative history is discussed in the preamble proposing the existing rule. See 61 FR 42092, August 13, 1996. We propose amending this section to clarify that a subsidiary that is eligible to borrow under §613.3100(c)(1)(ii) may also obtain financing for energy-related or public utility-related purposes that cannot be financed by the lenders referred to in §613.3100(c)(1)(i). Operation of a licensed cable television utility is one example of such purpose.

Since the legislative history of the relevant language of section 3.8 of the Act indicates that the permissible “non act” purposes usually involve providing of communication services such as cable television facilities and cellular radio facilities, the permissible purposes do not appear to be restricted to cable television or communication services.

2 "Non act” purpose means a purpose that is ineligible for financing by the Rural Utilities Service (RUS) or the Rural Telephone Bank (RTB) as described in paragraph §613.3100(c)(1)(ii).

1 On August 18, 1998, we published a document in the Federal Register inviting the public to identify existing FCA regulations and policies that impose unnecessary burdens on the System. See 63 FR 44176.

SUMMARY: The Farm Credit Administration (FCA, we, our) proposes to amend regulations governing domestic and international lending, certain intra-Farm Credit System (FCS or System) agreements concerning similar entity participation transactions, provisions of general financing agreements, and related services. We are amended by the Farm Security and Rural Investment Act (Pub. L. 107–171) (2002 Farm Bill or FSRIA); and (3) to help ensure that FCS association lending complies with the Act and our regulations.

A. Reducing Regulatory Burden

In response to our regulatory burden solicitation discussed above, CoBank, ACB (CoBank), requested that we address several issues concerning regulations governing title III banks.

1. Domestic Title III Lending

CoBank requested that we amend §613.3100 that pertains to eligibility and scope of financing for domestic borrowers because §613.3100(1)(i) appears to prohibit loans to subsidiaries of certain eligible borrowers. Because the Act does not prohibit financing subsidiaries or other entities in which an eligible utility or an eligible cooperative has an ownership interest, we propose to clarify our regulations to permit a title III bank to provide limited financing to such entities. The financing provided shall not exceed the percentage of ownership attributable to the eligible cooperative or utility, multiplied by the value of the total assets of such entity.

In addition, CoBank asked that we amend §613.3100(c)(2) to clarify that it authorizes financing activities broader than those permitted under the Rural Electrification Act. The legislative history of the Farm Credit Act of 1971, as amended, clearly demonstrates that Congress intended for banks for cooperatives (BCs) and agricultural credit banks (ACBs) to provide financing for “non act” purposes. This legislative history is discussed in the preamble proposing the existing rule. See 61 FR 42092, August 13, 1996. We propose amending this section to clarify that a subsidiary that is eligible to borrow under §613.3100(c)(1)(ii) may also obtain financing for energy-related or public utility-related purposes that cannot be financed by the lenders referred to in §613.3100(c)(1)(i).

Operation of a licensed cable television utility is one example of such purpose. Since the legislative history of the relevant language of section 3.8 of the Act indicates that the permissible “non act” purposes usually involve providing of communication services such as cable television facilities and cellular radio facilities, the permissible purposes do not appear to be restricted to cable television or communication services.

2 "Non act” purpose means a purpose that is ineligible for financing by the Rural Utilities Service (RUS) or the Rural Telephone Bank (RTB) as described in paragraph §613.3100(c)(1)(ii).
However, because title III generally authorizes lending to those that provide energy or utility services, it is reasonable to interpret section 3.8 of the Act to authorize financing for “non act” purposes, provided they are energy-related or public utility-related.

2. Related Services

CoBank also requested that we clarify that it is able to provide the same related services as Farm Credit Banks (FCBs) and BCS. We amended §§ 618.8000 and 618.8005 to clarify that CoBank has the same authority to provide related services under title I of the Act as FCBs and the same authorities to provide related services under title III of the Act as BCS.

B. Conforming FCA Regulations To Reflect Recent Amendments to the Act

Enactment of the FSRIA amended the Act with respect to:

(1) International lending by BCS, and
(2) similar entity transactions.

1. International Lending

FSRIA amended section 3.7 of the Act to authorize a bank operating under title III of the Act to finance certain international transactions involving “agricultural supplies.” This section formerly authorized a bank operating under title III of the Act to finance certain transactions involving “farm supplies.” After the amendment of section 3.7, CoBank can finance certain transactions involving “agricultural supplies,” which is statutorily defined to include a farm supply, agriculture-related processing equipment, agriculture-related machinery, and other capital goods related to the storage or handling of agricultural commodities or products. Because of this amendment, the definition of “farm supplies” in part 613 no longer defines the limit of CoBank’s authority. The proposed rule makes conforming changes to part 613 to add a definition of “agricultural supply.”

2. Similar Entity Participations

FSRIA also amended sections 3.1(11)(B) and 4.18A of the Act so that one type of FCS institution no longer needs approval from another type of FCS institution when it participates with a non-FCS lender in certain loans to a similar entity.3 These amendments to the Act have eliminated the statutory basis for some approvals required by existing FCA regulations.

However, the FSRIA did not amend the requirement in section 3.1 for approval to finance certain similar entities having System loan commitments or who are System customers. The proposed regulation would codify the remaining approval requirement. We note that System institutions may enter into agreements on such terms and conditions as they choose, including, where appropriate, annual agreements.

C. Ensure Loan Making Complies With the Act and Regulations

During examinations of some System institutions, we have identified loans that fail to comply with various requirements of the Act and our regulations. The Act provides FCA broad authorities and remedies with respect to such “ineligible” loans. For example, FCA may require a direct lender associate to divest itself of the loan or cure the ineligibility. In appropriate cases, FCA may use its cease and desist or civil money penalty authorities. However, a review of general financing agreements (GFAs) between FCBs and the ACB and their direct lender associations has revealed that, while most GFAs address ineligible loans in some fashion, they do not all expressly prohibit funding ineligible loans.

Without in any way limiting FCA’s other authorities or remedies under the Act, the proposed regulations mandate that the GFA between the funding bank and the direct lender association expressly require that the calculation of financing available be based solely on loans that comply with the Act and FCA regulations.

III. Section-by-Section Analysis

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

Sections 613.3100(b)(2)(ii) and 613.3100(c)(1)(v)—Domestic Lending

We propose to clarify that a bank operating under title III may finance a subsidiary or other entity in which eligible cooperatives or certain eligible utilities have an ownership interest. Proposed § 613.3100(b)(2)(ii) permits a title III bank to provide limited financing to a subsidiary or other entity in which an eligible cooperative has an ownership interest. Proposed § 613.3100(c)(1)(v) permits a title III bank to provide limited financing to a subsidiary or other entity in which certain eligible utilities have an ownership interest. If the eligible cooperative or eligible utility owns less than 50 percent of the entity, then the financing provided may not exceed the percentage of ownership attributable to the eligible cooperative or utility, multiplied by the value of the total assets of such entity.

Section 613.3100(c)(2)—Purposes for Financing Electric and Telecommunication Utilities

We propose to clarify that a BC or ACB may provide financing for subsidiaries of cooperatives or other entities that are eligible under § 613.3100(c)(1)(ii) for energy-related or public utility-related purposes even if such purposes would be ineligible for financing by the RUS or the RTB. Section 3.8(b)(1)(A) of the Act authorizes BCS and ACBs to finance rural utilities that are eligible to borrow from the RUS or RTB, and their subsidiaries. Although the Rural Electrification Act prohibits the RUS or RTB from financing the activities of certain subsidiaries, section 3.8(b)(1)(A) of the Act expressly authorizes a BC or ACB to extend credit to the same subsidiaries. As FCA discussed in its preamble when the present § 613.3100 was proposed in 1996, the legislative history makes it clear the present language of section 3.8 of the Act was intended to authorize title III banks to finance activities that are ineligible for RUS or RTB loans. See 61 FR 42092, August 13, 1996. Because the present language of § 613.3100(c)(2) could be narrowly read to limit such financing to subsidiaries that “operate a licensed cable television utility,” FCA is now proposing an amendment to clarify that banks operating under title III may provide such financing for any energy-related or public utility-related purpose. We believe it is important for the System to be able to finance these operations that provide valuable services to rural consumers and essential revenues for rural utility systems.

Section 613.3200—International Lending

We propose to conform our regulations to recent changes in section 3.7 of the Act made by FSRIA that authorize a bank operating under title III of the Act to finance certain international transactions involving “agricultural supplies.” We propose to amend § 613.3200(a) by adding a definition of “agricultural supply.” The proposed definition of “agricultural supply” in § 613.3200(a)(1) includes a farm supply, agriculture-related processing equipment, agriculture-related machinery, and other capital...

3“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.
goods related to the storage or handling of agricultural commodities or products. The term “farm supply,” which is included in the new definition of “agricultural supply,” is defined in §613.3200(a)(2).

§613.3200(a)(2).

limiting FCA loans that are in compliance. Without each GFA require that the calculation of their chartered territory. specific situations. For example, they agree to accommodate their structure the terms and conditions of or association. System institutions may commitment outstanding, with the FCB if the similar entity has a loan, or a loan loan to a similar entity under section 3.1 requires a bank operating under title III. Similarly, proposed §618.8005(b) deletes the phrase, “that is appropriate to the recipient’s on-farm, aquatic, or cooperative operations” in order to eliminate any possible confusion about limitations on related services offerings under title III. Similarly, proposed §618.8005(c) deletes the phrase, “appropriate to cooperative operations.”

In addition, proposed §618.8005(a) adds the phrase “appropriate to on-farm and aquatic operations” to the existing paragraph, in order to reflect the statutory limitation on related services offered under title I.

IV. Regulatory Flexibility Act

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

List of Subjects

12 CFR Part 613

Advertising, Aged, Agriculture, Banks, banking, Civil rights, Credit, Fair housing, Marital status discrimination, Religious discrimination, Rural areas, Sex discrimination, Signs and symbols.

12 CFR Part 614

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

PART 613—FINANCING FOR BANKS OPERATING UNDER TITLE III OF THE FARM CREDIT ACT

1. Amend §613.3100 by revising paragraphs (b)(2)(ii), (c)(1)(v), and (c)(2) to read as follows:

§613.3100 Domestic lending.

(b) * * *

* * * * *

(2) * * *

* * * * *

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

* * * * *

(c) * * *

* * * * *

(1) * * *

* * * * *

(v) Any legal entity in which an eligible utility under paragraph (c)(1)(iii) of this section (or a subsidiary or other entity in which an eligible utility under paragraph (c)(1)(iii) has an ownership interest) has an ownership interest, provided that if the percentage of ownership attributable to the eligible utility is less than 50 percent, financing may not exceed the percentage of ownership attributable to the eligible utility 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 for energy-related or public utility-related purposes that cannot be financed by the lenders referred to in paragraph (c)(1)(ii), including, without limitation, financing to operate a licensed cable television utility.

* * * * *

3. Amend §613.3200 to read as follows:

(a) Revise paragraph (a); and
(b) Remove the words “farm supplies” and add in their place, the words “agricultural supplies” each place they appear in paragraphs (b) introductory text, (c) introductory text, and (c)(1).

§613.3200 International lending.

(a) Definitions. For the purpose of this section only the following definitions apply:

(1) Agricultural supply includes:

(i) A farm supply; and

(ii) Agriculture-related processing equipment, agriculture-related machinery, and other capital goods related to the storage or handling of agricultural commodities or products.

(2) Farm supply refers to an input that is used in a farming or ranching operation.

* * * * *

Subpart C—Bank/Association Lending Relationship

6. Amend §614.4125(a) by adding a second sentence to read as follows:

§614.4125 Funding and discount relationships between Farm Credit Banks or agricultural credit banks and direct lender associations.

(a) * * * Each general financing agreement must require that the amount of financing available to a direct lender association be based solely on loans that comply with the Act and these regulations. If financing under a general financing agreement is based on a loan that FCA determines does not comply with the Act and these regulations, then the amount of financing available must be reduced by the amount of the ineligible loan.

* * * * * 

PART 618—GENERAL PROVISIONS

7. 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, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a–2, 2279b, 2279c–1, 2279f, 2279h–1, 2279a–5, sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

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PART 618—GENERAL PROVISIONS

7. 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, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a–2, 2279b, 2279c–1, 2279f, 2279h–1, 2279a–5, sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

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PART 618—GENERAL PROVISIONS

7. 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, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a–2, 2279b, 2279c–1, 2279f, 2279h–1, 2279a–5, sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.