deposits); 563.13–3(a) (purchase and sale of Federal Home Loan Mortgage Corporation stock); 563.9–8(c)(2)(iii) (making equity risk investments). Additionally, the Banks' directors have the authority to determine whether to extend advances to member institutions. Institutions not meeting their capital requirements often rely heavily on such advances.

Given the extensive authority granted to the directors of the Banks to administer the Banks, subject to the Board's authority, there may be potential for even the appearance of conflicts to arise in a Bank director's role with respect to policies toward groups of institutions that are similar to and may include his or her institution if that institution is under tighter regulatory supervision or control by the Bank President, as PSA, or has a greater need for advances. Of course, Bank directors have no responsibility for the supervisory and examination activities performed by any Bank employees on behalf of the Board of FSLIC pursuant to any authority delegated by the Board. See 12 CFR 522.62. The Board seeks comment about whether it is appropriate for an officer or director of an insured institution not meeting its minimum capital requirements to be eligible for election to a Bank directorship. A related concern arises when an institution is insolvent under regulatory accounting principles. The Board seeks comments about whether insolvency, rather than failure to meet capital requirements, should be a criterion for determining eligibility. The Board also requests comment on the policy concerns raised by a Bank director's continued service in that role if his or her institution falls below its minimum capital requirement, or becomes insolvent, during the director's term.

Second, nothing in Part 522 currently prohibits or in any way limits the ability of a person against whom a cease and desist order is outstanding to be an eligible candidate for a Bank directorship or to continue to serve as a Bank director. While the Board believes that the removal of such a person from the directorship position is within its authority pursuant to section 17 of the FHLBank Act, it seeks comment as to whether its regulations should be amended to deal specifically with this issue by, for example, precluding the election of such a person to the directorate of a Bank or by providing that the existence of such an order against an individual constitutes a ground for removal.

A separate but related issue arises when the cease and desist order has been issued against the institution of which the person serves as officer or director, but not against the person individually. Such a cease and desist order may not carry any negative implication about the person's capability to serve as a Bank director. It may be argued, however, that the appearance of conflict in that situation carries with it potential for injury to the integrity of the Bank System significant enough to constitute cause for removing such persons from service as a Bank director. Just as in the case of institutions not meeting their minimum capital requirements, institutions operating under cease and desist orders are under close regulatory scrutiny by the Board and the Banks as agents of the Board. Similar concerns may arise when an insured institution enters into a supervisory agreement which may require it to submit to heightened regulatory involvement by its PSA in its management.

The Board notes that the FHLBank Act provides that directors who do not continue to meet statutory eligibility requirements throughout their terms may continue to serve until the Board appoints a successor or their term expires, whichever occurs first. 12 U.S.C. 1427(f). The Board seeks comments as to whether similar provisions should accompany any regulatory eligibility requirements, or whether, if a director becomes ineligible during his or her term for one or more of the reasons discussed above, the director should be automatically removed.

Although regulations involving the management and directors of the Banks are matters of internal organization practice and procedure of the Federal Home Loan Bank System, and public notice and comment is therefore not required by the Administrative Procedure Act, the Board is today seeking comment from the public on these issues in order to assist it in determining the appropriate avenue to address these concerns. Today, by temporary regulation published elsewhere in this isssue of the **Federal Register**, the Board is addressing the eligibility requirements for a candidate for an elective Bank directorship to be declared elected to the Bank's board of directors. This temporary regulation governs only the election taking place in the 1988 calendar year. This advance notice of proposed rulemaking seeks to address broader, long-term concerns about the nomination and election process, as well as the propriety of allowing persons to continue to serve as Bank directors after their personal and/or institution's circumstances change during their tenure of office such that they would no longer be eligible for nomination.

The Board is currently considering requiring that persons nominated as candidates meet eligibility requirements both at the time of nomination and at the time candidates are declared elected. Additionally, the Board is considering specifying in its regulations certain circumstances under which it will exercise its removal powers pursuant to § 17 of the FHLBank Act, 12 U.S.C. 1437, when a director would no longer meet the same eligibility requirements. This would in no way indicate that the Board is in any way limiting its full statutory authority to remove a director for reasons not listed, but would merely provide notice of circumstances where such authority generally would be exercised.

The Board is currently considering regulatory eligibility requirements based upon whether the nominee's institution is meeting its minimum capital requirements and the existence of a cease and desist order against the nominee individually. The Board seek comments on the appropriateness of these eligibility requirements at both the nomination and election state, as well as whether the same standards should be automatically applied to existing directors. It has been suggested that in the case of directors currently serving it may be appropriate for such decisions to be made on a case-by-case basis, without a regulatory presumption. The Board's current view is that similar concerns may arise at any stage and that the regulation should therefore provide similar standard, but seeks comment on alternatives.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–25494 Filed 11–2–88; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, 615, 616, 618, and 619

Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Coordination; General Provisions; Definitions

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm

Credit Administration Board (Board), publishes for comment proposed amendments to 12 CFR Parts 613, 614, 615, 616, 618, and 619 to implement changes made necessary as a result of enactment of the Agricultural Credit Act of 1987 (1987 Act) (Pub. L. 100–233). These proposed amendments reconcile the authorities of Farm Credit Banks created by the mandatory merger of Federal land banks and Federal intermediate credit banks. They also reconcile the authorities of an agricultural credit association created by the merger of a Federal land bank association and production credit association and an Agricultural Credit Bank created by the merger of a bank for cooperatives with a Farm Credit Bank. The transfer of real estate lending authorities to individual Federal land bank associations is an additional area dealt within the proposed amendments. The proposed amendments also accommodate changes in authorities resulting from the voluntary restructuring of the banks for cooperatives. Other proposed amendments clarify related issues not specifically addressed in the 1987 Act and delete the requirement for FCA approval contained in selected credit-related regulations to reflect FCA's role as an arms-length regulator.

DATE: Comments should be received on or before December 5, 1988.

ADDRESSES: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Credit Specialist, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The proposed regulations discussed below address three areas. In Part I, the FCA Board proposes regulations reconciling the authorities of Farm Credit System banks and associations that are reorganized pursuant to the 1987 Act. Part II sets forth proposed amendments to clarify related issues not specifically addressed in the 1987 Act. Deletion of FCA credit-related approvals is dealt with in Part III.

I. Proposed Regulations Addressing Restructuring of System Institutions

The 1987 Act establishes requirements for restructuring the Farm Credit System. This restructuring may result in the creation of new institutions or the modification of the authorities of existing institutions. The FCA Board therefore proposes the following new regulations and amendments to existing regulations reconciling the powers and obligations of the restructured institutions. In addition, the FCA Board proposes to delete Part 616 in its entirety. The System restructuring required by the 1987 Act has eliminated the need for Part 616, which addresses the manner in which specified activities are to be coordinated by System institutions.

A. Formation of Farm Credit Banks

Section 410 of the 1987 Act required the Federal land bank (FLB) and Federal intermediate credit bank (FICB) in each district to merge to form a Farm Credit Bank no later than July 6, 1988. Pursuant to this provision, the Federal land banks and Federal intermediate credit banks in eleven Farm Credit districts have merged forming eleven Farm Credit Banks. The Farm Credit District of Jackson is the only district in which a merger did not occur because the FLB had been placed in receivership prior to the mandatory merger date.

Section 401 of the 1987 Act amended Title I of the Farm Credit Act of 1971 (1971 Act) to reflect the creation of Farm Credit Banks. Amended section 1.7 authorizes these recently formed FCBs to make long-term real estate mortgage loans in rural areas, to provide financial assistance to Federal land bank associations (FLBAs), and to extend intermediate credit to production credit associations (PCAs) or any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers engaged in the making of loans of farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products.

The FCA Board therefore proposes to revise § 614.4170 to state the lending authorities of FCBs as set forth in section 107. Section 614.4170 is also proposed to be amended to state the loan terms and conditions applicable to FCB loans and to incorporate amended section 1.10(a)(1) of the 1971 Act, which limits the loan-to-appraised value of real estate security to 85 percent (97 percent if guaranteed by a Federal, State, or other governmental agency) or 75 percent in certain instances. In addition, a new § 614.4170(a)(3) is proposed, which requires FCB borrowers to file financial reports with the bank at least annually. This provision is proposed pursuant to FCA's authority under section 1.10(a)(5) to issue regulations requiring financial reporting to FCBs from their borrows more frequently than once every 3 years. This requirement applies to real estate mortgage loans, excluding amortized loans to borrowers for rural residence, consumer-type, or other similarly amortized loans in which regular and frequent payments are required. A new paragraph (c) is also proposed to be added to § 614.4170 to describe the lending authorities and security requirements applicable to FCB direct loans to associations. The proposed regulation provides that these direct loans should be secured by certain assets of the association, although unsecured loans may be made if the overall condition of the association warrants such lending. The proposed regulation also requires each association to execute a financing agreement which will set forth the terms, conditions and limitations under which the FCB will advance funds to the association. Finally, paragraph (d) of § 614.4170 is proposed to be added, which describes an FCB's lending authorities in relation to commercial banks and other non-Farm Credit lending institutions.

B. Restructuring of the Banks for Cooperatives

1. Formation of the National Bank for Cooperatives (NBC)

Pursuant to section 413 of the 1987 Act, stockholders in eight of the twelve Farm Credit districts have voted to approve the merger of their district bank for cooperatives (BC) with the Central Bank for Cooperatives (CBS) to form a National Bank for Cooperatives. The NBC will begin operations January 1, 1989, and will have nationwide lending authority as described in section 413(b)(4)(B) of the 1987 Act. The four district BCs that did not approve the merger will also have nationwide lending authority and will remain as individual banks with the option to seek merger with other independent BCs, FCBs, or the new NBC. The FCA Board therefore proposes new § 619.9080 to define "bank for cooperatives" to incorporate all bank entities operating under Title III of the 1971 Act.

Section 614.4334 addresses the loan participation authority of banks for cooperatives. It is proposed to be amended to reflect the new participation authorities between the individual BCs, the NBC, and the FCBs. In particular, the CBC, which spread loan risk of the large BC loans throughout the BC system, has been merged into the NBC and the concentration of such loans with the NBC makes it unnecessary to require loan participations of individual BCs to be offered first to the NBC. In the case of individual BCs with loans in excess of their lending limit, participations with other Farm Credit System banks, commercial banks and financial institutions that are not Farm Credit System institutions will be authorized for such excess amounts. However, to avoid undue concentration of loan risk within a specific region the individual BCs will not be authorized to participate such excess amounts with their affiliated FCB.

2. Formation of Agricultural Credit Banks (ACBs)

The foregoing discussion has already noted that FCBs have been created from the merger of FLBs and FICBs pursuant to section 410 of the 1987 Act. It has also been noted that, pursuant to section 413 of the 1987 Act, stockholders in eight of the twelve Farm Credit districts have approved consolidation of the bank for cooperatives with the Central Bank for Cooperatives to form the National Bank for Cooperatives, which will begin operations January 1, 1989. Therefore, the FCB will be the only bank in all but four districts, after January 1, 1989. In three of the four remaining districts (excluding the Jackson District which currently has no FCB), the remaining two banks (FCB and BC) may merge to form an Agricultural Credit Bank (ACB) pursuant to new section 7.0, added by section 416 of the 1987 Act. ACBs are defined in proposed new § 619.9020. New section 7.2 provides that an ACB has all the powers of the constituent entities. Section 610.4180 is therefore proposed to be revised to define the lending authorities and the terms and conditions applicable to ACB loans by incorporating and revising the loan terms and conditions applicable to FCBs and BCs. New § 614.4335 is proposed to address the authority of ACBs to enter into loan participation agreements and provides that ACBs enter into such agreements under the authorities of FCBs and BCs, as prescribed under new section 7.2 of the 1971 Act.

3. Proposed Regulations Addressing Eligibility to Borrow from Banks for Cooperatives

In addition to the proposed revisions that reflect the restructuring of the banks for cooperatives, the following amendments are proposed to incorporate two changes made to section 3.8 of the 1971 Act by section 421 of the 1987 Act. Specifically, § 613.3110(b)(4), which deals with the eligibility of cooperatives to borrow from BCs, is proposed to be amended to incorporate the provision in section 421 stating that, for entities that are rural utility borrowers with loans fully guaranteed by the United States Government, no stock ownership requirements shall apply other than the requirement to hold a single share of voting stock. Section 421 of the 1987 Act also expands the eligibility criteria contained in section 3.8 of the 1971 Act to include, as eligible borrowers, legal entities that hold more than 50 percent voting control of an eligible entity and legal entities more than 50 percent of whose voting stock is held by eligible entities. Section 613.3110(b)(5) is proposed to be amended to incorporate this revision of eligibility requirements.

C. Formation of Agricultural Credit Associations (ACAs)

Section 416 of the 1987 Act added section 7.6 to the 1971 Act which authorizes the transfer of direct lending authority from the FCB to the FLBAs operating within the bank's chartered territory. Section 7.6(d) provides that when one or more PCAs merge with one or more FLBAs within a district to form an agricultural credit association (ACA), the bank affiliated with the constituent FLBA(s) will transfer its direct lending authority to the merged association. In addition, section 411 of the 1987 Act requires the boards of directors of each PCA and FLBA that share substantially the same geographic territory to submit, for stockholder vote, a plan for merging the two associations into an ACA. The plan must be submitted not later than 6 months from the date of the merger of the FLB and FICB into an FCB, and must be submitted to the affiliated bank and the FCA for their approval.

The FCA Board therefore proposes to define the term "agricultural credit association" in proposed new § 619.9015, and to define the lending authority and the terms and conditions applicable to loans made by ACAs in proposed new § 614.4205. The latter proposed new regulations states that upon creation of an ACA the FCB will transfer its authority to make and participate in long-term real estate mortgage loans to the ACA. ACAs also possesses the lending authority held by the PCA. It also allows ACAs the option to make real estate mortgage loans without requiring a first lien if the term is 10 years or less to incorporate PCA lending authority. Finally, this proposed regulation incorporates the security requirements for FCBs described in § 614.4170 and the traditional PCA loan terms and conditions stated in § 614.4200. Proposed § 614.4336 addresses the authority of ACAs to enter into loan participation agreements. It provides that ACAs enter into such agreements under the authorities prescribed by new section 7.8 of the 1971 Act. The FCA Board proposes to define the term "direct lender" in proposed new § 619.9135 to refer to the Farm Credit System banks and associations that have vested or transferred direct lending authorities pursuant to Titles I, II, III, and VII of the 1971 Act. Associations that are direct lenders operating under Titles II and VII of the 1971 Act will establish and maintain a debtor-creditor relationship with their affiliated banks as addressed in Part 614 Subpart A of these regulations.

D. Transfer of Long-Term Real Estate Lending Authority to FLBAs

Section 416 of the 1987 Act added new section 7.6 to the 1971 Act. New section 7.6(a) permits an FCB, or an ACB, to transfer its authority to make and participate in long-term real estate mortgage loans to an FLBA and subjects such transfers to FCA approval. The FCA Board therefore proposes new § 614.4060 to address the FCB's and ACB's responsibility to assure that policies and procedures are established before the transfer of lending authority to an FLBA. Proposed new § 614.4190 states the basic lending authority of FLBAs receiving a transfer of authority to make and participate in long-term real estate loans. It provides that FLBAs that have received a transfer of long-term real estate mortgage lending authority shall make long-term real estate mortgage loans under the same terms and conditions as an FCB that has not transferred this authority. Section 614.4332 is proposed to be revised to address the loan participation authority of an FLBA receiving a transfer of long-term real estate mortgage lending authority.

Sections 614.4090, 614.4100, 614.4110, 614.4120, and 614.4130, which address Farm Credit System institutions' lending authorities, are proposed to be removed and reserved. These sections have been revised and incorporated into Part 614

Subpart D, as redesignated, which addresses the banks' and associations' lending authorities as well as loan terms and conditions.

E. Issues Related to More Than One System Institution

1. Appraisal Standards

Section 614.4220 presently sets forth guidelines to be used by bank and association boards in the development of appraisal policies. The proposed amendments to § 614.4220 require Farm Credit banks and associations to develop a more structured and uniform collateral appraisal process that is independent of the loan-making decision and that utilizes several methods for determining appraised and market values for the collateral. This approach is consistent with pending legislation (H.R. 3675, Real Estate Appraisal Reform Act of 1987) requiring the development of a uniform set of basic appraisal standards by the appraisal industry. The revision to this section also eliminates the use of recovery value as a method of evaluating additional collateral, chattels, and other personal property and substitutes appraised and market values as the accepted methods of evaluation.

Sections 614.4230, 614.4240, 614.4250, 614.4260, and 614.4261 are proposed to be removed and reserved. These sections addressed the security requirements applicable to Farm Credit System institutions that have been incorporated into the lending authorities and loan terms and conditions sections of Part 614 Subpart D, as redesignated.

2. Lending Limit

Proposed new § 614.4351 contains the individual borrower lending limits applicable to FCBs and ACBs and proposed new § 614.4354 states the individual borrower lending limit for ACAs. These lending limits are set at the level applicable to the individual banks prior to the mergers required pursuant to enactment of the 1987 Act, with the inclusion of an overall lending limit applicable to the sum of operating and term debt. The establishment of an overall single borrower lending limit is consistent with the current lending philosophy utilized for bank for cooperative borrowers with term and seasonal loans.

Proposed new § 614.4352 prescribes individual borrower limits for FLBAs that have received a transfer of real estate mortgage lending authority. The FLBA lending limit is the former FLB individual borrower lending limit of 20 percent of capital and surplus. For lending limit purposes, "capital and surplus" will include guaranteed member stock. Applying the FCB lending limit to FLBAs does result in a smaller dollar limitation for FLBAs than it does when applied to FCBs. However, assuming that existing capital levels remain essentially unchanged at the association level, it is FCA's position that when considered together with the authority of FLBAs to participate loans with other lenders, the 20 percent limit should not result in substantial disruption of credit services.

On May 12, 1988, FCA published for comment proposed regulations (53 FR 16948) that would establish minimum permanent capital standards for System institutions, and on August 10, 1988, FCA solicited additional comments on several issues involving these capital standards (53 FR 30071). At the same time, Farm Credit System banks and associations are in the process of considering various merger and reorganization proposals. The transfer of lending authorities from FCBs and ACBs to the FLBAs and ACAs is among the reorganization proposals under consideration. The manner in which capital and assets are adjusted between the banks and associations will have a major influence on the individual bank and association lending limits and this adjustment will be affected by the final capital adequacy regulations. Therefore, upon finalization of the minimum capital adequacy standards and receipt of merger and authority transfer proposals from the Farm Credit System banks and associations, the lending limit for FLBAs, as well as for FCBs, ACBs, ACAs, and PCAs, may require review to take into account the impact of the new capital requirements upon the asset, capital and organizational structures of System institutions.

F. Technical Amendments

In addition to the foregoing substantive proposed regulations, the FCA Board proposes technical amendments throughout Parts 613, 614, 615, 618, and 619 to reflect the System restructuring authorized by the 1987 Act. For example, references to Federal land bank and Federal intermediate credit bank are proposed to be changed to Farm Credit Bank or Agricultural Credit Bank, as appropriate; certain references to production credit association are proposed to be replaced with the term "association" or agricultural credit association, as appropriate; and statutory references are proposed to be changed to reflect revisions made by the 1987 Act.

II. Proposed Amendments Clarifying Existing Regulations

The FCA Board proposes amendments to the following existing regulations to reflect earlier amendments to the 1971 Act and clarify issues not specifically addresses in the 1987 Act.

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

Subpart D—Eligibility of Cooperatives to Borrow From a Bank for Cooperatives

Section 613.3110(b)(5) deals with eligibility of cooperatives to borrow from BCs. It is proposed to be amended to incorporate changes made by prior amendments to the 1971 Act that allow noncooperative rural utilities to be eligible borrowers if they have been declared eligible to borrow from the Rural Electrification Administration or the Rural Telephone Bank.

PART 614—LOAN POLICIES AND OPERATIONS

Subpart A—General

Section 614.4051, which addresses the conduct of credit reviews by FLBs and FICBs, is proposed to be removed from FCA regulations. This section was adopted when FLBs and FICBs were responsible for conducting credit reviews on behalf of FCA. Prior amendments to the 1971 Act make FCA directly responsible for examining Farm Credit System institutions. Deletion of this regulation does not relieve Farm Credit System institutions of the responsibility to develop and implement adequate internal control procedures including procedures to monitor credit quality and compliance with the institutions' policies. Such procedures are discussed in the proposed amendments to §§ 614.4050 and 618.8430.

Subpart D—General Loan Policies

Existing § 614.4170, which addresses borrower liability, is proposed to be removed. Borrower liability is a credit area that is more appropriately addressed in credit and operations manuals as part of the discussion of loan terms and conditions, rather than in regulations.

Subpart E—Loan Terms and Conditions

Section 614.4200 addresses the terms and conditions applicable to PCA loans. A new paragraph (e) is proposed to be added to require PCAs to develop

policies to ensure they obtain a verifiable balance sheet and income statement at least annually (or more often if deemed necessary) to monitor risk and repayment ability. This amendment is consistent with guidance provided by the FCA Board on August 18, 1987 on the subject of loan documentation as it relates to borrower financial information.

Subpart J—Lending Limits

Existing § 614.4354(a)(4) requires BC loans to be reduced to established lending limits over a reasonable period of time if a decline in a BC's net worth causes its lending limit to be exceeded. This paragraph is proposed to be deleted. The purpose of this deletion is to require such excess loan amounts to be participated with other lenders as described in § 614.4334, as opposed to permitting a BC to retain the excess loan amounts. Paragraph (b) is also proposed to be revised to require BCs to report to FCA whenever loans made within previously established limits become excessive because of changes in the prescribed lending limit which is based upon the combined net worth of the BCs available to support the loan. In the future, such occurrences will be reported to FCA and reviewed as part of FCA's examination process. Remedial actions will be initiated as appropriate. Paragraph (b) is also proposed to be amended to clarify that the total loan limit requirements stated in § 614.4350 apply to BCs. Section 614.4350 provides that total loan limits are to be based on the total amount of loans, advances, commitments and financial assistance and funds through the purchase of loan participations outstanding at any one time to any one borrower, exclusive of participations sold to others. In addition, existing § 614.4354(a) and (d) are proposed to be revised to require the BCs to establish net worth calculations on an ongoing basis (at least monthly).

Section 614.4360 deals with lending limit computations. It is proposed to be amended by adding a new paragraph (d), which allows banks for cooperatives to eliminate from lending limit computation that portion of a loan balance that is guaranteed by the United States Government. This change is consistent with action taken by FCA on February 13, 1987 when FCA approved an exception to the CBC lending limit, whereby loans with 100 percent REA/United States Government guarantees were eliminated from calculations of this lending limit.

Subpart O—Special Lending Programs

Section 614.4520, redesignated as § 614.4525 (53 FR 35427, September 14, 1988) (Borrower Rights regulations), addresses the authority of Farm Credit System banks and associations to offer and participate in special lending programs. Section 614.4520(d), relating to memoranda of understanding for simultaneous processing and closing of loans, is proposed to be deleted because the manner in which banks and associations enter into memoranda of understanding is more appropriately left to their discretion.

Subpart Q—Banks for Cooperatives Financing International Trade

Section 614.4710(a)(1)(i) is proposed to be amended to remove FCA authority to select interim dates for net worth determinations used to calculate the total amount of bankers acceptances outstanding for a BC. This section is revised to require net worth calculations be completed by the BCs on an ongoing basis (at least monthly).

Section 614.4800 addresses the ability of the banks for cooperatives to provide guarantees and contracts of suretyship. This section is proposed to be amended to identify this activity as a compensable service and allow BCs to be remunerated for providing such guarantees and sureties. This proposed amendment is consistent with the remuneration policy contained in § 614.4720, which requires BCs to charge a fee for issuing or confirming letters of credit. This proposed amendment is issued pursuant to FCA's general regulatory authority over BCs stated in section 3.1 of the 1971 Act.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

Subpart E—Investments

Section 615.5160 currently deals with PCA investment in farmers' notes. An amendment is proposed to include ACAs as associations authorized to invest in these notes and to limit the total amount of an association's investment in specified obligations originated by any one cooperative or private dealer to 50 percent of association capital and surplus. The proposed 50 percent limitation is based upon current limitations on PCA investments that apply if no loss-sharing agreements exist as stated in § 614.4353.

PART 618—GENERAL PROVISIONS

Subpart J—Internal Controls

Section 618.8430 is proposed to be amended by adding a new paragraph (b) which incorporates the responsibility of banks and associations for adequate review and assessment of their loans and loan-related assets. The proposed amendment requires banks and associations to adopt policies for the evaluation and assessment of credit, operations, financial, and management functions. This expansion of internal controls is promulgated pursuant to FCA's general regulatory authority stated in section 5.17 of the 1971 Act and is proposed in order to ensure that adequate controls over the lending function are maintained.

III. Proposed Amendments Deleting Existing FCA Credit-Related Approvals

The FCA Board proposes revisions to the following regulations to remove the requirement for FCA approval or review of items such as bank policies, standards, programs, and loan actions. These FCA approvals and reviews of credit-related items are inconsistent with FCA's role as an arms-length regulator as reflected in the 1971 Act.

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

Subpart B—Eligibility to Borrow from Federal Land Banks and Production Credit Associations

The requirement for bank approval and FCA post-review of loans made to legal entities which are controlled by another legal entity, contained in existing § 613.3020(c), is proposed to be deleted. Instead new paragraph (b)(3) is proposed, which requires associations to report such loans to their affiliated bank and FCA.

Section 613.3045(b), which presently requires FCA approval of policies addressing the financing of processing and/or marketing activities, is proposed to be deleted.

Subpart D—Eligibility of Cooperatives to Borrow from a Bank for Cooperatives

Section 613.3110(a)(4) is proposed to be amended to remove FCA approval of cooperatives to be included in the definition of "service cooperatives". Section 613.3110(b)(2) is proposed to be amended to remove FCA approval of resolutions and policies of BC boards of directors concerning voting control of eligible cooperatives.

PART 614—LOAN POLICIES AND OPERATIONS

Subpart B—Chartered Territories

Section 614.4070(c) is proposed to be amended to remove FCA approval of policies for loans made to finance eligible borrowers conducting operations wholly outside the chartered territory of the lending bank or association. Loans to finance eligible borrower operations conducted wholly outside the chartered territory of a bank or association may be made provided such loans are authorized by the policies of the bank and association and the requirement for FCA approval is limited to situations in which a bank or association is proposing to finance a significant amount of loan volume in another institution's territory. FCA solicit comments on using 5 percent of existing loan volume as the measurement of a "significant amount of loan volume." It is FCA's position that 5 percent would allow the banks and associations to continue to provide requested lending services up to the specified level without substantial disruption of loan requests while maintaining control of institutions accumulating undue risk associated with out of territory loans. In addition, a new paragraph (e) is proposed to set forth the reporting requirements for monitoring the volume of loans made to borrowers conducting operations wholly outside of a bank's or association's chartered territory. Similarly, § 614.4080(c), which presently requires FCA approval of loans made to eligible cooperatives headquartered outside a bank for cooperatives' chartered territory, is proposed to be deleted. As discussed earlier, when the National Bank for Cooperatives is established, banks for cooperatives will have nationwide lending authority.

Subpart C—Lending Authorities

Section 614.4130 is proposed to be removed to eliminate FCA approval of district policies governing lending authorities.

Subpart D—General Loan Policies for Banks and Associations

Section 614.4160(c) is proposed to be amended to remove FCA approval of bank board policy addressing credit and lending standards.

Section 614.4165(f) is proposed to be deleted to remove FCA approval of bank and association policies relating to the special credit needs of eligible borrowers. The banks shall be required to provide to FCA an annual report summarizing the operations and achievements under such programs. The format of these reports shall be prescribed by FCA.

Subpart E—Loan Terms and Conditions

Section 614.4200(c)(3) is proposed to be deleted to remove FCA approval of district board policies concerning PCA or ACA 10-year term loans.

Subpart H—Loan Participations

Section 614.4330 is proposed to be deleted to remove FCA approval of district board policies concerning the implementation and operation of loan participation programs by Farm Credit System banks and associations.

Section 614.4334 is proposed to be deleted to remove FCA approvals relating to loan participation agreements between banks for cooperatives and the Central Bank for Cooperatives.

Subpart Q—Banks for Cooperatives Financing International Trade

Section 614.4700(a) is proposed to be amended to remove FCA approval of BC board policies concerning the financing of foreign trade receivables.

Section 614.4720 is proposed to be amended to remove FCA approval of BC policies concerning the issuance of letters of credit. Section 614.4720(a) is also proposed to be amended to require letters of credit to be written, instead of oral commitments.

Section 614.4800 is proposed to be amended to remove FCA approval of BC board policy governing guarantees and contracts of suretyship.

Section 614.4900(a) is proposed to be amended to remove FCA approval of BC policies concening financial transactions which transport monetary instruments into or out of the United States. Section 614.4900(b) is proposed to be amended to remove FCA approval of BC policies relating to currency exchange activities.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

Subpart E—Investments

Section 615.5160(a) is proposed to be amended to remove FCA approval of programs pertaining to PCA investment in farmer's notes given to cooperatives and private dealers.

Subpart Q—Bankers Acceptances

Section 615.5550 is proposed to be amended to remove FCA approval of BC board policies delegating to bank management the authority to rediscount bankers acceptances.

PART 618—General Provisions

Subpart A—Technical Assistance and Financially Related Services

Section 618.8000 is proposed to be amended to remove FCA approval of district and bank board policies relating to ongoing technical assistance and financially related service programs. However, the requirement in § 628.8000(c) that FCA approve proposals for new district technical and finacially related service programs submitted for approval is retained. The bank will submit to FCA for approval the related service progams proposed for implementation by the associations within its chartered territory.

List of Subjects in 12 CFR Parts 613, 614, 615, 616, 618, and 619

Accounting, Aged, Agriculture, Archives and records, Banks, banking, Civil rights, Credit, Fair housing, Foreign trade, Government securities, Investments, Insurance, Marital status discrimination, Reporting and recordkeeping requirements, Religious discrimination, Rural areas, Sex discrimination, Signs and symbols, Technical assistance.

For the reasons stated in the preamble, Parts 613, 614, 615, 616, 618 and 619 of Capter VI, Titel 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 is revised to read as follows and the authority citations throughout Part 613 are removed.

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, 5.9, 5.17; 12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2243, 2252.

Subpart A—general

2. Section 613.3000 is revised to read as follows:

§ 613.3000 Authority.

Farm Credit Banks, Agricultural Credit Banks, production credit associations and agricultural credit associations are authorized, under Titles I and II of the Act, to make loans to bona fide farmers (defined in § 613.3020(a)(1)), ranchers, producers or harveters of aquatic products, rural residents, and persons furnishing services directly related to the on-farm operating needs of farmers and

ranchers. Federal land bank associations that have received a transfer of real estate lending authority pursuant to section 7.6 of the Act are authorized to make long-term real estate mortgage loans to eligible borrowers (defined in § 613.3020(b)). Banks for cooperatives are authorized, under Title III of the Act, to make loans to eligible cooperatives and loans to domestic or foreign parties that substantially benefit an eligible cooperative which is a voting stockholder of the bank for cooperatives.

3. The heading of Subpart B is revised to read as follows:

Subpart B—Eligibility to Borrow From Farm Credit Banks, Agricultural Credit Banks, Production Credit Associations, Agricultural Credit Associations and Federal Land Bank Associations Which Are Direct Lenders

4. Section 613.3020 is amended by removing paragraph (c); redesignating paragraph (d) as paragraph (c) and revising paragraphs (b) and newly redesignated (c) to read as follows:

§ 613.3020 Farmers, ranchers and producers or harvesters of aquatic products

* * * * *

(b) *Eligibility.* (1) To be eligible to borrow, an individual's qualification as a bona fide farmer (defined in § 613.3020(a)(1)), rancher, or producer or harvester of aquatic products shall be established as a part of the application for credit. The applicant shall establish that its farming or aquatic business is compatible with normal farm or aquatic businesses operating in the area of general agricultural or aquatic economy. The applicant shall submit documentation describing the ownership structure and the business affiliations of those owning or controlling the agricultural or aquatic operation. In addition, if a legal entity owns or controls the applicant, the applicant must demonstrate that such legal entity can operate as a counterpart to the normal agricultural or aquatic business eligible to borrow, without jeopardy to such normal agricultural or aquatic business or general agriculture or aquatic economy.

(2) A legal entity that is a loan applicant shall meet the same requirements in either paragraph (a) (1) or (2) of this section. In addition, such applicant shall meet at least one of the following qualifications to be eligible to borrow:

(i) More than 50 percent of the value or number of shares of its outstanding voting stock or equity is owned by the individuals conducting the agricultural or aquatic operation.

(ii) More than 50 percent of the value of its assets consists of assets related to the production of agricultural products or production or harvest of aquatic products.

(iii) More than 50 percent of its income originates from its production of agricultural products or production or harvest of aquatic products.

(3) In addition, before a loan is made to a legal entity in which 50 percent or more of the ownership or control is vested directly or indirectly in another legal entity not meeting the requirements of paragrpah (b)(2) of this section, the basic loan requirements described in paragraph (b)(1) of this section shall be met. Such loans made by an association shall be reported to the association's affiliated bank and to the Farm Credit Administration as part of the association's examination.

(c) A legal entity engaged in agriculture or production or harvesting of aquatic products for the primary purpose of conducting its operation at a loss to absorb taxable income from nonagricultural or nonaquatic sources shall not be eligible. The legal entity shall demonstrate compliance with this paragraph.

5. Section 613.3040 is amended by revising paragraphs (d)(2) and (d)(3) to read as follows:

§ 613.3040 Rural residents.

* * * * *

(d) *Program limitations.* * * *

(2) No Farm Credit Bank or Agricultural Credit Bank (hereinafter bank) may at any time have outstanding rural residence loans in an amount exceeding 15 percent of the total of all loans outstanding. No Federal land bank association, production credit association or agricultural credit association may have outstanding rural residence loans in an amount exceeding 15 percent of its total loans outstanding at the end of the preceding fiscal year, without prior approval by the affiliated bank, nor shall the aggregate of such loans exceed 15 percent of the outstanding loans of all associations in the bank's chartered territory at the end of the bank's preceding fiscal year.

(3) Whenever the loan volume in rural residence loans of any Federal land bank association, production credit association or agricultural credit association approaches 15 percent, the affiliated bank shall make periodic reviews to assure that agricultural and aquatic credit needs are being adequately served in its chartered territory, in accordance with the objectives of the Act.

* * * * *

6. Section 613.3045 is revised to read as follows:

§ 613.3045 Financing of basic processing and marketing activities.

(a) Farm Credit Banks and Agricultural Credit Banks (hereinafter banks), and production credit associations, agricultural credit associations, and Federal land bank associations which have been transferred long-term real estate lending authority pursuant to section 7.6 of the Act, are authorized to provide financing for processing (including storage) and marketing activities.

(b) Eligibility requirements to obtain loans to finance basic processing and marketing activities.

(1) If the applicant or owners of the applicant provides 50 percent or more of the annual throughput used in the basic processing and/or marketing operation, then eligibility is determined as prescribed in § 613.3020.

(2) If the applicant provides more than 20 percent but less than 50 percent of the annual throughput, the applicant must meet three conditions.

(i) The basic processing and/or marketing activities shall constitute a logical and actual extension of a farmer's, rancher's, or aquatic producer's or harvester's operation for financing forward integration from the production stage through the basic processing and/or marketing stage.

(ii) The applicant or, as provided for in paragraph (iii) of this section, the owners of the applicant processing or marketing unit, shall produce on a sustained basis a minimum of 20 percent of the annual throughput of the basic processing and/or marketing operation or such higher percentage established by the Farm Credit System bank. Essentially all of the additional throughput utilized in the processing and/or marketing stage shall be purchased from or handled for eligible borrowers as defiend in §§ 613.3010 and 613.3020.

(iii) Where the ownership of the processing and/or marketing activities differs from that of the basic production unit, all of the ownership of the processing and/or marketing operation shall be vested in persons eligible to borrow as defined in §§ 613.3010 and 613.3020.

(c) Farm Credit System banks and associations shall develop policies that embody at least the following:

(1) The minimum "throughput" requirement;

(2) The method for defining basic processing and/or marketing activities by commodity or groups of commodities;

(3) Limitations on financing extended under the processing and marketing authority to those needs directly associated with the processing and/or marketing operation;

(4) Analysis and documentation of the ownership and operational features of the borrower sufficient both to establish loan eligibility under this section each time a loan is made or renegotiated, and to identify processing and/or marketing loans where less than 50 percent of the throughput is produced by the borrower or owners of the processing and/or marketing activity; and

(5) Authorities and limitations applicable to the Farm Credit System banks and associations.

7. Section 613.3050 is amended by revising paragraph (c) to read as follows:

§ 613.3050 Farm-related business.

* * * * *

(c) *Scope of financing.* Farm Credit Banks, Agricultural Credit Banks, production credit associations, agricultural credit associations, and Federal land bank associations which have been transferred long-term real estate lending authority, may make long-term real estate mortgage loans to farm-related businesses for necessary sites, capital structures, equipment and initial working capital for such services. Farm Credit Banks, Agricultural Credit Banks, production credit associations and agricultural credit associations may make operating and intermediate-term loans to farm-related businesses for any working capital, equipment, and operating need incident to the operation of farm-related businesses.

8. The heading of Subpart C is revised to read as follows:

Subpart C—Eligibility of Financial Institutions To Borrow From the Farm Credit Bank or Agricultural Credit Bank

9. Section 613.3060 is revised to read as follows:

§ 613.3060 Institutions eligible.

The Farm Credit Banks and Agricultural Credit Banks may make loans to and discount paper for production credit associations, agricultural credit associations, Federal land bank associations which have been transferred long-term real estate lending authority, and other financing institutions in accordance with provisions in Part 614 of this chapter.

Subpart D—Eligibility of Cooperatives to Borrow From a Bank for Cooperatives

10. Section 613.3110 is amended by revising paragraphs (a)(4), (b)(2), (b)(4) and (b)(5) to read as follows:

§ 613.3110 Cooperative eligibility.

(a) *Definitions.* * * *

(4) "Service cooperative" is a cooperative predominantly involved in providing a specialized business service related to the agricultural or aquatic business operations of farmers, ranchers, or producers or harvesters of aquatic products, or cooperatives.

(b) *Eligibility.* * * *

(2)(i) Requirements for a higher percentage of voting control by farmers, ranchers, producers or harvesters of aquatic products, or eligible cooperatives may be established by resolution of the bank for cooperatives board of directors with respect to any type of cooperative. Such higher voting control percentage requirements shall be applied uniformly and consistently to any type of cooperative so designated in the bank for cooperatives board resolution.

(ii) Bank for cooperatives board policies shall ensure that bank for cooperatives procedures require good faith representations on the part of borrowers in applications for loans and in loan covenants to affirm that the minimum farmer, rancher, and aquatic producer or harvestor voting control percentage requirements established by the Act are met. The procedures shall require documentation in bank loan files of the basis upon which such representations are made and accepted in the case of those cooperatives whose records do not establish the percentage of voting control held by agricultural or aquatic producers.

* * * * *

(4) No member of the cooperative has more than one vote because of the amount of stock or membership capital owned therein; or, the cooperative must restrict dividends on stock or membership capital to 10 percent per year or the maximum percentage per year permitted by the applicable State statutes, whichever is less. Notwithstanding the provisions of section 3.9(a) of the Act, the board of directors of a bank of cooperatives may determine that, with respect to a loan to any borrower eligible to borrow under § 613.3110(b)(5)(i) that is fully guaranteed by the United States Government, no stock purchase requirement shall apply, other than the requirement that a borrower eligible to own voting stock shall purchase one share of such stock.

(5) Entities eligible to borrow from a bank for cooperatives.

(i) Cooperatives and other entities that have received a loan, loan commitment, or loan guarantee from the Rural Electrification Administration, or a loan or loan commitment from the Rural Telephone Bank, or that have been certified by the Administrator of the Rural Electrification Administration to be eligible for such a loan, loan commitment, or loan guarantee, and subsidiaries of such cooperatives or other entities.

(ii) Any legal entity, more than 50 percent of the voting control of which is held by one or more associations or other entities that are eligible to borrow from a bank for cooperatives under § 613.3110 (b)(1) and (b)(2) or (b)(5)(i). However, any such legal entity, when considered together with one or more such associations or other legal entities that hold such control, shall also meet the requirements of § 613.3110 (b)(3) or (b)(5)(i).

(iii) Any legal entity that:

(A) holds more than 50 percent of the voting control of an association or other entity that is eligible to borrow from a bank for cooperatives under § 613.3110(b); and

(B) borrows for the purpose of making funds available to that association or entity, under the same terms and conditions as the funds are obtained from the bank for cooperatives.

* * * * *

PART 614—LOAN POLICIES AND OPERATIONS

11. The authority citation for Part 614 is revised to read as follows and the authority citations throughout Part 614 are removed:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 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, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17(a)(10), 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 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, 2207, 2219a, 2219b, 2243, 2244, 2252(a)(10), 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5; sec. 413 of Pub. L. 100–233.

Subpart A—General

12. Section 614.4000 is revised to read as follows:

§ 614.4000 Basic responsibilities.

The Act vests certain responsibilities with the Farm Credit System banks, associations and the Farm Credit Administration which pertain to the development of a credit system responsive to the credit needs of all eligible creditworthy applicants.

13. Section 614.4030 is amended by revising paragraph (a) to read as follows:

§ 614.4030 Policies for loanmaking.

(a) Farm Credit Banks and Agricultural Credit Banks (hereinafter banks), shall adopt policies and procedures governing the exercise of loanmaking authority by the Federal land bank associations acting as agents for the bank. The banks may delegate loanmaking authority to Federal land bank associations that demonstrate the ability to extend and administer credit soundly, provided the association develops and implements adequate credit administration guidelines and standards.

The banks shall adopt lending policies and procedures governing the extension of credit to associations which are direct lenders and other financing institutions which include the lending and financial standards for these institutions. These policies and procedures shall restrict the exercise of loanmaking authority of those associations with direct lending authority that do not demonstrate the ability to extend and administer credit soundly. The boards of directors of each association shall develop policies and procedures within which the association shall conduct its lending operations. Such policies and procedures shall require each association to maintain an adequate system of internal controls and shall also address particular enterprise financing and limitations with respect to lending in specialized or hazardous areas.

* * * * *

14. Section 614.4050 is revised to read as follows:

§ 614.4050 Bank and association lending relationship.

Farm Credit Bank and Agricultural Credit Bank (hereinafter bank) loans to associations shall be granted in accordance with the terms of a written financing agreement executed by both parties. The agreement shall specify the terms and conditions under which the bank has agreed to extend credit to the associations, limitations on the amount to be loaned, the definition of default, the remedies for default and such other items as may be necesary to define lending relationship.

§ 614.4051 [Removed and Reserved]

15. Section 614.4051 is removed and reserved.

§ 614.4060 [Redesignated as § 614.4065].

16. Section 614.4060 is redesignated as § 614.4065 and a new § 614.4060 is added to read as follows:

§ 614.4060 Transfer of loanmaking authorities to Federal land bank associations.

The authority for making and participating in long-term real estate mortgage loans may be transferred to a Federal land bank association (hereinafter association) pursuant to section 7.6 of the Act and Part 611 Subpart E of these regulations. The association shall have in place, prior to the transfer, policies and procedures guiding the extension and administration of credit within its territory.

17. Newly redesignated § 614.4065 is revised to read as follows:

§ 614.4065 Association responsibilities.

(a) Associations shall conduct their lending operations within their vested, delegated or transferred authority in compliance with these regulations and the policies of the association board and affiliated bank. Demonstrated capability in extending sound credit, including the extent to which association boards have established policies and procedures with adequate controls and accountability, shall be major factors in determining the terms under which the bank shall lend to the association.

(b) Associations with transferred direct lending authority pursuant to sections 7.6 of the Act or vested lending authority will be responsible for their individual lending operations. Such associations will operate under policies and procedures established by the association board in accordance with subject to the terms and conditions of the financing agreement between the bank and association.

(c) Federal land bank associations with delegated authority acting as agents for the Farm Credit Bank's or Agricultural Credit Bank's (hereinafter bank's) lending operations are to follow the bank's established policies and procedures, subject to the bank's supervision according to the terms stated in the delegations of authority and contractual agreement between the bank and association.

Subpart B—Chartered Territories

18. Section 614.4070 is revised to read as follows:

§ 614.4070 Loans and chartered territory—Farm Credit Banks, Agricultural Credit Banks, Federal land bank associations, production credit associations, and agricultural credit associations.

(a) A loan to finance eligible borrower operations conducted wholly within the chartered territory of a Farm Credit Bank or Agricultural Credit Bank (hereinafter bank) or Federal land bank association, production credit association or agricultural credit association (hereinafter association) may be made by the bank or association in whose territory the operations are conducted regardless of the residence of the applicant.

(b) A loan to finance eligible borrower operations which are conducted partially within the territory of a bank or association may be made if concurrence is obtained from all institutions providing similar credit for territories in which the operations are conducted.

(c) Loans to finance eligible borrower operations conducted wholly outside the chartered territory of a bank or association may be made, provided such loans are authorized by the policies of the bank and association and do not constitute a significant shift in loan volume away from the bank's or association's assigned territorial limits as addressed in paragraph (d) of this section.

(1) If a loan is made to an eligible borrower whose operation is conducted wholly outside the chartered territory of the lending bank or association, the lending institution shall obtain concurrence of like associations and the affiliated bank(s) in those territory(ies) the operation is conducted.

(2) Policies under which a bank or association proposes to finance a significant amount of loan volume (more than 5 percent of its existing loan volume) in another institution's chartered territory, require prior approval of the Farm Credit Administration.

(3) Loans to finance eligible borrower operations wholly outside of the bank's or association's territory shall be appropriately designated by the bank or association to provide adequate identification of the number and volume of such loans that are included in the loan portfolio and shall be monitored by the bank and associations.

19. Section 614.4080 is amended by revising the heading, removing existing paragraph (c) and redesignating paragraph (d) as new paragraph (c) and revising paragraphs (a) and (b) to read as follows:

§ 614.4080 Loans and chartered territory—banks for cooperatives.

(a) Pursuant to Title III of the Act, each bank for cooperatives is authorized to operate under a national charter permitting it to lend to cooperatives headquartered within any territory that may be served by Farm Credit System institutions under section 5.0 of the Act, or to any borrower otherwise eligible under section 3.7(b) of the Act.

(b) Territorial limitations for Agricultural Credit Bank loans that are not made pursuant to bank for cooperatives lending authorities are described in § 614.4070.

* * * * *

§§ 614.4090, 614.4100, 614.4110, 614.4120 and 614.4130 (Subpart C) [Removed].

20. Subpart C consisting of §§ 614.4090, 614.4100, 614.4110, 614.4120 and 614.4130 is removed.

Subpart D—[Redesignated as Subpart C]

21. Subpart D is redesignated as Subpart C.

Subpart C—General Loan Policies for Banks and Association

22. Section 614.4150 is amended by revising introductory text and paragraphs (c) and (e) to read as follows:

§ 614.4150 Credit factors.

Each Farm Credit System bank and association shall develop policies and procedures to evaluate credit factors to ensure that its lending operations result in sound loans and should, at a minimum, discuss the following:

* * * * *

(c) *Repayment capacity:* The determination of repayment capacity requires an analysis of cash flow history and projections. A cash flow projection shall reflect reasonably expected cash flow generation from the applicant's operation and all other sources. The flow of cash shall be sufficient to meet all obligations on a timely basis and provide a remainder for contingencies.

* * * * *

(e) *Collateral:* Collateral needs are contingent upon the requirements of the law and the strengths and weaknesses of all other credit factors. Collateral requirements shall be designed to reasonably protect the lender and provide the necessary control of equity and repayment. In addition, personal liability or entity liability in the form of comakers or guarantors may be required to provide added strength in extending credit. The creditworthiness of such comakers or guarantors shall be analyzed to assure that their signatures actually provide added credit support for the loan.

23. Section 614.4160 is amended by revising paragraph (c) to read as follows:

§ 614.4160 Lending objective.

* * * * *

(c) Farm Credit System bank and association boards shall adopt policies providing adequate direction to management in administering credit and lending standards. These policies shall ensure that nonagricultural assets owned by applicants or included in collateral appraisals are not given undue weight in the final loan decision. These policies shall also require that the nature of loans made under the eligibility provisions of §§ 613.3020 and 613.3030 shall be predominantly agricultural or aquatic. Management shall prescribe operating procedures to effectively administer board policies, that include provisions to ensure that proper weight is given to the wide variety of combinations of person, property, and purpose which can exist. These management procedures shall also require identification of that portion of mixed value (agricultural and nonagricultural) assets which may be considered agricultural for lending purposes.

24. Section 614.4165 is amended by removing paragraph (f) and revising paragraph (c) introductory text and paragraph (d) to read as follows:

§ 614.4165 Special credit needs.

* * * * *

(c) Farm Credit Bank, Agricultural Credit Bank, and association boards shall adopt policies that address the establishment of programs by production credit associations, agricultural credit associations, and Federal land bank associations to provide credit and related services to young, beginning, or small farmers, ranchers, and producers or harvesters of aquatic products. Such policies shall outline objectives of the programs and shall include, but are not limited to, the following:

* * * * *

(e) Each Farm Credit Bank and Agricultural Credit Bank shall provide to the Farm Credit Administration an annual report summarizing the operations and achievements in their chartered territory under such programs. The format for these reports shall be prescribed by the Farm Credit Administration and shall be based on the reports from each association providing services under these programs.

* * * * *

§ 614.4170 [Removed].

25. Section 614.4170, in newly redesignated Subpart C is removed.

Subpart E—[Redesignated as Subpart D]

26. Subpart E is redesignated as Subpart D and amended by revising the heading to read as follows:

Subpart D—Lending Authorities, Terms, and Conditions

27. Section 614.4170 is added to Subpart D, to read as follows:

§ 614.4170 Farm Credit Banks.

(a) Farm Credit Banks are authorized to make long-term real estate mortgage loans in rural areas (as defined in § 613.3040) or to farmers, ranchers or producers or harvesters of aquatic products, for a term of not less than 5 years nor more than 40 years. Subject to limitations applicable to making long-term real estate mortgage loans, the Farm Credit Banks are authorized to make continuing commitments to make such loans. To assure proper understanding, provide needed controls, and protect the lender, a formal written loan agreement shall be developed between the borrower and the lender. The notice of approval shall set out the terms and conditions under which a loan is approved based on the following:

(1) The outstanding loan balance on any loan shall not at any time during the life of the loan exceed 85 percent (97 percent if guaranteed by a Federal, State, or other governmental agency) of the appraised value established by the most recent appraisal report on the real estate taken as primary security. As deemed necessary by the Farm Credit Administration, the maximum loan balance-to-appraised value percentage may be reduced to 75 percent, where other than sound loan and business decisions are prevalent. These limitations shall not, however, prohibit advancing taxes or insurance premiums with respect to the real estate, rescheduling loan payments, or granting partial releases of security interests in the real estate, or other actions necessary to protect the lender's collateral position:

(i) If there is adequate collateral to support the total amount of the outstanding debt and such action will increase the ability of the debtor to repay the debt, or

(ii) If there is not adequate collateral to support the debt, the actions are considered necessary to protect the financial interest of the bank and/or association in the collateral. Such credit extensions shall be in accordance with specific board policy and shall be reported to the board on a regular basis.

(2) Such loans must be secured by a first lien on an interest in real estate. Additional security may be required, but shall only be considered supplementary protection and may not be included in the value of the security for purposes of applying the loan-to-security limitations that exist for real estate mortgage loans. A request for additional security must comply with the provisions of § 614.4443.

(3) As a condition precedent for making any long-term real estate mortgage loan, Farm Credit Banks shall obtain a verifiable balance sheet and income statement from each borrower. Thereafter, Farm Credit Bank board policies shall require that a verifiable balance sheet and income statement be obtained at least annually from each borrower; however, loans with regular and frequently scheduled payment periods, such as rural housing or other similar amortized consumer type loans, may be excluded from this requirement.

(b) Farm Credit Banks are authorized to participate in loans with Federal land bank associations, production credit associations, and agricultural credit associations as set forth in §§ 614.4190, 614.4200, and 614.4205, respectively, and with Farm Credit System banks and lenders which are not Farm Credit System institutions as set forth in §§ 614.4330 and 614.4331.

(c) Farm Credit Banks are authorized to make loans and extend other similar financial assistance to production credit associations, agricultural credit associations, and Federal land bank associations with direct long-term real estate lending authority, and discount for, or purchase from, such associations, with their endorsement or guaranty, any note, draft, and other obligations for loans which have been made for eligible purposes in accordance with the provisions of Part 614 of these regulations. The Farm Credit Banks shall have defined standards under which loans to associations will be granted and administered. Farm Credit Banks shall require execution of a financing agreement as a condition to making direct loans to production credit associations, Federal land bank associations, and agricultural credit associations. The Agreement will contain the terms, conditions and limitations under which Farm Credit Banks will advance funds to associations. Normally, direct loans to these associations will be secured by a pledge of certain or all assets of the association. However, the Farm Credit Banks may lend to associations on an unsecured basis if the overall condition of the association warrants such lending. The amount loaned shall at all times be consistent with sound financial and credit practices. The basis for evaluation of the creditworthiness of the association shall be as set forth in §§ 614.4140 and 614.4150.

(d) Farm Credit Banks are authorized to make loans and extend other similar financial assistance to, discount for, and purchase with recourse from, any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products (hereinafter other financing institutions), notes, drafts, and other obligations for loans which have been made for eligible purposes in accordance with the provisions of Part 614 Subpart P of these regulations. All such financial instruments shall bear the endorsement or guaranty of the originating lender. Farm Credit Banks shall require execution of a financing agreement as a condition to making and discounting loans for other financing institutions. The agreement will contain the terms, conditions and limitations under which Farm Credit Banks will advance funds to other financing institutions.

(e) All of the foregoing shall be subject to policies prescribed by the Farm Credit Bank board.

28. Section 614.4180 is revised to read as follows:

§ 614.4180 Agricultural Credit Banks.

(a) Agricultural Credit Banks are authorized to make long-term real estate mortgage loans in rural areas (as defined in § 613.3040) or to farmers, ranchers, or producers or harvesters of aquatic products, for a term of not less than 5 years nor more than 40 years subject to the conditions set forth in § 614.4170(a). Subject to limitations applicable to making long-term real estate mortgage loans, Agricultural Credit Banks are authorized to make continuing commitments to make such loans.

(b) Agricultural Credit Banks are authorized to participate in loans with Federal land bank associations with direct long-term real estate lending authority, production credit associations, and agricultural credit associations as set forth in §§ 614.4190, 614.4200, and 614.4205, respectively, and with Farm Credit System banks and lenders which are not Farm Credit System institutions as set forth in Part 614 Subpart H.

(c) Agricultural Credit Banks are authorized to make loans to production credit associations, agricultural credit associations, and Federal land bank associations with direct long-term real estate lending authority subject to the conditions set forth in § 614.4170(c). Agricultural Credit Banks are also authorized to provide and extend financial assistance to and discount for, or purchase from, such associations, with their endorsement or guaranty, any note, draft, and other obligations for loans which have been made for eligible purposes as set forth in § 614.4170(c). Agricultural Credit Banks shall require execution of a financing agreement as a condition to making direct loans to production credit associations, Federal land bank associations, and agricultural credit associations. The agreement will contain the terms, conditions and limitations under which Agricultural Credit Banks will advance funds to associations.

(d) Agricultural Credit Banks are authorized to make loans and extend other similar financial assistance to, discount for, and purchase with recourse from, any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products (hereinafter other financing institutions), notes, drafts, and other obligations for loans which have been made for eligible purposes in accordance with provisions of Part 614 Subpart P of these regulations. All such financial instruments shall bear the endorsement or guaranty of the originating lender. Agricultural Credit Banks shall require execution of a financing agreement as a condition to making and discounting loans for other financing institutions. The agreement will contain the terms, conditions and limitations under which Agricultural Credit Banks will advance funds to other financing institutions.

(e) Agricultural Credit Banks are authorized to make loans and commitments to eligible cooperatives and to extend to them other financial assistance, including but not limited to, discounting notes and other obligations,

guarantees, and collateral custody as set forth in § 614.4210.

(f) All of the foregoing shall be subject to policies prescribed by the Agricultural Credit Bank board.

29. Section 614.4190 is revised to read as follows:

§ 614.4190 Federal land bank associations.

Subject to the terms contained in § 614.4170(a), each Federal land bank association receiving a transfer of direct long-term real estate lending authority pursuant to section 7.6 of the Act, under the policies required in § 614.4060, is authorized to make long-term real estate mortgage loans in rural areas (as defined in § 613.3040) or to farmers, ranchers, producers or harvesters of aquatic products, for a term of not less than 5 years nor more than 40 years. The authority of these associations to participate in loans with other Farm Credit System banks and associations, and lenders which are not Farm Credit System institutions, is set forth in §§ 614.4330 and 614.4332. Subject to limitations applicable to making long-term real estate mortgage loans, these associations are authorized to make continuing commitments to make such loans. In addition, in making long-term real estate mortgage loans, these associations shall comply with the guidelines for obtaining financial reports described in § 614.4170(a)(3). All of the foregoing shall be subject to policies prescribed by the Federal land bank association board.

30. Section 614.4200 is amended by adding an introductory paragraph; removing paragraphs (c)(2) (iii), (iv), and (c)(3); revising paragraphs (b), (c) introductory text and (c)(2) introductory text; and adding a new paragraph (e) to read as follows:

§ 614.4200 Production credit associations.

Production credit associations, under policies established by the board of directors, are authorized to make and guarantee short- and intermediate-term loans and provide other similar financial assistance to eligible borrowers. Short- and intermediate-term loans may be made for a term not exceeding 7 years, or such longer periods not to exceed 10 years, as set forth in association policy. Loans for a term not exceeding 15 years may be made pursuant to the terms of paragraph (d) of this section. In addition, production credit associations may participate in loans and other similar financial assistance with other Farm Credit System institutions and with commercial banks or financial institutions as set forth in §§ 614.4330 and 614.4333. The notice of approval shall set out the terms and conditions under which a loan is approved based on the following:

* * * * *

(b) Intermediate-term loans may be made with maturities not to exceed 7 years from the date of initial disbursement, under policies established by the affiliated bank and association boards.

(c) Longer intermediate-term loans may be made for a term not to exceed 10 years from date of initial disbursement. Adoption of this longer intermediate-term loan program is optional with each Farm Credit Bank, Agricultural Credit Bank board and association board.

* * * * *

(2) Farm Credit Bank, Agricultural Credit Bank and production credit association boards shall adopt policies relating to:

* * * * *

(e) As a condition precedent to making any loan, the association shall have an enforceable right to obtain a verifiable balance sheet and income statement from each borrower. The association shall develop a policy that requires a verifiable balance sheet and income statement to be obtained at least annually thereafter from each borrower, and may exclude those loans with regular and frequently scheduled payment periods, such as rural housing, consumer related and other similar types of amortizing loans, and loans made under district minimum information programs.

31. Section 614.4205 is added to read as follows:

§ 614.4205 Agricultural credit associations.

(a) Agricultural credit associations are authorized to make loans to purchase real estate, to refinance the purchase of real estate, or to finance improvements to real estate when the value of the improvements being financed exceeds the value of the land and when the maturity is not less than 10 years and not more than 40 years. Such loans shall be secured by a first lien on an interest in real estate and shall not exceed 85 percent (97 percent if guaranteed by a Federal, State, or other government agency) of the appraised value established by the most recent appraisal report on the real estate taken as primary security. The additional advance terms applicable to Farm Credit Bank loans described in § 614.4170(a)(1) are also applicable to agricultural credit associations. As a condition precedent to making any long-term real estate mortgage loan, the association shall obtain a verifiable balance sheet and income statement from each borrower. The association shall develop a policy that requires a verifiable balance sheet and income statement to be obtained at least annually thereafter from each borrower, and may exclude those loans with regular and frequently scheduled payment periods, such as rural housing or other similar types of amortizing loans.

(b) Agricultural credit associations are authorized to make loans to finance the short-term operating needs of the borrower. Maturities should coincide with the purpose of the loan and the normal business cycle of the enterprises being financed. Such loans may be made on a secured or unsecured basis.

(c) Agricultural credit associations are authorized to make term loans with maturities which exceed the normal business cycle of the enterprise receiving financing for such items as real estate, equipment, breeding stock, facility improvements and vehicles. Such loans shall have maturities that assure that the useful life and value after depreciation of the items being financed at all times exceeds the outstanding indebtedness. Term loans shall not have maturities that exceed 7 years from the date of the initial disbursement unless the affiliated bank and association board authorize special term loans with maturities not to exceed 10 years. Term loans having maturities not to exceed 15 years may be made to producers and harversters of aquatic products to finance major capital expenditures directly related to the producing or harvesting operation. Normally term loans are secured by the items being financed; however, they may be made on an unsecured basis when justified by the strength of other credit factors.

(d) As a condition precedent to making any loan described in paragraphs (b) and (c) of this section, the association shall have an enforceable right to obtain a verifiable balance sheet and income statement from each borrower. The association shall develop a policy that requires a verifiable balance sheet and income statement to be obtained at least annually thereafter from each borrower, and may exclude those loans with regular and frequently scheduled payment periods, such as rural housing, consumer related and other similar types of amortizing loans, and loans made under district minimum information programs.

(e) Agricultural credit associations are authorized to participate in loans and other similar financial assistance with

Farm Credit System banks, associations, and with other lenders which are not Farm Credit System institutions as set forth in §§ 614.4330 and 614.4336.

(f) All of the foregoing shall be subject to policies prescribed by the agricultural credit association board.

32. Section 614.4210 is amended by adding introductory text and revising paragraph (c) introductory text to read as follows:

§ 164.4210 Banks for cooperatives.

Banks for cooperatives as defined in Part 619 are authorized to make loans and commitments to eligible cooperatives and to extend to them other financial assistance, including but not limited to, discounting notes and other obligations, guarantees, and collateral custody. Banks for cooperatives are authorized to participate with Farm Credit System banks, associations, and other financial institutions in loans as set forth in §§ 614.4330 and 614.4334. Banks for cooperatives are authorized to make or participate in loans, commitments, and extend other technical and financial assistance to a domestic or foreign party with respect to its transactions with a voting stockholder of the bank and to a domestic or foreign party in which such stockholder has at least a minimum ownership interest for the export or import of agricultural commodities, farm supplies, or aquatic products through purchases, sales, or exchanges. The voting stockholder must substantially benefit as a result of such a loan, commitment, or assistance for the purpose of facilitating the eligible cooperative's export or import operations. This type of activity shall be made under policies established by the bank's board of directors. Banks for coooperatives are authorized to make or participate in loans and commitments to finance and extend technical and financial assistance to domestic noncooperative lessors for the purpose of providing leased assets to eligible cooperative borrowers. The terms of the contract between the lessor and lessee shall establish that the leased assets are effectively under the control of the lessee and that such control shall continue in effect for essentially all of the term of the lease. The term of such a loan or financial assistance shall not be longer than the total period of the lease. The lessee must be a stockholder of the bank for cooperatives, and the leased equipment and facilities may only be for use in its operations in the United States. The following terms and conditions apply to loans made by banks for cooperatives:

* * * * *

(c) Term loans authorized to finance a foreign or domestic party with respect to export or import transactions with an eligible cooperative and to finance such transactions of a foreign or domestic party in which an eligible cooperative has at least a minimum ownership interest shall be subject to the following conditions:

* * * * *

33. A new Subpart E is added to read as follows:

Subpart E—Security Requirements for Cooperative Lending

§ 164.4260 [Redesignated as § 614.4215]

34. Section 614.4260 is redesignated as § 614.4215 of Subpart E and amended by revising the heading and introductory text to read as follows:

§ 164.4215 Security requirements for cooperative lending.

Bank for cooperatives as defined in Part 619 are authorized to make both secured and unsecured loans.

* * * * *

35. The heading for Subpart F is revised to read as follows:

Subpart F—Appraisal Requirements

36. Section 614.4220 is revised to read as follows:

§ 164.4220 Appraisal standards.

The boards of directors of each Farm Credit System bank and association are responsible for the development of well-defined and effective appraisal standards and policies.

(a) The appraisal policies and standards shall incorporate the following minimum requirements:

(1) All appraisals shall be made according to uniform standards of the appraisal industry and professional appraisal practices. Such appraisals should follow a reasonable valuation method which considers the approaches to appraised value described in paragraph (b)(1) of the section, unless the appraiser fully explains and documents the elimination of an approach.

(2) Appraisal documentation should also, at a minimum, comply with professional appraisal practices and the requirements of uniform standards established by the appraisal industry. Appraisal reports shall contain suficient informaton and data concerning the subject property to substantiate the value of the secutity described in such reports.

(3) The banks and associations shall establish standards for the qualifications and competence of fee and staff appraisers. Such policies shall require the appraiser to be independent from the loan decision process.

(4) Bank and association policies should include a process for reviewing, on an annual basis, new and existing appraisal reports for adequacy and accuracy, as well as a process for ordering reappraisals when additional or updated information is required.

(5) Real estate appraisals shall properly identify all nonagricultural influences, i.e., mineral deposits, commercial building development value, etc. These nonagricultural influences shall be documented in the final appraisal report.

(6) Real estate shall be valued on the basis of appraised value described in paragraph (b)(1) of this section.

(7) Chattel or personal property shall be appraised based on market value decribed in paragraph (b)(2) of this section.

(8) Collateral closely aligned with, an integral part of, and normally sold with the real estate may be included in the appraised value of the primary security upon which a loan is based. The appraised value of such collateral shall be determined according to the appraisal standards prescribed by the bank and association.

(b) In order to ensure standardization of appraisal terminology among the Farm Credit System banks and associations, the following definitions shall apply.

(1) *Appraised value.* Appraised value shall be the basis for valuing real estate. It incorporates the evaluation of the subject property by the three primary valuation approaches (cost, income, and comparable sales) to obtain a reasonably supportable value. These terms are defined as follows:

(i) *Cost Value* is the estimate of cost to reproduce or replace the property at the date of the appraisal, less an appropriate allowance for depreciation. (Physical deterioration, or functional, and/or economic obsolescence) made by market comparisons of cost and depreciation.

(ii) *Income Value* is the estimate of net income to be derived from future operations of the property, converted to an estimate of property value by application of an appropriate capitalization rate divided by the new income. The capitalization rate will be determined by analysis of the rate of return received by similar operations at the time of the appraisal. The capitatlization rate may be influenced

by favorable or unfavorable market features such as commodity markets, roads, transportation, community facilities, dwelling value, and other amenities which must be considered in the final estimate of value.

(iii) *Comparable Sales* is the process of comparing a subject property with similar properties located in relatively close proximity, having similar size and utility, and recently sold in arms-length transactions. Such comparisons will include adjustments for the variances used in valuing the subject property.

(2) *Market Value* is defined as the estimated sales price of a property based on the collective action of fully informed buyers and sellers over a reasonable period of time, which generally requires giving consideration to the full range of sales over at least the previous 6 months. Market price is distinguished from market value in that market price indicates the amount for which an individual property may have sold. In order to reflect the customary and current legal use of the property, single purpose sales, limited highest and best use sales, and sales based on speculative assumptions will be excluded from consideration in performing market value analysis. In addition, the following conditions must be met for a sale to be included in market value analysis:

(i) Buyer and seller are free of undue stimulus and are motivated by no more than the reactions of typical owners;

(ii) Both parties are well informed, well advised and act prudently according to their own best interests;

(iii) A reasonable time is allowed to test the market; and

(iv) Payment is made in cash or in accordance with financing terms generally available in the community for similar types of property.

§§ 614.4230, 614.4240, 614.4250 and 614.4261 [Removed]

37. Sections 614.4230, 614.4240, 614.4250 and 614.4261 are removed.

Subpart H—Loan Participations

38. Section 614.4330 is amended by revising the introductory text of paragraph (a), paragraphs (a)(1), (a)(3), (a)(6), (b) including text, (d)(1), (d)(3); and adding (d)(6); and removing paragraphs (e)(3) and (e)(4) to read as follows:

§ 614.4330 General.

(a) Under policies established by the boards of directors of the respective banks and associations, Farm Credit System banks and agricultural credit associations, production credit associations, and Federal land bank associations with direct long-term real estate lending authority (hereinafter collectively referred to as association(s)) may enter into loan participation agreements, as set forth in this subpart, to enable joint financing of individuals or legal entities authorized by the Act and the FCA regulations to borrow from Farm Credit System institutions. The areas to be addressed in these policies are stated in the list that follows.

(1) The basis upon which banks and associations may enter into loan participations.

(2) * * *

(3) Criteria regarding the credit quality of loan participations that Farm Credit System banks and associations may purchase.

* * * * *

(6) The aggregate amount of loan participations that a bank or association may purchase based on a percentage of total net loan volume.

* * * * *

(b) * * *

(4) * * *

Loan participations shall not be used to circumvent the operations or financial requirements of any Farm Credit System institution.

* * * * *

(d) * * *

(1) Each participating bank or association shall analyze each loan independently to ensure that the interest of the stockholders of each institution are protected.

* * * * *

(3) Participating institutions shall be issued certificates evidencing an undivided interest in the loan.

* * * * *

(6) Participation agreements among associations or between Farm Credit System banks and associations shall be executed in accordance with the term and conditions of the existing association and affiliated bank financing agreement.

39. Section 614.4331 is amended by revising the heading, paragraphs (a), (b), (c), introductory text of paragraph (d)(1) to read as follows:

§ 614.4331 Farm Credit Banks.

(a) Farm Credit Banks may enter into loan participation agreements with Farm Credit System banks and associations, commercial banks and financial institutions only on loans that Farm Credit Banks are authorized to make under Title I of the Act and FCA regulations and in accordance with the provisions of § 614.4330.

(b) All Farm Credit Bank loan participation agreements may finance eligible borrower operations located within its chartered territory, and may finance operations outside its chartered territory if the requirements of § 614.4070 are met.

(c) In addition to the provisions contained in § 614.4330, participation agreements between Farm Credit Banks and lenders which are not Farm Credit System institutions shall be subject to the limitations stated in the list that follows.

(d) * * *

(1) To assure that a non-System lender participating in such an agreement continues to use at least the same proportion of its resources for agricultural, aquatic, farm-related service, and rural home loans, the lender with which the Farm Credit Bank participates shall fulfill one of the following:

* * * * *

40. Sections 614.4332 is revised to read as follows:

§ 614.4332 Federal land bank associations.

(a) Federal land bank associations with direct long-term real estate lending authority (hereinafter Federal land bank association(s)), may enter into participation agreements for long-term real estate mortgage loans with one or more Farm Credit System banks or associations, commercial banks, or financial institutions which are not Farm Credit System institutions in accordance with § 614.4330.

(b) Participation agreements with commercial banks and financial institutions which are not Farm Credit System institutions will include the same limitations as contained in § 614.4333(c).

(c) Federal land bank associations shall only enter into loan participation agreements with lenders other than Federal land bank associations with direct long-term real estate lending authority to finance eligible borrower operations located within the association's chartered territory, and outside the chartered territory if the requirements of §614.4070 are met.

41. Section 614.4333 is amended by revising paragraph (a) to read as follows:

§ 614.4333 Production credit associations.

(a) Production credit associations may enter into participation agreements with one or more Farm Credit System banks and associations, commercial banks, and financial institutions which are not Farm Credit institutions in accordance with § 614.4330.

* * * * *

42. Section 614.4334 is revised to read as follows:

§ 614.4334 Banks for cooperatives.

(a) Banks for cooperatives may enter into loan participation agreements with other Farm Credit System banks and associations. Banks for cooperatives may enter into loan participation agreements with commercial banks and financial institutions which are not Farm Credit System institutions only on loans that banks for cooperatives are authorized to originate under Title III the Act and FCA regulations and in accordance with § 614.4330.

(b) A bank for cooperatives exceeding its lending limit for loans to a single borrower will offer the loan for participation as follows:

(1) If the loan is originated by an individual or regional bank for cooperatives, a written offer to participate the loan shall be made to any of the following:

(i) The National Bank for Cooperatives;

(ii) A Farm Credit System bank other than the originating bank for cooperatives' affiliated Farm Credit Bank(s); or

(iii) Commercial bank or financial institution that is not a Farm Credit System institution.

(2) Loans originated by a bank for cooperatives that exceed the lending limit for the National Bank of Cooperatives may be made only when such excess amounts are sold as participations to other banks for cooperatives, commercial banks or financial institutions that are not Farm Credit System institutions.

(c) Loans to a single borrower which are less than the lending limit of the originating bank for cooperatives may be offered for participation to other Farm Credit System banks and associations, commercial banks, or other financial institutions that are not Farm Credit System institutions.

43. Sections 614.4335 and 614.4336 are added to read as follows:

§ 614.4335 Agricultural Credit Banks.

(a) Agricultural Credit Banks may enter into loan participation agreements with Farm Credit System banks and associations, commercial banks and other financing institutions on loans that Agricultural Credit Banks are authorized to make under Titles I and III of the Act and FCA regulations and in accordance with § 614.4330.

(b) All Agricultural Credit Bank loan participation agreements may finance eligible borrower operations located within its chartered territory, and may finance operations outside its chartered territory if the requirements of § 614.4070 are met.

(c) In addition to the provisions contained in § 614.4330, participation agreements between Agricultural Credit Banks and lenders which are not Farm Credit System institutions shall be subject to the same limitations described in § 614.4331 (d)(1) and (d)(2).

§ 614.4336 Agricultural credit associations.

(a) Agricultural credit associations may enter into participation agreements with one or more Farm Credit System banks or associations, commercial banks, or other financing institutions in accordance with § 614.4330. Participation agreements with commercial banks and financial institutions which are not Farm Credit System institutions will be executed under the same limitations contained in § 614.4333(c).

(b) Agricultural credit associations shall only enter into loan participation agreements with lenders which are not Farm Credit System institutions to finance eligible borrower operations located within these associations' chartered territories, and may finance operations outside their chartered territory if the requirements of § 614.4070 are met.

Subpart J—Lending Limit

44. Sections 614.4351 and 614.4352 are revised to read as follows:

§ 614.4351 Farm Credit Banks or Agricultural Credit Banks.

The total amount of loans, advances, commitments, financial assistance and funds through the purchase of loan participations that a Farm Credit Bank or Agricultural Credit Bank (hereinafter bank) may extend directly or through loan participations to any one borrower, except Farm Credit System associations and other financing institutions, shall not exceed the following:

(a) Loans made to eligible borrowers described in §§ 613.3020, 613.3040, 613.3045 and 613.3050 shall not exceed 20 percent of the capital and surplus of the bank (including guaranteed member stock).

(b) Loans to organizations eligible to borrow from banks for cooperatives described in § 613.3110 shall not exceed the amount applicable to banks for cooperatives under § 614.4355.

§ 614.4352 Federal Land Bank Associations.

The total amount of loans, advances, commitments, and financial assistance and funds through the purchase of loan participations that may be extended to any one borrower by a Federal land bank association, which has received a transfer of long-term real estate lending authority pursuant to section 7.6 of the Act, shall not exceed 20 percent of its capital and surplus (including guaranteed member stock).

§ 614.4354 [Redesignated as § 614.4355]

45. Section 614.4354 is redesignated as § 614.4355 and a new § 614.4354 is added to read as follows:

§ 614.4354 Agricultural Credit Associaitons.

The total amount of loans, advances, commitments and financial assistance and funds through the purchase of loan participations that an agricultural credit association may extend to any one borrower shall not exceed the limitations described in the list which follows.

(a) A lending limit of 20 percent of its capital and surplus (including guaranteed member stock) for long-term real estate mortgage loans having maturities of 10 years or longer.

(b) A lending limit of 50 percent of its capital and surplus (including guaranteed member stock) for operating and intermediate term loans having maturities of less than 10 years, or not to exceed 15 years for aquatic loans.

(c) A lending limit of 100 percent of its capital and surplus (including guaranteed member stock) for operating and intermediate term loans if an approved loss-sharing agreement is in force.

(d) A lending limit of 50 percent of its capital and surplus (including guaranteed member stock for the sum of paragraphs (a) and (b) of this section (100 percent in those cases where an approved loss-sharing agreement is in force).

46. Newly redesignated § 614.4355 is amended by removing paragraphs (a)(3), (a)(4), and (c); redesignating paragraphs (d), (e), and (f), as (c), (d), and (e); and revising the introductory text of paragraph (a), paragraph (b), newly redesignated paragraphs (c) introductory text, (c)(1) and (c)(4) to read as follows:

§ 614.4355 Banks for cooperatives.

(a) *Individual banks.* The total amount of loans, advances, commitments, financial assistance and funds through the purchase of loan participations outstanding at any one time to any one borrower, exclusive of participations sold to others, shall be limited to the following percentages of the net worth

of a bank for cooperatives as calculated on an ongoing basis.

* * * * *

(b) *Total System.* The total amount of loans, advances, commitments, financial assistance and funds through the purchase of loan participations outstanding at any one time to any one borrower from one or more banks for cooperatives, exclusive of participations sold to lenders that are not Farm Credit System institutions, shall not exceed the percentages, specified in paragraph (a)(1) of this section, applied to the combined net worth of the banks for cooperatives available to support the loan. Loans made within previously established limits that become excessive because of changes in prescribed lending limits may be held and liquidated in accordance with existing loan terms and conditions. Such occurrences will be reported to the Farm Credit Administration.

(c) *Determination for purchases of participations from other banks for cooperatives.* A bank for cooperatives shall determine leading limits for the purpose of purchasing participations in loans of another bank for cooperatives as follows:

(1) Determine its balance sheet net worth total on an ongoing basis.

* * * * *

(4) The resulting total equals the amount of a loan to any one borrower which a bank for cooperatives may purchase from another bank for cooperatives.

* * * * *

47. Section 614.4360 is amended by adding a new paragraph (d) to read as follows:

§ 614.4360 Computation of obligation for lending limit determination.

* * * * *

(d) Loans that carry a full faith and credit performance guaranty or surety of the United States Government shall not be included in the computation of lending limit. The board of directors of banks for cooperatives shall adopt policies which require adherence to the conditions of the agency providing the guarantee.

Subpart O—Special Lending Programs

48. Section 614.4525 is revised to read as follows:

§ 614.4525 General.

(a) To provide the best possible credit service to farmers, ranchers, and producers or harvesters of aquatic products, a Farm Credit System bank (hereinafter bank(s)) board may adopt policies permitting banks and Farm Credit System associations to enter into agreements with agents, dealers, cooperatives, other lenders, and individuals to facilitate the making of loans to eligible farmers, ranchers, and producers or harvesters of aquatic products.

(b) A bank, or an association pursuant to bank policy, may enter into an agreement (which will accrue to the benefit of the borrower and lender) with third parties to perform functions in loanmaking or servicing other than the evaluation and approval of loans. When such an agreement is developed, and the territory covered by the agreement extends outside the territorial limits of the originating bank or association, the written consent of all affected banks or associations is required. Reasonable compensation may be paid for services rendered in connection with such agreements.

(c) Production credit associations and agricultural credit associations (hereinafter association(s)) may enter into agreements with private dealers or cooperatives permitting them to take applications for loans from the association to purchase farm or aquatic equipment, supplies, and machinery. Such agreements shall normally be limited to persons or businesses selling to farmers, ranchers, or producers or harvesters of aquatic products and shall contain credit limits consistent with sound credit standards. When the sales territory of a dealer or cooperative extends outside the territory of the originating bank or association, written consent of each bank and association affected shall be obtained before making such loans. Reasonable compensation may be paid or charged to a dealer or cooperative for services rendered in connection with such programs.

§ 614.4530 Special Loan, Production Credit Associations and Agricultural Credit Associations. [Amended]

49. Section 614.4530 is amended by adding the words "and Agricultural Credit Associations" after the works "Production Credit Associations" in the heading and in the introductory paragraph:

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

50. The heading of Subpart P is amended by removing the words "Federal Intermediate Credit Bank" and adding in their place, the words "Farm Credit Bank and Agricultural Credit Bank."

51. Section 614.4540 is amended by revising paragraph (e) and adding paragraphs (h) and (i) to read as follows:

§ 614.4540 Definitions.

* * * * *

(e) The term "other financing institution" (hereinafter referred to as "OFI") means any person enumerated in section 1.7(b)(1)(B) of the Act, except to the extent that depository institutions, as defined herein, are specifically excluded from the term.

* * * * *

(h) The term "bank(s)" refers collectively to a Farm Credit Bank(s) and Agricultural Credit Bank(s) as defined in Title I of the Act and Part 619 of these regulations, respectively.

(i) The term "association" refers collectively to production credit associations and agricultural credit associations defined in Title II of the Act and Part 619 of these regulations, respectively.

§ 614.4545 General. [Amended]

52. Section 614.4545 is amended by removing the words "Federal intermediate credit" in paragraphs (a), (c) introducting text (d) and (e); and by adding the words "or Agricultural Credit Associations" after the words "production credit associations" in the second sentence of paragraph (b).

§ 614.4550 Basic eligibility criteria. [Amended]

53. Section 614.4550 is amended by removing the words "Federal intermediate credit" in paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3) and (b).

§ 614.4555 Review of denial of access based on eligibility. [Amended]

54. Section 614.4555 is amended by removing the words "Federal intermediate credit" in the first sentence.

§ 614.4560 Establishing and maintaining access. [Amended]

55. Section 614.4560 is amended by removing the words "Federal intermediate credit" in paragraphs (a) introductory text, (b)(1), (b)(2), (b)(3), (b)(4) and (b)(5) each place it appears, by removing the words "production credit"in paragraphs (b)(2), (b)(3) and (b)(4) each place it appears; and by removing the acronym "FICB" and adding in its place the word "bank" in the third sentence of paragraph (b)(5).

§ 614.4630 Insolvency of another financing institution. [Amended]

56. Section 614.4630 is amended by removing the words "Federal

intermediate credit" in the first sentence of paragraph (a). §§ 614.4565, 614.4570, 614.4580, 614.4590, 614.4600, 614.4610, 614.4620, 614.4630, 614.4640, 614.4650 and 614.4660 [Amended]

§§ 614.4565, 614.4570, 614.4580, 614.4590, 614.4600, 614.4610, 614.4620, 614.4630, 614.4640, 614.4650, 614.4660 [Amended]

57. In addition to the amendments set forth above and below, 12 CFR Part 614 is amended by removing the words "Federal intermediate credit" in the following sections; and in addition in §§ 614.4610 and 614.4640, removing the words "production credit".

(a) Section 614.4565;
(b) Section 614.4570;
(c) Section 614.4580;
(d) Section 614.4590;
(e) Section 614.4600 (a) introductory text, (a)(1) and (a)(2);
(f) Section 614.4610;
(g) Section 614.4620;
(h) Section 614.4630(a);
(i) Section 614.4640;
(j) Section 614.4650 (a) introductory text, (a)(1) and (b); and
(k) Section 614.4660.

Subpart Q—Banks for Cooperatives Financing International Trade 58. Section 614.4700 is amended by revising paragraph (a) to read as follows:

§ 614.4700 Financing foreign trade receivables.

(a) Banks for cooperatives as defined in Part 619 (hereinafter bank(s) for cooperatives or bank(s)) under policies adopted by their boards of directors, are authorized to finance foreign trade receivables on behalf of eligible cooperatives to include the following:

(1) Advances against collections.
(2) Trade acceptances.
(3) Factoring.
(4) Open accounts.

* * * * *

59. Section 614.4710 is amended by removing paragraph (b); redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c) and (d) and revising the introductory text, (a) heading; paragraphs (a)(1) introductory text, (a)(1)(i), (a)(2), (a)(3), and redesignated paragraphs (b), (c)(1) and (d) to read as follows:

§ 614.4710 Bankers acceptance financing.

The Federal Farm Credit Banks Funding Corporation (Funding Corporation) is authorized to accept drafts or bills of exchange drawn upon banks for cooperatives as defined in Part 619 (hereinafter bank(s) for cooperatives or bank(s)). With the exception of acceptances eligible for purchase by the Federal Reserve banks under the direction and regulation of the Federal Open Market Committee and rediscounted, acceptances shall be subject to the provisions of §§ 614.4350, 614.4355, and 614.4360 of this part and must be combined with any other loans to the account party by the banks for cooperatives for the purpose of applying the lending limits of § 614.4355 of this part.

(a) *Banks for Cooperatives.* (1) The Funding Corporation's authority to accept drafts or bills of exchange drawn upon a bank for cooperatives having not more than 6 months' sight to run, exclusive of days of grace, that are derived from transactions involving the importation or exportation of agricultural commodities, farm supplies, or aquatic products into or out of the United States; or are derived from transactions involving the domestic shipment of goods that were produced from agriculture or commercial fishing or that have an agriculturally or aquatically related purpose; or are secured at the time of acceptance by totally covering readily marketable staples.

(i) The dollar amount of such acceptances outstanding at any one time to any one borrower, exclusive of participations sold to others, shall be limited to 10 percent of the net worth of a bank for cooperatives as calculated on an ongoing basis. However, if such acceptances are secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance, the 10-percent limit shall not apply.

* * * * *

(2) The limit specified in paragraph (a)(1)(i) of this section is separate from and in addition to the lending limits of § 614.4355 of this part if the acceptances are rediscounted.

(3) During any period within which a bank for cooperatives holds its own acceptance, having given value therefor, the amount thereof shall be included against the lending limits set forth in § 614.4355 of this part of the customer for whom the acceptance was made.

* * * * *

(b) *Total system.* Liabilities for drafts accepted at any one time from all of the banks for cooperatives shall not exceed 100 percent of the combined net worth of the banks for cooperatives. However, the aggregate of acceptances growing out of domestic transactions shall not exceed 50 percent of net worth. Discounted acceptances outstanding at any one time to any one borrower from one or more banks for cooperatives, exclusive of participations sold to institutions other than banks for cooperatives, shall not exceed the percentage specified in paragraph (a)(1) of this section applied to the net worth of the banks for cooperatives available to support such acceptances. Acceptances created or discounted within previously established limits that have become excessive because of changes in accepting and/or discounting limits prescribed herein may be held and liquidated in accordance with terms individually specified by the Farm Credit Administration.

(c) *Purchases of participations in bankers acceptances.* (1) A bank for cooperatives shall determine limits on purchasing participations in discounted acceptances of another bank for cooperatives on the same basis as prescribed in § 614.4355 of this part for purchasing participations in loans of another bank for cooperatives.

* * * * *

(d) *Funding Corporation.* All acceptances created by the banks for cooperatives shall be physically accepted by the Funding Corporation when intended for rediscount.

60. Section 614.4720 is amended by revising the introductory paragraph and paragraph (a) to read as follows:

§ 614.4720 Letters of credit.

Banks for cooperatives, under policies adopted by the board of directors, may issue, advise, or confirm import or export letters of credit in accordance with the Uniform Commercial Code, or the Uniform Customs and Practice for Documentary Credits, to or on behalf of its customers. In addition, as a matter of sound banking practice, letters of credit shall be issued in conformity with the list which follows.

(a) Each letter of credit shall be in writing and shall conspicuously state that it is a letter of credit, or be conspicuously entitled as such.

* * * * *

61. Section 614.4800 is revised to read as follows:

§ 614.4800 Guarantees and contracts of suretyship.

A bank for cooperatives (hereinafter bank), under a policy approved by the bank's board of directors, may lend its credit, be itself a surety to indemnify another, or otherwise become a guarantor if an eligible cooperative substantially benefits from the performance of the transaction involved. A bank may guarantee the debt of eligible cooperatives and foreign parties or otherise agree to make payments on the occurrence of readily ascertainable events if the guarantee or agreement specifies a maximum monetary liability.

Guarantees may be secured or unsecured, and can include, but are not limited to, such events as nonpayment of taxes, rentals, customs duties, costs of transport, and loss of or nonconformance of shipping documents. The bank may be remunerated for the guarantee or surety. The bank's customer shall have an unqualified obligation to reimburse the bank for payments made under a guarantee or surety.

62. Section 614.4900 is amended by revising paragraph (a) (b) introductory text, and (i) to read as follows:

§ 614.4900 Foreign exchange.

(a) Before a bank for cooperatives (hereinafter bank) may engage in any financial transaction which transports monetary instruments

(1) From any place within the United States to or through any place outside the United States; or

(2) To any place within the United States from or through any place outside the United States,

The bank must have policies adopted by the bank's board of directors governing such transactions and must have established bank procedures to safeguard the interests of the stockholders of the bank in regard to such transactions.

(b) Under policies adopted by the bank's board of directors, a bank for cooperatives may engage in currency exchange activities necessary to service individual transactions that may be financed under the regulations authorizing export, import, and other internationally related credit and financial services. These currency exchange activities shall not include any loans or commitments intended to finance speculative futures transactions by eligible borrowers in foreign currencies. The bank may engage on behalf of the eligible borrowers or on its own behalf in bona fide hedging transactions and positions, where such transactions or positions normally reduce risks in the conduct and management of international financial activities. The bank's policies should include established guidelines for:

* * * * *

(i) The banks for cooperatives shall use the Federal Farm Credit Banks Funding Corporation (Funding Corporation) for purposes of trading foreign exchange. All foreign exchange transactions shall be made by the Funding Corporation on behalf of the banks consistent with instructions received from the respective bank.

* * * * *

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

63. The authority citation for Part 615 is revised to read as follows and the authority citations throughout Part 615 are removed.

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26; 12 U.S.C. 2013, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233.

Subpart E—Investments

64. Section 615.5160 is amended by revising paragraphs (a) and (d) to read as follows:

§ 615.5160 Production credit association and agricultural credit association investment in farmers' notes given to cooperatives and dealers.

(a) In accordance with policies prescribed by the board of directors of its affiliated Farm Credit Bank or Agricultural Credit Bank, each production credit association and agricultural credit association (hereinafter association(s)) may invest in notes, conditional sales contracts, and other similar obligations given to cooperatives and private dealers by farmers and ranchers eligible to borrow from such associations.

* * * * *

(d) The total amount which an association may invest in such obligations at any one time shall not exceed 15 percent of the balance of loans outstanding at the close of the association's preceding fiscal year. In addition, the total amount which an association may invest in such obligations that are originated by any one cooperative or private dealer, at any one time, shall not exceed 50 percent of association capital and surplus.

* * * * *

Subpart G—Deposit of Funds

65. Section 615.5190 is amended by revising paragraph (a) to read as follows:

§ 615.5190 General.

(a) Farm Credit System banks and associations may deposit securities and current funds with and receive interest from any member bank of the Federal Reserve System or any insured State nonmember bank (within the meaning of section 3 of the Federal Deposit Insurance Act). Associations may also deposit funds with their affiliated Farm Credit System bank.

* * * * *

Subpart Q—Bankers Acceptance

66. Section 615.5550 is revised to read as follows:

§ 615.5550 Bankers acceptances.

Subject to the provisions of § 614.4710, banks for cooperatives may rediscount with other purchasers the acceptances they have created. The bank for cooperatives board, under established bank for cooperatives policies, may delegate this authority to management.

67. Part 616 is removed and reserved, to read as follows:

PART 616—[RESERVED]

PART 618—GENERAL PROVISIONS

68. The authority citation for Part 618 is revised to read as follows and the authority citations throughout Part 618 are removed:

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; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252.

Subpart A—Technical Assistance and Financially Related Services

69. Section 618.8000 is amended by removing paragraph (c)(3) and revising paragraphs (a), introductory texts of paragraphs (b) and (c), and paragraph (b)(5) to read as follows:

§ 618.8000 Policy Guidelines.

(a) Farm Credit System banks and associations are authorized to provide those technical assistance and financially related services programs that are both appropriate to the on-farm, aquatic, and cooperative operations of persons and cooperatives eligible for assistance (as defined in Part 613) and permitted under policies adopted by Farm Credit System bank and association boards.

(b) Farm Credit System bank and association boards are authorized to establish policies governing the development, implementation, marketing, and offering of technical assistance and financially related services programs. These policies shall meet the following general guidelines:

* * * * *

(5) Each Farm Credit System bank and association board shall evaluate the financial feasibility of the financially related services programs based on annual reports from their respective managements. Costs and benefits of

closely related programs may be combined in making the financial feasbility evaluation. Bank and association management shall determine the cost effectiveness of each program through a cost accounting system that records both direct and indirect costs. Indirect benefits may be included but must be determined in a systematic and consistent fashion.

(c) Each newly proposed technical assistance and financially related services program to be offered in a bank's chartered territory must be approved by the Farm Credit Administration. In submitting proposed programs for approval, banks and associations shall provide the following documentation to Farm Credit Administration:

* * * * *

Subpart C—Leasing

70. Section 618.8050 is revised to read as follows:

§ 618.8050 Leasing authority.

Farm Credit System banks and associations with direct lending authority may own and lease, or lease with option to purchase, to persons and cooperatives eligible for assistance (as defined in Part 613 of these regulations), equipment or facilities needed in the farming and aquatic operations of such persons and cooperative.

Subpart J—Internal Controls

71. Section 618.8430 is revised to read as follows:

§ 618.8430 Internal controls.

(a) Each Farm Credit System institution's (hereinafter institution) board of directors shall adopt an internal control policy which provides adequate direction to the institution in establishing effective control over and accountability for operations, programs, and resources. The policy should include the items enumerated in the list which follows:

(1) Direction to management which ensures the fixation of responsibility for the internal control function (financial, credit, and administrative) in an officer (or officers) of the institution.

(2) Requirements that the institution adopt internal audit and control procedures that evidence responsibility for review and maintenance of comprehensive and effective internal controls.

(b) Each institution's board of directors shall adopt policies addressing the operation of a program to review and assess its loans and related assets. These policies shall include standards which address the administration of this program, described in the list which follows:

(1) Loan and asset review standards, including standards for scope of review selection and standards for workpapers and supporting documentation.

(2) Asset quality classification standards to be utilized in accordance with a uniform classification system.

(3) Credit administration standards.

(4) Standards for the training required to initiate the program.

PART 619—DEFINITIONS

72. The authority citation for Part 619 is revised to read as follows and the authority citations throughout Part 619 are removed.

Authority: Secs. 1.7, 2.4, 5.9, 5.12, 5.17, 5.18, 7.0, 7.6, 7.7, 7.8; 12 U.S.C. 2015, 2075, 2243, 2244, 2252, 2253, 2279a, 2279b, 2279b–1, 2279b–2.

§ 619.9020 [Redesignated as § 619.9025]

§ 619.9060 [Redesignated as § 619.9065]

§ 619.9135 [Redesignated as § 619.9145]

§ 619.9140 [Redesignated as § 619.9150]

§ 619.9150 [Redesignated as § 619.9155]

73. Part 619 is amended by redesignating § 619.9020 as new § 619.9025; adding new §§ 619.9015 and 619.9020; revising § 619.9050; redesignating § 619.9060 as new § 619.9065; adding a new § 619.9060; redesignating §§ 619.9135, 619.9140, 619.9150 as new §§ 619.9145, 619.9150, 619.9155; adding new §§ 619.9135 and 619.9140; and revising newly redesignated § 619.9145, to read as follows:

§ 619.9015 Agricultural credit associations.

Agricultural credit associations are associations created by the merger of one or more Federal land bank association(s) and production credit association(s) and which have received a transfer of authority to make and participate in long-term real estate mortgage loans pursuant to § 7.6 of the Act.

§ 619.9020 Agricultural Credit Banks.

Agricultural Credit Banks are those banks created by the merger of a Farm Credit Bank and a bank for cooperatives pursuant to § 7.0 of the Act.

§ 619.9050 Associations.

The term associations includes Federal land bank associations that are agents of its affiliated Farm Credit Bank or Agricultural Credit Bank, and production credit associations, agricultural credit associations, and Federal land bank associations that have received a transfer of direct long-term real estate lending authority.

§ 619.9060 Bank for cooperatives.

Bank for cooperatives refers to any bank chartered under Title III of the Act or exercising the authorities contained in Title III. The term "bank for cooperatives" includes the National Bank for Cooperatives, individual and regional banks for cooperatives and Agricultural Credit Banks.

§ 619.9135 Direct lender.

The term direct lender refers to Farm Credit System banks and associations authorized to lend to eligible borrowers identified in § 613.3000.

§ 619.9140 Farm Credit System bank(s).

The term Farm Credit System bank(s) includes Farm Credit Banks, Agricultural Credit Banks and banks for cooperatives.

§ 619.9145 Farm Credit System institutions.

The term Farm Credit System institutions refers to all institutions chartered and regulated by the Farm Credit Administration as described in § 1.2 of the Act.

Date: October 26, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–25127 Filed 11–3–88; 8:45 am]

BILLING CODE 6705–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 433

Regulatory Flexibility Act Review of the Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses

AGENCY: Federal Trade Commission.

ACTION: Proposed rule; Request for Comments.

SUMMARY: In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and a published plan for Periodic Review of Commission Rules (46 FR 35,118 (July 7, 1981)), the Federal Trade Commission is soliciting comments and data on whether the Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses (16 CFR Part 433) (the "Holder Rule") has had a significant economic impact on a substantial number of small entities and, if it has, whether the Rule should be amended to minimize any significant economic impact on small entities.

DATES: Comments and data must be received on or before February 1, 1989.

ADDRESS: Comments and data should be sent to: Secretary, Federal Trade Commission, Washington, DC 20580. Submissions should be marked "Holder Rule Comments."

FOR FURTHER INFORMATION CONTACT: Jonathan D. Jerison or Richard C. Sauer, Division of Credit Practices, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, DC 20580. Tel: (202) 326–3223.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act requires the Federal Trade Commission to conduct a periodic review of rules issued by the Commission that have or will have a significant economic impact upon a substantial number of small entities.

The Holder Rule was promulgated by the Commission on November 18, 1975 (40 FR 53,506) and became effective on May 14, 1976. This periodic review is conducted in accordance with the Commission's plan for periodic review of rules (46 FR 35,118 (July 7, 1981)).

The Rule applies to sellers who offer or arrange for consumer credit to finance consumers' purchases of their goods or services. The Rule requires sellers entering into "consumer credit contracts" [1] or accepting the proceeds of "purchase money loans" to assure that sales finance contracts and loan contracts contain one of two clauses [2] that preserve the buyer's right to assert against any "holder" of the credit contract the sales-related claims and defenses that the buyer may have against the seller.

A "purchase money loan" is defined in the Rule as "a cash advance received by a consumer which is applied, in whole or in substantial part, to a purchase of goods or services from a seller who (1) refers consumers to the creditor or (2) is affiliated with the creditor by common control, contract, or business arrangement." 16 CFR 433.1(d). A "holder" refers to a person or entity who is in possession of an instrument drawn, issued or indorsed to him or to his order or to bearer or in blank.

In promulgating the Rule, the Commission found that: (1) In the course of arranging the financing of a consumer sale, sellers used procedures (including contractual devices) that separated the buyer's duty to pay for goods or services from the seller's reciprocal duty to perform as promised; (2) consumers are generally not in a position to evaluate the likelihood of seller misconduct in a particular transaction; (3) consumers lacked information to comprehend the significance of waivers of defenses in credit contracts or the use of promissory notes; (4) consumers, therefore, assumed all risks of seller misconduct; and (5) creditors dunned consumers and collected debts despite the consumers' claims and defenses against the seller.

At the same time the Commission promulgated the Holder Rule, it commenced a proceeding ("Holder II") to amend the Rule to extend it to third-party creditors. 40 FR 53,506 (1975). In 1979, the Commission approved the Holder II amendment in principle. Before final action on the amendment, however, the Commission articulated more specific criteria for exercising its unfairness authority and for issuing trade regulation rules.[3] The record for the Holder II amendment, therefore, was developed under a different legal standard from the one the Commission now applies. The Commission has re-evaluated the Holder II record in light of its current legal standards for determinations of unfairness and for the evaluation of proposed trade regulation rules, and has determined that the evidence is inadequate to support issuance of the proposed amendment. In particular, the record contains little evidence of consumer injury occurring after the Holder Rule became effective and little evidence to suggest that creditor participation in cutting off consumers' claims is prevalent. Accordingly, the Commission has decided to terminate the Holder II proceeding without issuing an amended rule.[4]

The objective of the review initiated by this notice is to determine whether any part of the Holder Rule has had a significant impact on a substantial number of small entities and, if so, whether any such impact can be reduced consistent with the objectives of the Rule. In addition, the Commission requests comments on a number of other issues relating to the operation of the Rule.

For purposes of this review, the Commission poses the following questions for public comment:

* * * * *

1. Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? What kinds of costs has the rule imposed on small entities? Have small but established entities found it more difficult to obtain credit since the Rule became effective in May 1976? Have new small entities found it more difficult to arrange sources of closed-end credit (purchasers for sales finance contracts or third parties to make purchase money loans) for their customers since May 1976? Has the interest rate paid for closed-end consumer credit risen as a result of the rule? What evidence is there that the increase in interest rates for closed-end consumer credit is attributable to the Rule?

2. Are consumers more likely to purchase goods or services at newly established entities as a result of the rule? Have small entities experienced other benefits from the rule?

3. To what extent did consumers try to assert against creditors the claims and defenses they have against sellers before the Rule became effective? To what extent, after the Rule became effective, have consumers asserted against creditors the claims and defenses they have against the seller? In what percentage of these cases was the seller judgment-proof (through bankruptcy, corporate dissolution, or otherwise)?

4. To what extent do creditors attempt to mediate disputes between an aggrieved consumer and a seller?

5. To what extent have the claims and defenses asserted by consumers against creditors since the Rule became effective included tort claims?

6. How much do consumers' assertions of claims and defenses cost creditors on an annual basis? Have creditors attempted to recover these costs from sellers? If so, by what means and how much has been recovered? Do sellers in turn attempt to recover these costs from manufacturers?

7. In the past year, what percentage of sales finance contracts resulted in claims and defenses asserted against creditors? What percentage of "purchase money loans"? How do these percentages compare to 1975–76, the year prior to the effective date of the Rule? In the past year, what percentage of claims or defenses under sales finance contracts were resolved without recourse to litigation? Of purchase money loans? How do these percentages

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[1] "Consumer credit contract" is defined as "[A]ny instrument which evidences or embodies a debt arising from a 'purchase money loan' transaction or a 'financed sale' as defined [in the Rule]". 16 CFR § 433.1(i). "Financing a sale" is defined as "[e]xtending credit to a consumer in connection with a 'credit sale' within the meaning of the Truth in Lending Act." *See* 15 U.S.C. § 1601 *et seq.*

[2] *See* 16 CFR 433.2(a). The language of the required clause differs slightly in purchase money loans. *See* 16 CFR 433.2(b).

[3] *See* Letter from the Federal Trade Commission to the Hon. Wendell H. Ford and the Hon. John C. Danforth (December 17, 1980) (the Commission's "Unfairness Statement"); Statement of Basis and Purpose for the Credit Practices Rule, 49 FR. 7740 (1984).

[4] This decision does not, of course, foreclose the Commission from considering in the future whether the Rule should be extended to creditors. *See* question 19, *infra.*

compare to the year prior to the effective date of the Rule?

8. Is there evidence that consumers' expectations about their right to assert claims and defenses against the creditor may differ between financed sales and purchase money loans? If so, what evidence?

9. Since the Rule became effective, what kinds of procedures have creditors used to determine whether to purchase credit contracts from sellers or to make purchase money loans to customers of different sellers? Do creditors more carefully investigate sellers before agreeing to finance their consumer credit transactions than they did prior to the Rule?

For sales finance contracts, do discounts imposed by creditors vary by the identity of the seller? For purchase money loans, does the interest rate charged to the consumer depend upon the seller from whom the consumer plans to buy? If so, what kinds of factors lead a creditor to apply a higher discount to the contracts of some sellers or a higher interest rate on purchase money loans spent at some sellers? Have any of these practices changed since the Rule became effective? If so, how?

10. Have sellers (especially small sellers) experienced difficulty in obtaining creditors' cooperation in meeting sellers' compliance obligations for consumer credit contracts in financed sale transactions since the Rule became effective? In purchase money loans? How do sellers insure that the credit agreement in a purchase money loan transaction contains the clause required by the Rule?

11. What arrangements do creditors require of sellers to avoid the losses from the assertion of claims and defenses under the Holder Rule (*e.g.*, reserve accounts, indemnification agreements, recourse or repurchase agreements)? What kinds of costs do creditors incur in such arrangements? What kinds of costs do sellers incur? To what extent do the arrangements and costs for purchase money loans differ from those for sales finance contracts? Do the kinds of arrangements made and costs incurred differ for small and large sellers? For new and established sellers? If so, how do they differ?

12. Does the experience of third-party credit card issuers differ from the experience of closed-end creditors regarding the assertion of consumers' claims and defenses? If so, how does it differ?

13. Has the Rule improved the match between seller promises and seller performance as a result of closer creditor scrutiny of sellers (if such closer scrutiny has occurred)? What indications are there of a better match?

14. Has the incidence of closed-end credit transactions covered by the Rule decreased as a result, for example, of the increased use of third-party credit card? To what factors is the decrease, if any, attributable?

15. Is there a continued need for the Rule and all of its requirements? What changes in the Rule would make it more useful to consumers? Should the Commission alter the dollar limitation on transactions covered by the Rule from the present $25,000? If so, by what amount?

16. Is the Rule unduly complex? Should the contract clauses set forth at 16 CFR 433.2 be rewritten to make them easier to understand? How? What changes in the Rule would minimize the Rule's economic impact on small entities?

17. To what extent does the Rule overlap, duplicate, or conflict with other federal, state, or local laws or regulations? To what extent are the compliance burdens that the Rule imposes on small entities similar to those that small entities would experience under standard and prudent business practices or other existing federal, state, or local laws or regulations? To what extent would other federal, state, or local laws provide equivalent protection for the buyer in sales finance transactions if the Rule were repealed? In purchase money loans?

18. Have technology, economic conditions, or other factors changed in the area affected by the Rule since late 1975? If so, what affect do these changes have on the Rule or those covered by it?

19. What evidence, if any, is there now that the Rule should be extended to creditors? If the Commission were again to propose extending the Rule to creditors, what changes, if any, ought to be made in the Rule?

* * * * *

In responding to these questions, please distinguish to the extent possible between smaller and larger sellers and between new firms and more established firms. In addition, please submit the factual data (*e.g.*, economic and accounting information, statistical analysis, surveys, studies, etc.) upon which comments are based together with the comments.

List of Subjects in 16 CFR Part 433

Federal Trade Commission, Trade practices, Consumer credit transactions.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88-25429 Filed 11-2-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 292

[Docket No. RM88-17-000]

Regulations Governing The Public Utility Regulatory Policies Act of 1978

Issued October 31, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of change in procedural schedule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) on July 29, 1988 (53 FR 31021, Aug. 17, 1988) proposing to amend its regulations governing implementation of Title II of the Public Utility Regulatory Policies Act. The NOPR provided for a public hearing on November 16, 1988 and for the filing of reply comments on November 28, 1988. This notice changes the date of the public hearing to December 1, 1988. In accordance with our original schedule the date for the filing or reply comments is changed to December 12, 1988, i.e., 10 days after the public hearing date.

DATE: The date for the public hearing is changed from November 16, 1988 to December 1, 1988. The date for filing reply comments is changed from November 28, 1988 to December 12, 1988.

ADDRESS: 825 N. Capitol Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8400.

SUPPLEMENTARY INFORMATION:

Change in Procedural Schedule

The Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) on July 29, 1988 (53 FR 31021, Aug. 17, 1988). The NOPR provided for a public hearing on Novmber 16, 1988 and for the filing of reply comments on November 28, 1988. This notice changes the date of the public hearing to December 1, 1988. In accordance with our original schedule the date for filing reply comments is