

2. Section 16.20 is revised to read as follows:

§ 16.20 Compliance with requirements of the securities laws.

(a) Each bank that files a registration statement that has been declared effective pursuant to this part shall comply with the rules, regulations, and forms adopted by the Commission pursuant to sections 10A(m) and 13 of the Exchange Act and those provisions of the Sarbanes-Oxley Act of 2002 that are listed in § 11.2(a)(1)(ii) of this chapter as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78J).

(b) Suspension of the duty to file current and periodic reports under this section will be in accordance with section 15(d) of the Exchange Act (15 U.S.C. 78o(d)).

(c) Paragraph (a) of this section does not apply if the bank is a subsidiary of a one-bank holding company, the financial statements of the bank and the parent bank holding company are substantially the same, and the bank's parent bank holding company files current and periodic reports pursuant to section 13 of the Exchange Act (15 U.S.C. 78m).

(d) Paragraph (a) of this section does not apply if the bank files the registration statement in connection with a merger, consolidation, or acquisition of assets subject to 12 CFR 5.33(e)(8).

Dated: April 29, 2003.

John D. Hawke, Jr.,
Comptroller of the Currency.

[FR Doc. 03-12259 Filed 5-20-03; 8:45 am]

BILLING CODE 4810-33-P

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, and 618

RIN 3052-AC06

Eligibility and Scope of Financing; Loan Policies and Operations; General Provisions; Credit and Related Services

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

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

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, McLean, VA 22102-5090, (703) 883-4498; TTY (703) 883-4434; or

James Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

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 customers, make similar entity participation transactions less burdensome, and help ensure compliance with the Act and FCA regulations.

II. Background

We are proposing these amendments for three reasons: (1) To address comments we received in response to our request that the public identify ways we could reduce regulatory burden;¹ (2) to conform our regulations to the Act, as

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(c)(1) appears to prohibit loans to subsidiaries of 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.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)(iii) 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)(ii). 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.

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.

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

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.

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 association 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

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).

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

Section 613.3300—Participations and Other Interests in Loans to Similar Entities

We propose to amend our regulations to conform them to changes the 2002 Farm Bill made in sections 3.1(11)(B) and 4.18A of the Act regarding similar entity transactions. Because of these changes, FCS institutions are no longer required to obtain the approvals now required by present § 613.3300(d). Although the FSRIA removed the statutory provisions that were the basis of the § 613.3300(d) approval requirements, it did not remove the statutory requirement that a bank operating under title III not participate in a loan to a similar entity under section 3.1 if the similar entity has a loan or loan commitment outstanding with an FCB or association, unless agreed to by the FCB or association. Therefore, while we propose deleting present § 613.3100(d) to reflect the elimination of other statutory approval requirements, we propose adding a new section to reflect this statutory requirement. Proposed § 613.3100(d) requires a bank operating under title III to obtain the agreement of an FCB or association in order to participate in a loan to a similar entity under section 3.1 if the similar entity has a loan, or a loan commitment outstanding, with the FCB or association. System institutions may structure the terms and conditions of the agreement to accommodate their specific situations. For example, they may grant approvals on an annual basis allowing similar entity participations in their chartered territory.

Subpart C—Bank/Association Lending Relationship

Section 614.4125—Funding and Discount Relationships Between Farm Credit Banks or Agricultural Credit Banks and Direct Lender Associations

Direct lender associations may not make or hold any loan that does not comply with the Act and FCA regulations, including, without limitation, part 613. We propose to amend § 614.4125(a) to mandate that each GFA require that the calculation of financing available be based solely on loans that are in compliance. Without limiting FCA’s other authorities or

remedies, proposed § 614.4125(a) would expressly state that if financing under a GFA is based on a loan that FCA determines does not comply with the Act and these regulations, then the financing available must be recalculated without that loan. We emphasize that the remedies described in this section do not limit our other authorities or remedies under the Act.

Subpart A—Related Services

Section 618.8000—Definitions and Section 618.8005—Eligibility

We propose to amend §§ 618.8000(b) and 618.8005(c) to clarify that ACBs have the same authority to offer related services under title III of the Act as BCs, and the same authority to offer related services under title I of the Act as FCBs. Proposed § 618.8000(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 seq.*), 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.

12 CFR Part 618

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

For the reasons stated in the preamble, parts 613, 614, and 618 of chapter VI, title 12 of the Code of Federal Regulations, are proposed to be amended as follows:

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for part 613 continues 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).

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

2. 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)(ii) of this section (or a subsidiary or other entity in which an eligible utility under paragraph (c)(1)(ii) 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—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

4. Revise § 613.3300(d) to read as follows:

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

* * * * *

(d) *Approval by other Farm Credit System institutions.* A bank for cooperatives or agricultural credit bank may not participate in a loan to a similar entity under title III of the Act if the similar entity has a loan or loan commitment outstanding with a Farm Credit Bank or an association chartered under the Act, unless agreed to by the Farm Credit Bank or association.

PART 614—LOAN POLICIES AND OPERATIONS

5. 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, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 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, 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, 2279a-2, 2279b, 2279c-1, 2279f, 2279f-1, 2279aa, 2279aa-5); sec. 413 of Pub. L. 100-233, 101 Stat. 1568, 1639.

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, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart A—Related Services

8. Amend § 618.8000(b) by revising the first sentence to read as follows:

§ 618.8000 Definitions.

* * * * *

(b) *Related service* means any service or type of activity provided by a System bank or association that is appropriate to the recipient’s operations, including control of related financial matters.

* * *

* * * * *

§ 618.8005 [Amended]

9. Amend § 618.8005 by:

- a. Adding the phrase “appropriate to on-farm and aquatic operations” after the word “services” in paragraph (a); and
- b. Removing the phrase “appropriate to cooperative operations of” and

adding in its place, the word “to” in paragraph (c).

Dated: May 15, 2003.

Jeanette C. Brinkley,
Secretary, Farm Credit Administration Board.
[FR Doc. 03-12631 Filed 5-20-03; 8:45 am]
BILLING CODE 6705-01-P

POSTAL SERVICE

39 CFR Part 111

Customized MarketMail™

AGENCY: Postal Service.
ACTION: Proposed rule.

SUMMARY: On March 14, 2003, the United States Postal Service, in conformance with sections 3622 and 3623 of the Postal Reorganization Act (39 U.S.C. 101 *et seq.*), filed a request for a recommended decision by the Postal Rate Commission (PRC) on the establishment of Customized MarketMail™ as a minor classification change. The PRC designated this filing as Docket No. MC2003-1.

In view of this filing, the Postal Service proposes to amend current mailing standards in the *Domestic Mail Manual (DMM)* that would permit mailers to mail irregular-shaped and nonrectangular-shaped Regular Standard Mail and Nonprofit Standard Mail pieces, including pieces that are ¼ inch thick or less. Such pieces would be limited to the nonletter basic rate categories in the Standard Mail Regular and Nonprofit subclasses.

Current mailing standards require that any mailpiece that is ¼ inch thick or less may not be mailed if the piece is not rectangular in shape. This ban on nonrectangular letter-size mail and, in some cases, nonrectangular flat-size mail has limited the options available to businesses and various organizations that might wish to reach existing or potential customers with advertising messages and designs—including the shape of the mailpiece—that are more creative than those now permitted under Postal Service mailing standards.

Customized MarketMail (CMM) would significantly overcome this limitation under controlled circumstances that would ensure minimal impact on Postal Service operations, while allowing mailers the latitude to target a specific audience with highly individualized mailpiece designs. More creative designs could encourage greater customer interest and response rates to promotions, advertising, or other types of communications.