Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1228, 1252; 8 CFR part 2.

2. In § 212.2, paragraph (a) is revised to read as follows:

§ 212.2 Consent to reapply for admission after deportation, removal or departure at Government expense.

(a) *Evidence.* Any alien who has been deported or removed from the United States, who is applying for a visa, admission to the United States, or adjustment of status, must present proof to the satisfaction of the consular or immigration officer that the alien has remained outside the United States for more than five successive years, or ten successive years in the case of an alien convicted on or after November 18, 1988, of an aggravated felony, following the last deportation or removal. Any alien who does not present proof of absence from the United States for more than five successive years, or ten successive years in the case of an alien convicted of an aggravated felony, which is satisfactory to the consular or immigration officer, or who has not remained outside the United States for the requisite period, must apply for permission to reapply as provided under this part. A temporary stay in the United States with the approval of the Attorney General, under section 212(d)(3) of the Act, does not interrupt the five or ten successive year absence requirement.

* * * * *

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

3. The authority citation for part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1254, 1362; 8 CFR part 2.

4. Section 242.2 is amended by revising the introductory text for paragraph (c)(1) and the eighth sentence of paragraph (c)(2) to read as follows:

§ 242.2 Apprehension, custody and detention.

* * * * *

(c) *Warrant of arrest.* (1) At the time of issuance of the Order to Show Cause, or at any time thereafter and up to the time the respondent becomes the subject of a duly issued warrant of deportation, the respondent may be arrested and taken into custody under the authority of a warrant of arrest, provided that, in the case of a respondent convicted on or after November 18, 1988, of an aggravated felony as defined in section 101(a)(43) of the Act, the respondent shall not be released from custody unless a determination is made by the District Director that the respondent's departure cannot be effected, or until respondent becomes subject to supervision under the authority contained in section 242(d) of the Act. However, such warrant may be issued by no other than a: * * *

* * * * *

(2) * * * Except in cases involving an alien convicted on or after November 18, 1988, of an aggravated felony as defined in section 101(a)(43) of the Act, a respondent on whom a warrant of arrest has been served may apply to any officer authorized by this section to issue such a warrant for release or for amelioration of the conditions under which he/she may be released. * * *

* * * * *

5. In section 242.5, paragraph (a)(2) is amended by adding a new sentence immediately after the heading to read as follows:

§ 242.5 Voluntary departure prior to commencement of hearing.

(a) * * *

(2) *Authorization.* Notwithstanding any other provision of this section, an alien convicted on or after November 18, 1988, of an aggravated felony as defined in section 101(a)(43) of the Act, shall not be eligible for voluntary departure prior to commencement of hearing. * * *

* * * * *

PART 244—SUSPENSION OF DEPORTATION AND VOLUNTARY DEPARTURE

6. The authority citation for part 244 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1252, 1254; 8 CFR part 2.

7. Section 244.1 is amended by adding a new sentence immediately before the first sentence begining with the phrase "Pursuant to part 242 * * *".

§ 244.1 Application.

Notwithstanding any other provision of this chapter, an alien who is deportable because of a conviction on or after November 18, 1988, for an aggravated felony as defined in section 101(a)(43) of the Act, shall not be eligible for voluntary departure as prescribed in part 242 of this chapter and section 244 of the Act. * * *

* * * * *

Dated: February 21, 1990.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 90-14158 Filed 6-18-90; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 245

INS Number 1277-90

Adjustment of Status Under Public Law 101-167

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 599E of Public Law 101-167, by providing for adjustment of status to lawful permanent resident of certain parolees from the Soviet Union, Vietnam, Laos, and Cambodia. It ensures that these individuals, paroled into the United States between August 15, 1988 and September 30, 1990, the sunset date of Public Law 101-167, will have the opportunity to apply for immigrant status.

DATES: This interim rule is effective June 19, 1990. Comments must be received on or before July 19, 1990.

ADDRESSES: Written comments should be submitted, in triplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, room 2011, 425 I Street, NW., Washington, DC 20536. Please include INS number 1277-90 on the mailing envelope to ensure proper handling.

FOR FURTHER INFORMATION CONTACT: Joseph D. Cuddihy, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., room 7228, Washington, DC 20536, telephone (202) 633-5014.

SUPPLEMENTARY INFORMATION: Public Law 101-167, the Foreign Operations Appropriations Act for Fiscal Year 1990, provides for the adjustment of status to lawful permanent resident of certain nationals of the Soviet Union, Vietnam, Laos, and Cambodia who, being of special interest to the United States, were inspected and granted parole into the United States during the period beginning on August 15, 1988, and ending on September 30, 1990, after being denied refugee status. The statute requires such aliens to have been physically present in the United States

for at least one year and to be physically present in the United States on the date the application for such adjustment is filed. The date of approval shall be recorded as the date of the alien's inspection. No immigrant visa number is required for such adjustment. A new § 245.10 is being added to part 245 to establish the aliens who are eligible, the eligibility criteria, and the application procedures.

Applicants for adjustment of status under this new section shall not be subject to the exclusion ground provisions set forth in the following paragraphs of section 212(a) of the Immigration and Nationality Act: (14), The requirement for a labor certification; (15), public charge; (20), documentary requirement of an immigrant visa; (21), requirement of a visa petition; (25), illiteracy; (28), political opinion (other than subparagraph (F); and (32), foreign medical graduates. Any other provision of section 212(a) may be waived except (23)(B), narcotics trafficking; (27), activities prejudicial to the public interest; (29), activities subversive to the national security; or (33), Nazi association, with respect to such an adjustment for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date are impracticable and unnecessary as the changes have been mandated by the passage of Public Law 101–167. Early implementation will be advantageous to the intended beneficiaries.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The Office of Management and Budget control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 245 of Chapter I of title 8, of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1154, 1182, 1186a, 1255, and 1257; 8 CFR part 2.

2. A new § 245.10 is added to read as follows:

§ 245.10 Adjustment of status of certain Soviet and Indochinese parolees under the Foreign Operations Appropriations Act for Fiscal Year 1990 (Pub. Law 101–167).

(a) *Application.* Each person applying for benefits under section 599E of Public Law 101–167 must file Form I–485 (Application for Lawful Permanent Residence) with the district director having jurisdiction over the applicant's place of residence and must pay the appropriate fee. Each application shall be accompanied by Form I–643 (Health and Human Services Statistical Data Sheet), the results of a medical examination given in accordance with § 245.8 of this part, and, if the applicant has reached his or her 14th birthday but is not over 79 years of age, Form G–325A and an applicant fingerprint card (Form FD–258).

(b) *Aliens eligible to apply for adjustment.* The benefits of this section shall only apply to an alien who:

(1) Was a national of the Soviet Union, Vietnam, Laos, or Cambodia, and

(2) Was inspected and granted parole into the United States during the period beginning on August 15, 1988, and ending on September 30, 1990, after being denied refugee status.

(c) *Eligibility.* Benefits under Section 599E of Public Law 101–167 are limited to any alien described in paragraph (b) of this section who:

(1) Applies for such adjustment,

(2) Has been physically present in the United States for at least one year and is physically present in the United States on the date the application for such adjustment is filed,

(3) Is admissible to the United States as an immigrant, except as provided in paragraph (d) of this section, and

(4) Pays a fee for the processing of such application.

(d) *Waiver of certain grounds for inadmissibility.* The provisions of paragraphs (14), (15), (20), (21), (25), (28) (other than subparagraph (F), and (32) of section 212(a) of the Act shall not apply to adjustment under this section. The Attorney General may waive any other provision of section 212(a) (other than paragraph (23)(B), (27), (29), or (33)) with respect to such an adjustment for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(e) *Date of approval.* Upon approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission as a lawful permanent resident as of the date of the alien's inspection and parole described in paragraph (b)(2) of this section.

(f) *No offset in number of visas available.* When an alien is granted the status of having been lawfully admitted for permanent residence under this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act.

Dated: May 16, 1990.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 90–14075 Filed 6–18–90; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket 90–075]

Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of swine by adding Massachusetts to the list of validated brucellosis-free States. We have determined that Massachusetts meets the criteria for classification as a validated brucellosis-free State. This action relieves certain restrictions on moving breeding swine from Massachusetts.

EFFECTIVE DATE: July 19, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. William C. Stewart, Chief Staff Officer, Swine Disease Staff, VS, APHIS, USDA, room 736, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7767.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register and effective on March 6, 1990 (55 FR 7882–7883, Docket 89–213), we amended the brucellosis regulations in 9 CFR part 78 that, among other things, prescribe conditions for the interstate movement of swine based upon the disease status of the herd, area, or State from which the animal originates. We amended § 78.43 of the regulations, which lists validated brucellosis-free States, to include Massachusetts.

Comments on the interim rule were required to be received on or before May 7, 1990. We did not receive any comments. The facts presented in the interim rule still provide the basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Herd owners in Massachusetts will be affected by this rule. It allows breeding swine to be moved interstate from Massachusetts without being tested for brucellosis. Approximately 440 sows are tested annually for brucellosis in order to be eligible for interstate movement from Massachusetts at an average cost to the seller of $4.75 per test. Using these numbers, we estimate that removing the testing requirement would result in a potential annual savings of $2,090 for Massachusetts swine herd owners. Of the approximately 3,000 swine herd owners nationwide who regularly ship breeding swine interstate, 4 herd owners regularly ship breeding swine interstate from Massachusetts. Of these herd owners, 3 would be considered small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 78.43 that was published at 55 FR 7882–7883 on March 6, 1990.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 13th day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–14146 Filed 6–18–90; 8:45 am]

BILLING CODE 3410–34–M

FARM CREDIT ADMINISTRATION

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

RIN 3052–AA94

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: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts final regulations that amend 12 CFR parts 613, 614, 615, 616, 618, and 619, that were published as proposed regulations on November 3, 1988, 53 FR 44438. These final regulations reflect amendments to the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001–2279aa–14, (Act) made by the Farm Credit Amendments Act of 1985 (1985 Amendments), Public Law 99–190, the Farm Credit Act Amendments of the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509 (1986 Amendments), and the Agricultural Credit Act of 1987, Public Law 100–233 (1987 Act). These final regulations do not include the provisions of parts 614 and 618 published for comment on November 3, 1988, that relate to the general financing agreement, lending limits, appraisal standards, loan participations, financially related services, and bank supervision of associations. The FCA intends to republish proposed regulations relating to these provisions in the near future. Some sections that were proposed to be amended but were not adopted are redesignated in the final regulation.

The final regulations reconcile authorities of institutions created from the mergers required or authorized by the 1987 Act. The 1987 Act required the merger of Federal land banks (FLBs) and Federal intermediate credit banks (FICBs) in each Farm Credit district to form Farm Credit Banks (FCBs); and authorized the merger of Federal land bank associations (FLBAs) and Federal land credit associations (FLCAs) with production credit associations (PCAs) to form agricultural credit associations (ACAs), the merger of FCBs with banks for cooperatives (BCs) to form agricultural credit banks (ACBs), and the merger of BCs to form a National Bank for Cooperatives (NBC or Co-Bank). In addition, the 1987 Act authorizes the transfer of long-term real estate lending authority from a FCB to a FLBA when approved by the shareholders of both institutions, resulting in a FLCA. The 1987 Act requires such a transfer when a FLBA merges with a PCA to form an ACA. The effect of the final regulations is to set forth the lending authorities of the resulting entities as well as those of the constituent entities. The final regulation also makes necessary conforming changes in parts 613, 614, 615, 618 and 619, to reflect the restructuring possibilities and the merger of certain of the BCs under a national charter. The final regulations make other changes necessary to reflect statutory changes made by the 1985 Amendments and the 1987 Act, such as expanding the class of entities eligible to borrow from the BCs and deleting certain required FCA approvals. In addition, the final regulations reorganize and reorder sections in parts 613 and 614 for greater clarity and make other clarifying, technical, and minor substantive

changes. Part 616 is removed and reserved.

DATES: These regulations shall become effective on July 19, 1990 during which either or both Houses of Congress are in session. Notice of the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT:
Dennis K. Carpenter, Senior Credit Specialist, Financial Analysis and Standards Division, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444.
or
Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On November 3, 1988, the FCA published for public comment (53 FR 44438) proposed amendments to 12 CFR parts 613, 614, 615, 616, 618, and 619 relating to Farm Credit borrower eligibility, Farm Credit institutions' lending authorities and relationships, lending limits, appraisal standards, and related definitions and technical amendments, including revisions necessary to conform the regulations to the amendments to the Farm Credit Act of 1971 made by the 1985 Amendments, the 1986 Amendments and the 1987 Act. The proposed amendments were divided into three areas. In part I, the FCA Board proposed regulations reconciling the authorities of Farm Credit System banks and associations that are reorganized pursuant to the 1987 Act. Part II set forth proposed amendments to clarify credit-related issues not specifically addressed in the 1987 Act. Part III proposed the deletion of certain requirements for credit-related FCA approvals. The comment period for these proposed amendments closed on December 5, 1988.

In response to the published proposed regulations, the FCA received 32 letters of comment from Farm Credit institutions, an appraisal industry professional group, and an individual respondent. Farm Credit institutions responding to the proposed regulations included the Farm Credit Corporation of America (FCCA), the FCBs of Baltimore, Texas, St. Paul, Louisville, and Springfield, the BCs of Springfield and St. Paul, as well as the Central Bank for Cooperatives (CBC), one of the predecessors of the NBC. In addition, comments from Farm Credit associations and regional service centers (FLBA and PCA branches operating under joint management) from the Baltimore, St. Louis, and Texas Farm Credit districts were received along with comments from the general public and the American Society of Farm Managers and Rural Appraisers (ASFMRA). The comments were reviewed and considered in the development of these final regulations that are hereby adopted. The comments received can be divided into eight major areas of concern, which are:

1. Borrower eligibility;
2. Lending authorities and requirements for banks and associations operating under titles I and II of the Act;
3. Lending authorities and requirements for banks for cooperatives;
4. Appraisal and security requirements and related issues;
5. Bank/association relationship;
6. Lending limits;
7. Financially related services; and
8. Technical revisions.

The FCA does not adopt at this time certain amendments proposed on November 3, 1988, relating to general financing agreements, appraisal requirements, lending limits, loan participations, bank/association relationships and financially related services, as described more fully below. In order to address issues raised by the comments on these proposals, the FCA Board concluded that additional public comment would be needed. The FCA Board intends to republish proposed amendments to these regulations in the near future. Comments related to these topics will be discussed at that time.

The following discussion summarizes the comments received on proposed amendments adopted as final regulations, the FCA's response to the comments, and changes in the final regulations from the proposed regulations, as well as the changes made to existing regulations by the final regulations. The discussion is presented in the numerical order of sections of existing regulations with explanations of proposed amendments to those sections, followed by an explanation of the amendments and revisions made to those sections by the final regulation. The regulatory amendments are set forth in the order they will appear in the amended regulations. Subparts A and E of part 614 of the final regulation, which are reordered and reorganized, are set forth in their entirety for clarity. Sections of existing regulations redesignated in the final regulation are set forth in the table that follows:

Redesignation Table

Existing section	New section
614.4030	614.4100
614.4040	614.4145
614.4050	614.4135
614.4060	614.4140
614.4140	614.4150
614.4150	614.4160
614.4160	613.3005
614.4190 (c) and (d)	614.4130 (a) and (b)
614.4220	614.4240
614.4240(b)	614.4130(c)
619.9020	619.9025
619.9060	619.9065
619.9135	619.9146
619.9140	619.9150
619.9150	619.9160
619.9160	619.9165

Part 613—Eligibility and Scope of Financing

Subpart A—General

Section 613.3000

Section 613.3000 of existing regulations, which sets forth the authority of Farm Credit banks and associations generally, was proposed to be revised to reflect the corporate restructuring provided for by the 1987 Act, the basic lending authorities of the resulting entities, and their eligibility requirements. The proposed amendment is adopted with minor technical adjustments.

Section 613.3005

Section 614.4160 of existing regulations, which sets forth the basic lending objectives and scope of financing of Farm Credit institutions, has been redesignated as a new § 613.3005 and amended as described below. Section 614.4160(c) of existing regulations, which requires banks to adopt policies to ensure that credit and lending standards are administered to ensure attainment of the institution's lending objective, was proposed to be amended to delete the requirement for FCA prior approval of such policies. Comments were received suggesting that this paragraph was not intended to apply to BCs, notwithstanding the use of the term "bank," because of the provisions of the paragraph requiring bank policies to ensure that loans made under the provisions of § 613.3020 are made primarily for an agricultural purpose and to ensure that nonagricultural assets not be given undue weight in the loan decision or collateral evaluation.

The FCA believes that the reference to § 613.3020 makes it clear that the "agricultural purpose" requirements of § 614.4160(c) are not intended to apply to BCs, since they do not make such loans. The FCA does not agree that BCs are excluded from the applicability of the requirement to adopt policies

ensuring that credit and lending standards are administered consistent with the institution's lending objective. The final regulation further clarifies that the requirements for policies governing loans made under the eligibility requirements of § 613.3020 apply only to institutions making such loans and deletes the requirement for FCA prior approval of such policies. In addition, a technical revision to paragraph (a) is made in the final regulation to correct an error by substituting the term "speculative appreciation" for "speculative application." The section is otherwise unchanged.

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

Subpart B of part 613 addresses the eligibility requirements for borrowing from institutions operating under titles I and II of the Act (FCBs, ACBs, FLCAs, PCAs and ACAs) for farmers, ranchers, and producers or harvesters of aquatic products.

Section 613.3010

Section 613.3010 of existing regulations, which defines "person," has been retitled "Definitions," expanded to incorporate definitions relocated from § 613.3020 (without substantive change), and reorganized to arrange the definitions in alphabetical order in the final regulation.

Section 613.3020

Section 613.3020 of existing regulations, which sets forth requirements for eligibility to borrow from an institution operating under titles I or II of the Act as a farmer, rancher or producer or harvester of aquatic products, was proposed to be amended to add a requirement to demonstrate compatibility of the applicant's agricultural operation with local agricultural conditions and to clarify eligibility requirements for legal entities.

Comments were received from 10 Farm Credit institutions and one individual objecting to the requirement of the proposed amendment of § 613.3020(b)(1) that the applicant demonstrate that the agricultural operation is compatible with normal agricultural operations within the Farm Credit institution's territory. Respondents asserted that the proposed amendment was an inappropriate extension to all applicants of the requirement of existing regulations for a legal entity owned by one or more ineligible entities to demonstrate that it can conduct its operations as a counterpart to the normal farm or aquatic business that is eligible to borrow. Respondents expressed concern that such a requirement would place Farm Credit lenders in the difficult position of having to make judgments regarding what is normal and compatible and would be overly restrictive.

Respondents also requested clarification concerning the reference to the association examination in proposed § 613.3020(b)(3) in light of the proposed deletion of the requirements of § 614.4051 for bank credit reviews of associations. The proposed regulation would have required that loans made to entities owned by ineligible entities be reported to the funding bank and the FCA as part of the association's examination.

FCA Response. A Farm Credit institution, in its determination of borrower eligibility and its credit analysis, must be aware of the inherent risks involved in financing agricultural operations that are unique or foreign to its territory. Such operations must be closely reviewed for such factors as marketability of products, availability of management and labor expertise, and marketability of the collateral when the loan is in a distressed condition. Such factors must be considered in making a credit decision on an application for financing of agricultural operations that have characteristics unique and/or specialized in comparison to the predominant farming practices employed within the institution's territory. However, the FCA has concluded that these matters can be addressed as part of the credit risk identification and analysis process and need not be stated as an eligibility requirement. Accordingly, the FCA does not adopt the compatibility requirement for all applicants in the final regulation, but applicants that are legal entities owned by ineligible legal entities will continue to be subject to the requirement of existing regulations to demonstrate that their operations can be conducted as a counterpart to normal farm and aquatic businesses that meet the eligibilty requirements.

In response to the request for clarification of the reference to association examinations in the proposed regulation, the reference was to the FCA examination of associations. However, the final regulation merely requires the institution to identify such loans in such a manner as to permit the number and volume to be monitored. This will allow the FCA or the funding bank to review such loans as the need arises. In the final regulation, the contents of existing § 613.3020 have been reworded for greater clarify, and the definitions relocated to § 613.3010 without substantive change.

Section 613.3040

Section 613.3040 of existing regulations, which addresses rural home lending, was proposed to be amended to reflect the new corporate structures emerging under the 1987 Act and to require the funding bank to make periodic reviews of association lending when rural housing loans approach the statutory 15-percent limit (rather than when 15 percent is exceeded, as the existing regulation requires). The FCCA objected that it would be difficult to tell when rural home loans "approach" 15 percent.

After considering the comment, the FCA has concluded that since FCBs and ACBs are themselves subject to a statutory 15-percent district limitation on rural housing loans, there is adequate incentive for the banks to monitor association rural home lending without regulatory requirements regarding how or when such monitoring must be accomplished. The FCA's monitoring of compliance with the statutory limits can be accomplished in the course of its examination of banks and associations. Accordingly, the requirement of proposed § 613.3040(d)(3) for the bank to conduct periodic reviews of association rural residence lending when it approaches the statutory limit is deleted in the final regulation. However, the FCA emphasizes that monitoring rural residence lending to ensure that the statutory limit is not exceeded is the responsibility of each association and its funding bank.

Section 613.3045

Section 613.3045 of existing regulations, which addresses the financing of basic processing and marketing activities, was proposed to be amended to reflect restructuring under the 1987 Act and to make minor technical changes. In response to comments, the final regulation clarifies that the regulation is not applicable to BCs. The final regulation further clarifies that no substantive change was intended in the throughput requirements of the existing regulation by restoring the word "produces" in the final regulation, which had been replaced in the proposed amendment by the word "provides." Also, the phrase "vertical integration" has been substituted for "forward integration," to clarify that reverse integration as well as forward integration can be financed provided eligibility requirements are met.

Section 613.3050

Section 613.3050 of existing regulations, which addresses the eligibility of farm-related businesses for funding by FLBs and PCAs, was proposed to be amended to reflect the 1987 Act restructuring and the potential for the transfer of long-term lending authority to FLBAs. In response to comments, the final regulation clarifies that a PCA is not authorized to make long-term mortgage loans to farm-related businesses. The final regulation authorizes FCBs, ACBs, ACAs, FLCAs to make long-term real estate mortgage loans to such businesses and authorizes PCAs and ACAs to make short- and intermediate-term loans to such businesses.

Subpart C—Eligibility of Financial Institutions to Borrow from Federal Intermediate Credit Banks

Section 613.3060

Section 613.3060 of existing regulations, which enumerates the types of institutions that were eligible for funding by the FICB, is amended in the final regulation to reflect new corporate entities that have resulted from the implementation of the restructuring provisions of the 1987 Act. Specifically, it reflects the authority of FCBs and ACBs to lend to and discount loans for PCAs, ACAs, FLCAs and other financing institutions that are not Farm Credit institutions (OFIs) that are eligible for financing by FCBs and ACBs.

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

Section 613.3110

Section 613.3110 of existing regulations, which addresses eligibility to borrow from banks for cooperatives (which is defined in the proposed and the final regulations to include ACBs with respect to their title III powers), was proposed to be amended to reflect the expansion of eligibility under the 1985 Amendments and the 1987 Act to certain legal entities, notwithstanding their failure to meet general cooperative eligibility standards. These were entities having loans, commitments, or guarantees from the Rural Electrification Administration or the Rural Telephone Bank; entities that have eligible cooperative entities as majority owners; and entities that own a majority interest in an eligible cooperative, for the purpose of funding the cooperative. In addition, the regulation was proposed to be amended to reflect the provisions of the 1987 Act authorizing a BC to restrict borrower stock requirements for eligible cooperatives whose loans are government-guaranteed to one share of voting stock for the guaranteed portion of a loan.

No comments were received on the proposed amendment of this section. The final regulation reflects the expanded eligibility provisions of the 1987 Act as they were proposed on November 3, 1988, with minor technical changes to clarify that the new eligible entities are considered eligible cooperatives for the purpose of determining eligibility to borrow under § 3.7(a), notwithstanding their failure to meet the cooperative eligibility requirements of § 3.8(a) of the Act and § 613.3110(b), and to clarify that such entities are only eligible to borrow under § 3.7(a), and not under § 3.7(b) unless they are also eligible cooperatives. The final regulation does not adopt the proposed amendment incorporating in the regulation the statutory authorization to restrict stock requirements for eligible cooperatives having only government-guaranteed loans to one share of voting stock. Such a restriction would be more appropriately reflected in the capital adequacy related regulations found in part 615. A new § 613.3120 has been added in the final regulation setting forth persons eligible to borrow from a BC under § 3.7(b) of the Act.

Part 614—Loan Policies and Operations

The various provisions of part 614 relating to lending authorities, general loanmaking policies, and loan terms and conditions were proposed to be amended to reflect the restructuring mandated and authorized by the 1987 Act and to set forth the lending authorities of the resulting new entities, reconciling authorities in entities created from the merger of different types of entities where necessary. In addition to substantive changes made in response to comments, the FCA has made a number of technical changes to promote clarity and accessibility, including reordering and rearranging provisions of existing regulations and proposed amendments. The reordering does not itself make substantive changes. Substantive changes from the existing regulation and from the proposed amendment are explained below.

As reordered in the final regulation, the lending authorities of the Farm Credit System bank and associations are relocated from subpart C to subpart A, while subpart B continues to address chartered territories. Sections of existing regulations addressing bank and association lending and supervisory relationships are relocated to subpart C, along with sections of the proposed regulations addressing transfers of lending authority. Subpart D continues to address general loan policy guidelines. However, § 614.4160 of subpart D is relocated to part 613 and redesignated as § 613.3005, and §§ 614.4140 and 614.4150 of subpart D are redesignated as §§ 614.4150 and 614.4160, respectively. Subpart E of the final regulation continues to address loan terms and conditions, but is expanded to include security requirements formerly set forth in subpart F and is restructured to set forth required loan terms and conditions by types of loans rather than by types of institutions. Appropriate cross-references to subpart E are included in the lending authorities of the institutions authorized to make such loans, which are set forth in subpart A.

Subpart A—General Authorities

Subpart A is revised in its entirety to set forth the lending authorities of the various institutions as described below under "Subpart C—Lending Authorities." The discussion that follows summarizes comments received on proposed amendments to existing sections of subpart A and the disposition of these sections in the final regulation. Sections of existing subpart A (as well as sections of existing subparts E and F) relating to the bank/association lending and supervisory relationships are redesignated and relocated to subpart C, as explained more fully below, with minor technical and nomenclature changes. Proposed substantive amendments to these sections are not adopted. These sections will be the subject of a separate proposal to amend which will consider comments received on these sections in the November 3, 1988, proposal.

Section 614.4000

Section 614.4000 of existing regulations, which states the responsibility of Farm Credit institutions and the FCA for a credit system responsive to the credit needs of all eligible, creditworthy applicants, was proposed to be amended to substitute "banks and associations" for "Farm Credit System." Such an amendment was needed to reflect the fact that the term "Farm Credit System" now includes the Federal Agricultural Mortgage Corporation (Farmer Mac) and the Farm Credit System Financial Assistance Corporation (FAC), neither of which is a direct lender subject to the provisions of part 614. Upon review, the FCA has concluded that the section has no substantive legal effect, and its

provisions have been deleted in the final regulation.

Section 614.4030(a)

Section 614.4030(a) of existing regulations, which sets forth requirements for bank policies governing assocation lending was proposed to be amended to reflect the 1987 Act restructuring and to require bank policies and procedures governing the extension of credit to direct lender associations to include lending and financial standards for the associations.

The FCCA, an FCB, and an individual respondent expressed concern that the proposed requirement to include lending and financial standards for these institutions in the policies and procedures may be limiting in that they appear to require absolute rather than minimum standards. The respondents also suggested language reflecting a FCB's or ACB's ability to impose restrictions upon the lending activity of institutions if funds that are not Farm Credit institutions (OFIs) similar to those it is empowered to impose upon the Farm Credit associations.

In the final regulation the provisions of § 614.4030 of the existing regulation relating to FLBAs are incorporated and restated in § 614.4100, and the provisions relating to direct lender associations and OFIs are incorporated and restated in § 614.4120. In response to the comments, § 614.4120 of the final regulations clarifies that the FCB is required to set minimum, not absolute, financial standards for the lenders it funds. Also, the language of § 614.4120 of the final regulation is clarified to reflect that the FCB can impose restrictions on the statutory lending activity of institutions it funds that do not demonstrate the ability to extend and administer credit soundly, including OFIs, by restricting funding of such activity.

Section 614.4040

Section 614.4040 of existing regulations was not proposed to be amended. However, respondents suggested that § 614.4040 be amended to conform to proposed changes to § 614.4030 requiring associations to develop their own operating guidelines, rather than relying on bank guidelines. In the final regulation existing § 614.4040 is redesignated as § 614.4145 and relocated to subpart C without substantive change to its provisions. The FCA will consider the comment in the context of its proposal on bank/association relationships.

Section 614.4050

Section 614.4050 of existing regulations, which addresses bank supervision of associations, was proposed to be amended to delete existing provisions and to add a requirement for direct lender associations and their funding banks to enter into a written financing agreement meeting certain requirements. Under the proposal, the amended § 614.4050 would have replaced the requirement of § 614.4190(d) for FCA prior approval of general financing agreements, which was proposed to be deleted.

Most respondents supported the deletion of the prior approval requirement. However, the FCCA and two FCBs objected to the deletion of the reference in the section to the supervisory role of the bank with respect to the associations it funds, citing statutory references to such a role. After considering the comments and reflecting further upon the proposal, the FCA has decided to withdraw the proposed amendment to existing § 614.4050 published in 53 FR 44438 for further study. In the final regulation the provisions of existing § 614.4050 are redesignated as § 614.4135. The FCA intends to address this issue in greater detail in a separate regulatory proposal that will also respond to the suggested amendment of § 614.4040 of existing regulations (redesignated in the final regulation as § 614.4145.)

Section 614.4051

Section 614.4051 of existing regulations, which addresses Federal land bank and Federal intermediate credit bank credit reviews of association loans, was proposed to be removed and reserved. This section provided guidance for the bank's examination of associations pursuant to delegated authority from the Farm Credit Administration. The legal basis for the delegation was removed by the 1985 Amendments to the Act and this section is no longer needed. Accordingly, the final regulation removes § 614.4051. However, the FCA believes that an internal credit review by an institution of its own loan portfolio and portfolios serving as collateral for lines of credit is an essential part of effective internal controls and has included a reference thereto in part 618. (See discussion under part 618 below.)

Section 614.4060

Section 614.4060, which addresses association responsibilities, was proposed to be redesignated as § 614.4065 and amended to reflect changes made by the 1987 Act, including the potential for the transfer of long-term lending authority to FLBAs and ACAs. No comments were received on these proposed changes. In the final regulation, the provisions of existing § 614.4060 are relocated to subpart C and redesignated as § 614.4140, but the proposed amendment of the provisions is not adopted. This section will be reviewed at a later time, along with the rest of subpart C, when the FCA addresses the bank/association lending and supervisory relationships. A new § 614.4060 was proposed to be added to reflect the authority of a FCB under section 7.6 of the Act (added by the 1987 Act) to transfer long-term real estate lending authorities to a FLBA for its territory. Upon such a transfer, the association becomes a direct lender funded by the FCB in a manner similar to PCAs. No comments were received on this proposal and the proposed § 614.4060 is adopted in the final regulation as § 614.4110 of subpart C with technical and clarifying changes, including the incorporation of the term "Federal land credit associations (FLCAs)" the name given to FLBAs to which long-term lending authority has been transferred.

Subpart B—Chartered Territories

Section 614.4070

Section 614.4070 of existing regulations, which addresses loans made outside the chartered territory, was proposed to be amended to reflect the restructuring resulting from the 1987 Act and the emphasis on greater association autonomy in the 1987 Act and its legislative history. Paragraph (b) of existing § 614.4070 permits a bank or association to lend to a borrower whose operations are conducted partially within and partially outside the lending association's chartered territory only with the concurrence of supervisory banks responsible for the territories in which the borrower's operations are conducted. The proposed regulation would have required the institution to obtain the consent of all Farm Credit institutions chartered to provide similar credit in the territories in which the borrower's operations are conducted. In addition, the proposed amendment would have limited the requirement for FCA approval of policies for making loans to finance operations conducted entirely outside the institution's chartered territory to those policies that would permit the institution to finance more than 5 percent of existing loan volume in another institution's territory. Finally, the proposed regulation added a requirement that out-of-territory loans

be identified and the number and volume of such loans be monitored by banks and associations.

The FCCA, an FCB, an ACA and an individual respondent expressed concern that the requirement for concurrence by all Farm Credit institutions that are authorized to extend similar types of credit in the territory in which the borrower's operations are conducted was unduly restrictive and burdensome, and suggested that only the concurrence of Farm Credit institutions with similar authorities serving the territory be required. One respondent suggested that concurrence only be required when the collateral supporting a loan is located in another institution's territory and that only notice be required if the borrower is headquartered in the lending institution's territory. In addition, respondents questioned the FCA's statutory authority to impose any FCA prior approval requirement at all on policies governing the volume of business that a Farm Credit institution can conduct in another institution's territory. Respondents also expressed concern that the 5-percent definition of "significant shift" in this regulation might become a standard to be used by the FCA in measuring "significant" and "substantial" as they are used in other parts of the regulations. One respondent expressed concern that the monitoring requirement would be unduly burdensome to Farm Credit institutions and would increase the cost of service to the members.

FCA response. The authority of the FCA to charter institutions with assigned territories is well established. Since institutions are only chartered to lend within an assigned territory, regulations permitting out-of-territory lending give the necessary legal sanction to what would otherwise be an *ultra vires* act. Since the FCA can grant charters that authorize lending within a defined geographic area, the FCA clearly has the authority to protect the territorial integrity of the charters it issues. In the absence of these out-of-territory lending regulations, no institution would be authorized to lend outside its chartered territory. The proposed regulations would merely have established limits on how an institution can engage in such extra-territorial lending. Furthermore, out-of-territory lending can constitute a safety and soundness concern to the extent the lender is not familiar with local practices and market and economic conditions in other territories. The requirement for FCA prior approval of policies allowing greater than 5 percent of an institution's loan volume to be in another institution's territory was proposed in furtherance of the FCA's regulatory interests in lieu of setting a regulatory ceiling on out-of-territory lending. The FCA's general authority under § 5.17(a)(9) of the Act to adopt regulations necessary or appropriate to carry out the Act provides adequate legal authority for the imposition of such a requirement.

Nevertheless, upon further consideration, the FCA has concluded that the requirements for concurrence of other Farm Credit lenders in whose territory the borrower's operation is conducted will act as a control on the amount of out-of-territory lending an institution engages in and that the safety and soundness aspects can be monitored in the course of the examination process, perhaps even more effectively than by requiring approval of policies. Consequently, the final regulation deletes the proposed requirement for FCA prior approval of policies allowing greater than 5 percent of an institution's loan volume to be in another institution's territory. However, the FCA will review the institutions out-of-territory lending policies and practices in the course of its examination.

The final regulation retains the proposed concurrence requirement with some modification. It has long been the position of the FCA that a Farm Credit institution seeking to provide lending services to borrowers outside of the institution's territory should coordinate such activities with the other Farm Credit institutions offering similar credit services in whose territory the loan is to be made. Previously, regulatory language requiring such coordination between "like" institutions was sufficient to achieve this result. The proposed amendment of § 614.4070 is needed to take into account the new entities authorized under the Act; ACAs and FLCAs are corporate entities that were not envisioned when the existing regulation was drafted.

The FCA adopted the suggestion that notice only be required if the borrower is headquartered in the lending institution's territory. However, the FCA did not incorporate in the final regulation the suggestion that concurrence be required only when the collateral supporting a loan is located in another institution's territory. The final regulation requires the concurrence of all Farm Credit institutions offering similar credit services in the territory in which the operation being financed is located when the borrower's headquarters are located outside the lending institution's territory.

With regard to the alleged burden of monitoring out-of-territory lending, it should be noted that the regulation merely requires these loans to be identified and the volume monitored. The FCA regards the required monitoring as a minimal burden and believes that the lending institution should be monitoring the volume of out-of-territory loans and reporting these numbers to its board anyway as a part of its internal controls.

Section 614.4080

Section 614.4080 of existing regulations, which addresses out-of-territory lending by BCs, was proposed to be revised to reflect the fact that all BCs now operate under national charters as a result of the creation of the NBC and by operation of section 413 of the 1987 Act. In the final regulation, this section is amended to reflect that BCs can lend to eligible domestic parties domiciled anywhere in the United States or its territories and to eligible foreign parties without regard to domicile.

Subpart C—Lending Authorities

Subpart C of existing regulations sets forth the lending authorities of Farm Credit direct lenders in existence prior to the 1987 Act: FLBs, FICBs, PCAs and BCs. The proposed regulations would have combined the requirements for loan terms and conditions in subpart E and security requirements in subpart F with the lending authorities of each type of direct lender. In each of the proposed lending authorities sections, the proposed regulation added a requirement for a loan agreement, a requirement to obtain annual financial statements from borrowers, and a requirement for a notice of approval setting forth terms and conditions of the loan. In the proposed regulation, the lending authorities of the various Farm Credit direct lenders were set forth in proposed subpart D in the following proposed sections:

§ 614.4170—Farm Credit Banks.
§ 614.4180—Agricultural credit banks.
§ 614.4190—Federal land bank associations to which direct lending authority has been transferred (Federal land credit associations).
§ 614.4200—Production credit associations.
§ 614.4205—Agricultural credit associations.
§ 614.4210—Banks for cooperatives.

Sections 614.4090, 614.4100, 614.4110, 614.4120, and 614.4130 of subpart C were proposed to be removed.

In the final regulation the lending authorities are set forth in subpart A separately from required loan terms and

conditions and security requirements, which are set forth in subpart E by type of loan. Cross references to appropriate sections of subpart E are included in the lending authority sections for institutions authorized to make such loans. Lending authorities of the various Farm Credit System direct lenders are set forth in the final regulation in the following sections of subpart A:

§ 614.4000—Farm Credit Banks.
§ 614.4010—Agricultural credit banks.
§ 614.4020—Banks for cooperatives.
§ 614.4030—Federal land credit associations.
§ 614.4040—Production credit associations.
§ 614.4050—Agricultural credit associations.

In the final regulations, § 614.4090 is removed and §§ 614.4100, 614.4120, and 614.4130 are revised in the revision of subpart C. The provisions of existing § 614.4120(b) setting forth conditions for financing leased equipment and facilities (set forth in § 614.4210 of the proposed regulation) are set forth in the final regulation as § 614.4232, "Loans to domestic lessors."

Comments on lending authorities. The FCA received comments from the FCCA, three FCBs, nine Farm Credit service centers, and one individual regarding proposed revisions to the lending authority sections of part 614, subpart D of the regulations (§§ 614.4170 through 614.4210 in the November 3, 1988, proposal). Most of the respondents were concerned with the effect that the costs associated with expanded financial reporting and loan agreement requirements of the proposed regulations would have on their operations. The respondents also objected to the requirement for a formal notice of approval and the application of the loan-to-value restrictions for long-term real estate mortgage loans during the life of the loan. Comments were also received on existing § 614.4120(b) relative to the conditions for lending to domestic lessors to finance equipment or facilities leased to eligible cooperatives. These comments and the FCA response are discussed under "Subpart E—Loan Terms and Conditions" below.

A number of technical comments and request for clarification were received on the sections of the proposed regulation setting forth the lending authorities of the various institutions. In addition, respondents requested clarification of the meaning of the term "continuing commitment" as it was used in setting forth authorities of long-term real estate lenders. A number of respondents requested that proposed § 614.4210, which sets forth BC lending authorities, be revised to clarify that the BC is authorized to lend to certain entities that are not cooperatives. One respondent suggested that the term "eligible cooperative" be substituted for "voting stockholder" in the description of international lending authorities.

FCA Response. In the final regulations, the FCA incorporated technical suggestions of the respondents when they contributed to clarity. The lending authorities are set forth completely for each institution with cross references to other sections of the regulations applicable to each authority. Variances in language describing applicable loan terms and conditions have been eliminated in the final regulation by setting forth loan terms and conditions by type of loan in subpart E and including appropriate cross-references in the lending authorities of those institutions authorized to make such loans. FLBAs to which long-term real estate lending authorities have been transferred are designated as Federal land credit associations (FLCAs) in the final regulation.

The final regulation clarifies that ACAs are authorized to make real estate loans for terms of up to 40 years, provided that any such loan with a term of 10 years or more is secured by a first lien interest in real estate security. Real estate loans with terms of less than 10 years are not required to be secured by a first lien interest in real estate. Thus, the final regulation reconciles the authorities of the constituent associations to give the ACA the broadest possible powers.

The term "continuing commitment" is a statutory term which is interpreted by the FCA to include a commitment to make new advances when a loan is paid down in the amount of the repaid portion, on the same terms and conditions as the original advance. Although the proposed regulation included other eligible entities within the term "eligible cooperative," the final regulation does not. The final regulation makes specific reference to "other eligible entities" where such entities are intended to be included. This distinction is necessary because it appears that such entities are not eligible to be voting stockholders and are eligible to borrow only under section 3.7(a) of the Act and not under section 3.7(b).

Subpart D—General Loan Policies for Banks and Associations

Section 614.4140

Section 614.4140 of existing regulations, which sets forth the requirements for a sound loan, is redesignated in the final regulation as § 614.4150, but is otherwise unchanged.

Section 614.4150

Section 614.4150 of existing regulations, which sets forth factors pertinent to a sound credit decision, was proposed to be amended by revising the introductory text to require policies and procedures governing the evaluation of credit factors. Minor amendments were proposed to paragraph (c) of this section to require cash flow projections to reflect "reasonably expected cash flow generation" rather than "cash generation" and to add a requirement to meet all obligations from the cash flow "on a timely basis." Minor changes in wording were proposed to paragraph (e), having no substantive effect.

The FCCA, a FCB, and an individual respondent expressed concern with the provisions of the proposed regulation relating to repayment capacity (§ 614.4150(c)) and collateral (§ 614.4150(e)). The respondents asserted that the discussion of repayment capacity was too narrowly focused on cash flow, which may be transitory (because of government payments of various kinds or because they result from a sale of assets) or may be illusory (as a result of a particular borrower's accounting practices). Respondents suggested that while cash flow should be considered in the credit decision, past repayment history and profitability have a much higher correlation to successful repayment. FCCA noted that the deletion of the word "generally" in the statement that cash flow must be sufficient to meet all obligations and contingencies would deprive Farm Credit institutions of the flexibility needed to finance young, beginning and small farmers and start-up operations, which may have negative or inadequate cash flow in the early years but have considerable strength. The FCCA suggested adding a statement to paragraph (c) that would allow the depth and nature of the analysis to be adjusted to the size and risk characteristics of the borrower.

The respondents commenting on the collateral criterion described in § 614.4150(e) asserted that the concept expressed in the existing regulation—that collateral functions as a control of equity and repayment of debt—is one that courts are increasingly finding against public policy in lender liability suits. One respondent asserted that this language would make it difficult to develop credit policies that both comply with the regulation and do not create litigation opportunities. This respondent suggested that the need for collateral

and the type of collateral varies with the type and maturity of the loans and suggested more generally that the absolutes of the various credit factors are less important than their relativity in evaluating the strengths and weakness of particular borrowers. Alternate wording was suggested for these sections.

FCA response. After considering the comments on credit factors, the FCA has concluded that its regulatory purposes are sufficiently served by merely setting forth the areas that must be analyzed and has amended the regulation accordingly. This will allow institutions to have more flexibility in developing policies tailored to local needs; to vary the emphasis on the various credit factors to suit the particular enterprises they are financing; and to accommodate the financing of young, beginning and small farmers and start-up operations.

Section 614.4160

Section 614.4160 of existing regulations, which addresses the scope of financing based upon lending objectives, was proposed to be amended to reflect the 1987 Act restructuring provisions and to make minor technical adjustments in paragraph (c). The proposed amendment of § 614.4160 of existing regulations is adopted as proposed with minor changes, relocated to part 613 and designated as § 613.3005. *See* discussion of changes under part 613.

Section 614.4165

Section 614.4165 of existing regulations, which addresses the specialized credit needs of young, beginning, and small farmers and specialized enterprises, was proposed to be amended by removing paragraph (f), which requires FCA approval of policies governing lending to such borrowers, and by revising the introductory text of paragraph (c) and paragraph (d) to eliminate the reference to district boards and to reflect new types of institutions resulting from the restructuring provisions of the 1987 Act.

No comments were received on these proposed changes, but several respondents recommended that paragraph (b)(3) of this section of the existing regulation be amended to define "small" in terms of the amount of the farmer's sales and assets, which might be prescribed by the FCA from time to time, rather than in terms of the amount of the farmer's sales and net worth. The final regulation does not make the suggested change. The definition of "small" was designed to be consistent with data categories of the U.S. Census Bureau, and although respondents' arguments may have merit, the FCA believes the change should not be made without inviting comment on the benefits of such consistency and other ramifications of such a change. In the final regulation, the proposed amendment of § 614.4165 is adopted as proposed, except that paragraph (c) is clarified to apply only to associations that are direct lenders.

Section 614.4170

Section 614.4170 of existing regulations, which addresses borrower liability, was proposed to be removed from subpart C and a new § 614.4170 was proposed to be added to subpart D to set forth the lending authorities of FCBs. The final regulation removes and reserves § 614.4170 in subpart C.

Subpart E—Loan Terms and Conditions

Section 614.4180

Section 614.4180 of existing regulations, which sets forth required loan terms and conditions for FLBs, was proposed to be revised to set forth the lending authorities of ACBs. The provisions of existing § 614.4180 (a) and (b) were proposed to be combined with the lending authorities of the FCBs and ACBs in proposed §§ 614.4170 and 614.4180 respectively. The provisions of § 614.4180(c) of existing regulations were proposed to be deleted.

In the final regulation, the substance of paragraphs (a) and (b) of existing § 614.4180 are set forth in § 614.4210 for all lenders having long-term real estate mortgage lending authority, and revised as discussed below under § 614.4210 in response to public comments. Section 614.4180 is removed in the revision of subpart E in the final regulation.

Section 614.4190

Section 614.4190 of existing regulations, which sets forth the required terms and conditions for FICB lending, was proposed to be revised to set forth the lending authorities of FLCAs. The effect of the proposed amendment would have been to delete the provisions of existing § 614.4190, including paragraph (c) of § 614.4190, which addresses the limitation on direct lending to associations, and paragraph (d) of § 614.4190, which addresses the general financing agreement between the FICB and the institutions it funded. FCA does not adopt the proposal to delete the provisions of paragraphs (c) and (d) of § 614.4190, but redesignates these paragraphs as paragraphs (a) and (b), respectively, of § 614.4130, makes appropriate nomenclature changes, and deletes a reference in existing § 614.4190(c) to obsolete examination categories. In the final regulation, a reference to "performing" loans is substituted for the words "acceptable and problem," reflecting the guidance contained in FCA's bookletter of April 23, 1987, regarding interpretation of the FCA's direct loan limitation regulation. The FCA notes that the terminology of this bookletter will continue to provide useful guidance pending consideration of a separate proposal to amend sections of the subpart C regulation to address the bank/association lending relationship, which will be forthcoming in the near future. Section 614.4190 is removed in the revision of subpart E in the final regulation.

Section 614.4200

Section 614.4200 of existing regulations, which sets forth required loan terms and conditions for PCA loans, was proposed to be revised by combining its provisions with the lending authorities of PCAs. A new § 614.4205 was proposed to be added to set forth similar provisions for ACAs. In the final regulation, the substance of paragraphs (a), (b), and (c) of existing § 614.4200 are incorporated in § 614.4220 of subpart E, which addresses required terms and conditions for short- and intermediate-term loans that PCAs and ACAs are authorized to make. The substance of § 614.4200(d) of existing regulations, which relates to loans with maturities of up to 15 years that PCAs and ACAs are authorized to make to aquatic producers and harvesters for capital items is relocated to §§ 614.4040 and 614.4050.

In the final regulation, § 614.4200 is amended to set forth general requirements for loans made under the Act and is cross-referenced in the various sections of the final regulation setting forth the lending authorities of Farm Credit banks and associations. These general requirements include the requirements for all Farm Credit institutions that are direct lenders to use a written loan agreement and a notice of approval, and a requirement for all Farm Credit institutions operating under title I or II of the Act to obtain annual borrower financial statements. The comments received on the proposed requirements and the revisions made in response thereto are discussed below.

Loan Agreement. The lending sections of the proposed regulation setting forth the lending authorities of the various institutions would have required a loan agreement that would set forth the terms and conditions of the loan in greater detail than is commonly done in a promissory note. The proposal contemplated that the loan agreement

would, among other things, provide the lender with an enforceable right to obtain required financial and loan-related information from the borrower.

The FCCA, two FCBs, eight service centers and one individual commented on the requirement for a formal written loan agreement on long-term real estate mortgage loans. Most respondents agreed that such a requirement was appropriate on large, complex, or high-risk loans, but opposed its use on small, low-risk loans. Many respondents stated that such a requirement would place Farm Credit institutions at a competitive disadvantage since formal loan agreements are seldom used by commercial lenders for small agricultural loans. An FCB and an individual respondent commented that the loan agreement presents an additional element of risk because of the potential for error in the preparation of an additional loan document. Three service centers commented that the definition of formal written loan agreement was not clear. The FCCA and three service centers asserted that a loan agreement should not be required but should be a matter of management discretion. The FCCA questioned the FCA's statutory authority to impose such a requirement. The FCCA and two FCBs favored retaining the requirement of existing § 614.4180 for a loan agreement to be used "where appropriate."

FCA response. The FCA views its authority under section 5.17(a) (9) and (10) of the Act as a sufficient legal basis for requiring minimum criteria for loan contracts when such criteria are necessary or appropriate for safe and sound lending operations. The FCA considers a formal written loan agreement to be a key document in establishing the terms and conditions under which a loan is made and in providing appropriate mechanisms to enforce compliance with the terms and conditions of the loan. Hence, the FCA regards the requirement for a loan agreement as an appropriate safety and soundness requirement. However, the FCA agrees that the form and content of the loan agreement are matters for management discretion, provided the terms are set forth with sufficient specificity to provide a clear understanding between borrower and lender and adequate proof of indebtedness. Therefore, the final regulation retains the proposed requirement for a loan agreement, but leaves the determination of the form and content to the institution, which allows the terms and conditions to be adjusted according to the size, complexity and risk of the loan. As size, complexity, and risk increase, the form and content of the loan agreement should become more detailed and comprehensive. Depending on these variables, the form of the loan agreement may range in complexity from a brief statement of loan terms to a more formal loan document. In all cases the loan agreement should include provisions that will enable the lender to obtain adequate financial disclosure and documentation to meet regulatory requirements and to ensure prudent loan servicing.

Notice of approval. Several respondents commented on the provisions of proposed § 614.4170 requiring a notice of approval that sets out the terms and conditions of a long-term real estate loan. Several respondents opposed the requirement for a notice of approval on short- and intermediate-term loans of the type made by PCAs. One respondent noted that so little time normally elapses between the PCA loan approval and disbursement of loan funds that such a requirement would add a needless operating cost. Another commented on the absence of any clear definition of what constitutes a notice of approval. The FCCA questioned the FCA's statutory authority to impose such a requirement, noting that section 4.13B of the Act, which requires prompt written notice of action taken on a loan, does not require terms and conditions to be set forth in the notification.

FCA response. The FCA relies upon section 5.17(a)(9) of the Act for statutory authority to impose a requirement that the terms and conditions on which credit will be extended be set forth in the notice of approval. Section 4.13B of the Act requires prompt written notice of action taken on a loan and, if the application is denied or the amount reduced, the notice must state the reason for the action and inform the applicant of his or her right to a review of the action under the Act. Although this statutory notice is directed at ensuring that the review rights granted by the Act can be exercised in a timely and meaningful way, the FCA considers this notice to be the appropriate vehicle for communicating to the borrower the terms and conditions under which the institution is willing to extend credit, to allow the borrower to make meaningful judgment on whether to incur indebtedness on the terms offered. In addition to providing disclosure to the borrower and ensuring that the institution has adequate documentation that such disclosure has been made, the notice of approval will serve to minimize the likelihood that defaults will occur because of misunderstandings of the terms on which credit is extended and will minimize losses arising from inability to prove indebtedness. The FCA regards these matters as appropriate safety and soundness concerns.

The FCA recognizes that in some cases there is not enough time between the approval of a short-term operating loan and disbursement of funds to make a formal notice of approval setting forth terms and conditions of the loan useful. The requirement was proposed to address those situations in which there is some delay between the notification of action on an application and the loan closing because there are certain actions that need to be taken by the borrower or the lender before the loan can be closed. In cases where the loan closing occurs soon after the borrower is notified, a notice of approval setting forth loan terms and conditions may not be needed, as the terms and conditions are set forth in the loan agreement the borrower will be asked to sign at closing. However, where there is a lapse of time between the approval and the closing and especially where there are actions to be taken by the borrower or the institution prior to closing, setting forth the terms and conditions will prevent the parties from taking needless actions if the terms are not acceptable to the borrower. The final regulation clarifies this point by requiring the notice of approval required by section 4.13B of the Act to set forth loan terms and conditions only in cases in which the loan closing is to occur more than 15 days subsequent to the date the notification of the approval is sent or provided to the borrower.

The FCA also recognizes that the form and content of the notice may need to be varied according to the size, complexity and risks inherent in particular types of loans, and the final regulation leaves the determination of the form and content of the notice to the institution. The requirement may be met by enclosing a copy of the loan agreement the borrower will be expected to sign or by summarizing material terms of the agreement. The requirement may also be met by an adverse action notice required under Federal Reserve Regulation B when credit is granted on different terms or in different amounts than that requested, provided the adverse action notice sets forth the terms and conditions with sufficient specificity to reflect the material terms of the loan agreement. Interest rate disclosures required by subpart K of part 614 may be combined with the notice of approval disclosures.

Annual Financial Statements. On August 5, 1986, the FCA Board adopted a policy statement on loan documentation that set forth the FCA's expectations concerning the type of financial information Farm Credit institutions should obtain to provide an adequate basis for a prudent lending decision and to facilitate FCA examinations. *See* FCA Bookletter of August 18, 1986. The policy stated that obtaining current borrower financial information when the loan is made, when any significant loan administration action is taken and at the close of the borrower's fiscal year is critical to sound loan underwriting and servicing. The policy also stated that loan agreements should clearly establish the institution's right to obtain annual borrower-attested statements, independently audited where appropriate. The policy stated that the FCA would expect institutions to develop and implement a plan for strengthening loan documentation by yearend 1987 that would establish the right of the institution to obtain a verified balance sheet and income statement from all borrowers at least annually and would require annual verified balance sheets and income statements for all loans over $100,000 and for all loans secured by production or storage facilities constituting more than 25 percent of the total collateral value. The policy further stated that failure to develop and implement such plans would be considered an unsafe and unsound practice by FCA examiners.

A subsequent clarification issued by the FCA Board stated that annual financial information is not considered critical for consumer-related, rural housing and other such loans repayable through regular and frequent payments, but is considered critical for loans financing profit-generating enterprises where loan repayment is largely dependent on the enterprise financed. The clarification further stated that for the latter loans, such requirements should be waived or limited only where adequate information to properly manage risk is available, such as lender agreements to share borrower financial information. The subsequent bookletter also stated that when an institution does not have the right to obtain annual financial information on performing loans made before the issuance of the Board policy, it should seek to obtain it by conditioning any loan servicing action that benefits the borrower on the institution's obtaining the right to obtain borrower financial information as needed in the future. The clarification also suggested that institutions utilizing a differential pricing program related to risk should consider borrower financial statements a necessary pricing tool. *See* FCA Bookletter 090–OB, August 20, 1987.

Subsequently, Congress responded to the same concern addressed in the policy statement by enacting in the 1987 Act a requirement that each FCB require a financial statement from each borrower with a long-term real estate mortgage loan at least once every 3 years, but authorized the FCA to establish by regulation shorter intervals at which such statements must be required. *See* section 1.10(a)(5) of the Act, as amended. The proposed regulations would require all institutions making loans under titles I and II of the 1971 Act, as amended, to obtain, as a condition precedent to making a loan, an enforceable right to obtain a verifiable balance sheet and income statement from the borrower. The proposed regulation would also require such institutions to develop a policy requiring a verifiable balance sheet and income statement to be obtained from each borrower annually, except for loans with regularly and frequently scheduled payments such as rural housing, consumer-related and other similar types of amortizing loans, as well as loans made under district minimum information programs.

Many respondents acknowledged that the proposed regulations incorporated most of the substance from FCA bookletters dated August 18, 1986, and August 20, 1987, in which the FCA Board encouraged Farm Credit banks and associations to impose such requirements. The FCCA asserted that Farm Credit institutions would view the regulations as superseding any previous bookletters on the subject. However, most respondents objected to the requirement that a balance sheet and income statement be obtained annually. The FCCA, a FCB, four service centers and an individual respondent expressed concern that the competitive position of Farm Credit institutions would be severely harmed by this requirement. A FCB asserted that the requirement is inconsistent with congressional policy reflected in borrower rights provisions of the 1987 Act. Many respondents asserted that the legal right of the institution to such information from existing borrowers is uncertain.

The FCCA and several service centers agreed that financial information is important to the lending decision, but requested that institutions be allowed complete discretion in the amount and degree of information gathered. The FCCA, several FCBs, several service centers in one district, one association and one individual respondent objected to the requirement for long-term real estate mortgage loans. The FCCA and three service centers asserted that Farm Credit institutions should be allowed to make small and low-risk loans which do not present a material risk to the institution in the aggregate without full balance sheet and income information from the borrower. Three service centers generally supported the practice of requiring such information, but asserted that certain small loans which would pose little risk through the absence of such information should be exempted from this requirement.

Several comments were received on the verification requirement. One service center suggested that verification should not be necessary when the borrower has an established history of performance. The FCCA asserted that the FCA's imposition of the proposed requirement is not well supported by the statute, noting the absence of any specific reference in the Act to verification or to obtaining such statements as a "condition precedent" to making the loan. An FCB and an individual respondent suggested that the borrower should also be required to certify the financial statements as true and correct.

The FCCA asserted that Farm Credit institutions would have no legal right to require such information with respect to outstanding loans and commitments where borrowers are current on their payments and suggested that the requirements would have an adverse public relations impact, since most competitors do not have similar requirements for their customers. An FCB and an individual respondent viewed the proposed provision as an attempt by the FCA to implement uniform criteria for the diversified portfolios of the Farm Credit institutions. An FDB observed that most lenders require periodic financial statements only on larger commercial or business loans and not on small commercial loans and residential mortgage loans. The FCB further suggested that the degree of credit risk should be the criterion for setting differential requirements for financial information and that such requirements should be set forth in board policy statements. The FCCA noted that proposed regulations governing credit standards for the sale of loans to a certified agricultural mortgage marketing facility had no such requirement.

Farm Credit institutions were especially opposed to the requirement

for an annual balance sheet and income statement for short- and intermediate-term loans. The FCCA asserted that there is no statutory basis for this requirement, and six service centers and an FCB objected to the requirement for such loans contained in the proposed regulation. Another FCB alleged that there are apparent inconsistencies between the annual financial statement requirements for short- and intermediate-term loans, and long-term real estate mortgage loans. It suggested that the language used in the proposed regulations covering ACAs making short- and intermediate-term loans be used also for long-term real estate mortgage loans.

FCA response. The FCA considers the commitment of a loan without sufficient financial information to assess the borrower's creditworthiness (especially his or her ability to repay from primary sources) to be imprudent. Annual or more frequent borrower financial information is needed by the institution to monitor the risk in its loan portfolio, especially when the primary source of repayment is the operation being financed, whether the loan is a long-term loan or a short-term loan. The minimum components of financial information are a balance sheet and income statement that accurately reflect the borrower's financial condition in sufficient detail to allow the lending institution to verify the reliability of the information furnished by the borrower. The FCA regards the requirement for annual financial statements to be an appropriate safety and soundness concern and relies on its authority under 5.17(a)(9) of the Act for legal authority to impose such a requirement for short- and intermediate-term loans. The FCA does not believe that requiring sufficient financial information for sound credit decisions and administration is inconsistent with according borrowers their statutory rights.

The FCA recognizes that requiring, verifying, and analyzing financial information has a cost to Farm Credit institutions; however, such information is vital to an institution's ability to monitor risk in its loan portfolio and to take timely action to address risk. Moreover, the absence of such information also has a cost. Loans that are not supported by borrower financial information that is adequate for a sound credit decision and subsequent monitoring of risk are more likely to result in loss than those that are. In addition, Farm Credit institutions have historically been required to make provisions for loan losses because of the absence of such information. Although the subsequent collection of such information allowed the institutions' allowance for loan losses to be reduced, the public has tended to react to these reductions as liberal accounting policies rather than benefits gained from improved risk detection practices. Such perceptions may result in a demand for higher interest rates on System obligations.

Nevertheless, the FCA acknowledges that for certain types or sizes of loans, the cost to the institution of obtaining such information may outweigh the potential benefits. For this reason, the various lending authorities sections of the proposed regulations, as well as § 614.4200(c) of the final regulations, allow each institution's board of directors to exempt certain classes of loans from the requirement. These include loans made under a minimum information program and loans with regular and frequently scheduled payments, such as rural housing or other similar amortized consumer-type loans. Although § 614.4200(c) of the final regulation does not exempt loans from the annual financial statement on the basis of size, the FCA expects that exempted loans will be small in size, both individually and in aggregate, because of the nature of loans exempted. Section 614.4200(c) of the final regulation clarifies that the district minimum information programs that were contemplated in the proposed regulation were those with a maximum limit of $100,000 in outstanding loans and commitments per borrower.

The exemption permitted by § 614.4200(c) of the final regulation is only an exemption from the requirement to obtain annual financial information. It does not relieve the institution of the obligation to ensure that these loans meet the lending criteria defined by the institution's board at the origination of the loan or of the obligation to obtain financial information and adequately document repayment capacity before making the loan, restructuring its term, or granting forebearance. Minimum information programs and their limitations are expected to be appropriately documented.

The FCA understands that there may be no enforceable right to obtain annual financial statements for existing loans in which the institution may not have had an opportunity to acquire such a right. However, as stated in previous bookletters, Farm Credit institutions should obtain the right to obtain such information when they have an opportunity to do so, as in connection with a servicing action benefiting the borrower, and should obtain annual financial information when they do have the right.

The FCA disputes the contention of respondents that other financial institutions generally require periodic financial statements only on larger commercial loans and that Farm Credit institutions would be at a significant competitive disadvantage if required to obtain annual financial statements. The recently published Farmer Mac Securities Guide requires servicers of loans in Farmer Mac-guaranteed pools to obtain current and historical financial information and annual financial statements, as appropriate. Also, Comptroller of the Currency Robert Clarke, in a recent speech to the Independent Bankers of America, stated that a recent survey of national banks in the midwestern States revealed that all of the banks surveyed were obtaining annual balance sheets and 90 percent were obtaining annual cash flow information. Mr. Clarke took this opportunity to place the banks on notice that increased emphasis on financial reporting and analysis is going to be expected from national banks and that their performance in this area will be of considerable concern to national bank examiners. The FCA believes that its regulation is in step with industry and regulatory trends.

Therefore, the final regulation continues to require annual verifiable financial statements for all loans other than loans with regular and frequently scheduled payments and loans subject to a minimum information program with a maximum limitation of $100,000 per borrower. Although the responsibility for verifying the statements rests with the lending institution, the FCA is persuaded that requiring the borrower to certify the information to be true and correct will result in financial information of better quality and incorporates this suggestion in the final regulation.

Section 614.4210

Section 614.4210 of existing regulations sets forth required loan terms and condition for banks for cooperatives. Its provisions are redesignated and restated in §§ 614.4230 and 614.4233 in the final regulation. The final regulation revises § 614.4210 to set forth required terms and conditions and security requirements for long-term real estate mortgage loans. These requirements are set forth in existing regulations in §§ 614.4180 and 614.4230 and were incorporated in the proposed regulation, without substantive change, in the lending authority sections of the various institutions authorized to make

such loans, namely FCBs, FLCAs and ACAs.

Loan-to-value limitations for long-term real estate loans are set forth in existing regulations in § 614.4180(b). In the November 3, 1988, proposal, these provisions were incorporated virtually unchanged into the sections setting forth lending authorities of the various entities that are authorized to make such loans. In addition, the proposal included a provision allowing the FCA to reduce the maximum loan-to-value percentage to 75 percent for a particular institution whose lending and business practices are deemed to be imprudent.

Section 1.10(a)(1)(A) of the Act provides that long-term real estate mortgage loans originated under the authorities granted to FCBs under title I cannot exceed 85 percent of the appraised value of the real estate security (97 percent for government-guaranteed loans). Section 1.10(a)(1)(B) of the Act authorizes the FCA to require that loans not exceed 75 percent of the appraised value of the real estate security. Existing regulations and the proposed regulation interpret the statutory loan-to-value requirement for long-term real estate loans to apply at origination and all times during the life of the loan, but allow certain actions to be taken by the institution to protect its investment, notwithstanding the fact that such actions may cause the loan-to-value percentage to exceed the statutory limitation. A number of comments were received on the maximum loan-to-value percentage even though it was not proposed to be amended. Respondents urged the FCA to modify the statutory interpretation reflected in existing regulations, arguing that recent experience demonstrates that this interpretation is problematic in an environment of rapidly declining real estate values. The FCCA pointed out that the lender has little recourse if the value of collateral declines while a loan is outstanding. The FCCA and three service centers noted that the events of the mid-1980s led to a substantial decline in the appraised value of real estate so that the 85-percent requirement could not be maintained. The FCCA proposed some alternative wording to explicitly permit an FCB to advance operating funds to a borrower in a distressed loan situation as an alternative to eliminating the 85 percent loan-to-value requirement after loan origination.

Several respondents commented on the provision of the proposed regulation allowing the FCA to reduce the maximum loan-to-value of real estate to 75 percent for a particular institution where other than sound loan and business conditions are prevalent. The FCCA and the three service centers asserted that the FCA's use of this authority could impede the Farm Credit institution's ability to provide consistent credit to its customers, especially young or beginning farmers, if such control is not used within discretion. FCCA also pointed out that this provision was not included in proposed § 614.4205, which set forth the lending authorities for ACAs. A FCB and an individual respondent noted that the phrase "other than sound loan and business decisions" might be construed to apply to the borrower rather than the lender.

FCA response. Upon considering the comments and recent experience with dramatic declines in property values over which the borrower had little control, the FCA has concluded that the statutory purpose will be satisfied if the 85-percent limitation is applicable at loan origination and at the time any additional funds are advanced. Therefore, existing regulations are amended by the final regulations to provide that no loan may exceed 85 percent of the appraised value of security at the time the loan is made or at any time funds are advanced, whether under a binding commitment or otherwise. The FCA emphasizes, however, that the 85 percent is a maximum limitation. Individual lending decisions must take into account the borrower's circumstances and the institution's risk tolerance in determining whether it is prudent to lend up to the maximum limit allowable under the statute. The final regulation emphasizes the importance of the evaluation of the borrower's repayment capacity to the credit decision by requiring that the borrower's earnings history repayment history and net earnings projections provide assurance for repayment.

The final regulation continues to provide that, notwithstanding this limitation, funds may be advanced to pay taxes or make other expenditures necessary to protect the institution's investment. Thus, the final regulations provide long-term real estate lenders the opportunity to advance funds in a distressed loan situation when such advances will enable the lender to limit its losses on the loan to the greatest extent possible, provided an analysis considering relevant costs supports that action. However, loan agreements should include provisions allowing the lender to correct collateral deficiencies when they arise, and prudent lending practices would dictate that collateral deficiencies be addressed by the lending institution at any time servicing actions are taken that would afford the lender a legal opportunity to do so, whether or not new funds are advanced.

The final regulations continue to provide that the loan-to-value percentage may be reduced by the FCA for a particular institution that engages in unsound lending or business practices. An institution that employs prudent lending and business practices need not fear that its ability to provide consistent credit to its borrowers will be curtailed. Nor does the FCA believe that any special exemption from this provision for loans to young, beginning and small farmers or to rural home owners is warranted. There is no suggestion in the statute that Congress contemplated that loans to such persons should be based on unique credit criteria. The FCA views these provisions as requiring that credit be available to such persons on terms appropriate to their needs, but does not view these provisions as license to engage in imprudent lending or business practices. While it is possible that such a restriction may work a hardship on the institution's borrowers, including young, beginning and small farmers, the institution can remedy the situation by improving its lending and business practices. The final regulation clarifies that a lower loan-to-value percentage may be imposed by the FCA through the exercise of its enforcement powers or otherwise. The reorganization of part 614 will remedy the inadvertent omission of the ACAs from the applicability of this provision and clarify that the provision is applicable to all lenders that make long-term real estate loans.

Section 614.4210

Section 614.4210 of existing regulations, which sets forth required loan terms and conditions for banks for cooperatives, was proposed to be amended by combining with it the provisions of existing § 614.4120 setting forth the lending authorities of BCs. Similar provisions were proposed for agricultural credit banks in § 614.4180 of the November 3, 1988, proposal. Requirements for FCA prior approval of policies governing international lending under section 3.7(b) of the Act was proposed to be deleted.

In the final regulation, the provisions of existing § 614.4210 (a) and (b) relating to loans to eligible cooperatives are restated without substantive change in § 614.4230. The provisions of existing § 614.4210(c) relating to loans made under 3.7(b) (international lending authorities) are restated in § 614.4233 of

subpart E of the final regulations. Required loan terms and condition for loans to domestic lessors for the purpose of providing leased assets to eligible cooperative borrowers, which are set forth in existing regulations in § 614.4120, were also set forth in proposed § 614.4210. In the final regulation, these requirements are restated in § 614.4232, with a clarification made in response to the comment that leased equipment, such as a railroad car, should not lose its eligibility for financing if it is used to transport agricultural goods to Mexico or Canada. The existing regulation and the proposed amendment stated that such equipment must be for use only in the United States; the final regulation provides that the leased equipment must be primarily for use in the United States.

The final regulation adds a new § 614.4230 to subpart E to set forth required terms and conditions for loans made by BCs and ACBs to eligible cooperatives and other eligible entities under section 3.7(a) of the Act.

Subpart F—Security Requirements

Appraisal requirements. Section 614.4220 of subpart F of existing regulations requires primary real estate security to be valued on the basis of appraised value and requires primary chattel and additional security to be valued on the basis of recovery value. Appraised value is defined as reasonably supported market value, which is defined as the amount a property will bring if a reasonable time is allowed to find a purchaser and if both seller and prospective buyer are fully informed and not under abnormal pressure. Methods of appraisal are not addressed in existing regulations. The November 3, 1988, proposal would have required Farm Credit banks and associations to develop a more structured and uniform collateral appraisal process that would be independent of the lending decision and that would utilize several methods for determining appraised value. The use of recovery value as a method of evaluating additional collateral, chattels, and other personal property would have been replaced by appraised value. Section 614.4261 of existing regulations, which addresses the security and appraisal standards for BCs, was proposed to be eliminated and replaced with the appraisal requirements applicable to other Farm Credit institutions.

The FCA received 32 comments on various aspects of the proposed appraisal regulation. Among these were comments from the FCCA, CBC, two BCs and an individual expressing concern that the BCs would be subject to the proposed appraisal requirements. These respondents argued that the BC credits are commercial in nature and that the appraisal requirements should distinguish between such loans and loans made by other Farm Credit institutions. The majority of these respondents favored retaining the existing language of § 614.4261 with only minor changes for BCs.

While these comments were under review, Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Title XI of FIRREA established new appraisal requirements for all "Federally related" mortgage loans. Although loans from Farm Credit institutions do not fall within the definition of "Federally related" loans, the FCA has determined that the FIRREA appraisal provisions and regulations adopted by Federal regulatory agencies thereunder should be reviewed prior to the adoption of final appraisal regulations. Therefore, the FCA hereby withdraws the November 3, 1988, proposal to amend the provisions of §§ 614.4220 and 614.4261 of subpart F, but redesignates § 614.4220 as 614.4240 in the final regulation. The FCA will propose new appraisal regulations in the near future. In the final regulation, subpart F is retitled "Appraisal Requirements."

Sections 614.4230, 614.4240, 614.4250, 614.4260 and 614.4261

Sections 614.4230, 614.4240, 614.4250, 614.4260 and 614.4261 of existing subpart F set forth security requirements for loans by type of institution and valuation requirements for all Farm Credit institutions. In the November 3, 1988, proposal, §§ 614.4230, 614.4240, 614.4250 and 614.4261 were proposed to be removed. The substance of these provisions was proposed to be incorporated in the sections setting forth the lending authorities of the various types of institutions of the Farm Credit System.

In the final regulation, security requirements for the various institutions are incorporated in the provisions of subpart E setting forth required loan terms and conditions by types of loans rather than by types of institutions. Existing § 614.4220 is redesignated as § 614.4240 in the final regulation and a new § 614.4220 is added to subpart E setting forth required terms and conditions for short- and intermediate-term loans. This new section also includes the relevant provisions of existing § 614.4250, which set forth security requirements for PCAs. No substantive change is made in the requirements, except for the deletion of references to the district board and FCA prior approval requirements and deletion of the requirement for the short-term lender to consider whether all or a portion of an applicant's credit needs might be more satisfactorily met by a real estate mortgage loan originated by an FLBA in accordance with district board policies established under § 616.6020. The deletion of the latter requirement is consistent with the deletion of part 616.

In the final regulation, the provisions of § 614.4240(b) are incorporated in § 614.4130 as paragraph (c), and the provisions of paragraphs (a) and (c) of § 614.4240 are deleted, as they are duplicative of requirements stated elsewhere in the regulations. In response to a respondent's suggestion that more specific language addressing the type of collateral required for long-term real estate mortgage loans be added to the proposed regulation, the substance of § 614.4230 of existing regulations is incorporated in the final regulation in §§ 614.4210 and 614.4220 for both long-term real estate mortgage loans and short- and intermediate-term loans. The provisions of existing § 614.4260(a) are incorporated and restated without substantive change in the final regulation in § 614.4230. Paragraph (b) of existing § 614.4260, which permits seasonal loans to be secured or unsecured is deleted as unnecessary. The provisions of existing § 614.4260(c) relating to seasonal commodity loans are set forth in the final regulation in § 614.4231. Paragraph (c) of § 614.4260 of existing regulations is restated in § 614.4231 without substantive change.

Subpart H—Loan Participations

Section 614.4330

Section 614.4330 of existing subpart H, which sets forth requirements for loan participation policies and regulatory requirements for loan participations and loan participation agreements was proposed to be amended to delete requirements for FCA prior approval of district board loan participation policies. Section 614.4334 was proposed to be amended to delete requirements for FCA prior approvals relating to loan participation agreements between banks for cooperatives and the Central Banks for Cooperatives. Amendments to reflect the restructuring possibilities under the 1987 Act were proposed to §§ 614.4331, 614.4332, 514.4333, and 614.4334, which set forth the loan participation authorities of the FLBs, FICBs, PCAs, and BCs, respectively, and new sections were proposed to be added to set forth

the participation authorities of ACBs, ACAs, and FLCAs.

Several comments of a technical nature were received. In addition, comments were received from a number of institutions suggesting additional substantive changes to the regulations. In particular, institutions objected to the existing requirement (which the FCA did not propose to change) that each participating institution make an independent credit decision on purchased loan participations.

After considering the issues raised by the comments and in consideration of the need to modify the regulation to accommodate the subordinated participation interest retained by institutions when loans are sold into the Farmer Mac program, the FCA has decided not to adopt amendments to subpart H proposed on November 3, 1988, and to repropose amendments to subpart H that will address the subordinated participation interest as well as the issues raised by the commenters. Comments received on amendments proposed to subpart H on November 3, 1988, will be addressed at that time.

Subpart J—Lending Limits

The FCA does not adopt amendments to subpart J proposed on November 3, 1988, at this time. At the time the regulations were proposed, capital regulations had not been adopted, and it was unclear how Farm Credit institutions would respond to the restructuring opportunities under the 1987 Act. Now that capital adequacy regulations have been adopted and a significant amount of restructuring has taken place, the proposed amendments may no longer be appropriate. The FCA intends to repropose in the near future amendments to the regulations in this subpart in light of these recent developments. Comments received on the proposed amendments will be considered at that time.

Subpart O—Special Lending Programs

Section 614.4525

Section 614.4525 of existing regulations, which addresses the general authorities of Farm Credit institutions to enter into special lending programs with agents, dealers, cooperatives, other lenders, and individuals to facilitate the making of eligible loans, was proposed to be amended to incorporate the provisions of the 1987 Act resulting in the restructuring, new corporate identities and revised authorities for specific Farm Credit institutions.

The only comment received was a technical one questioning whether § 614.4525 was a proper designation. Although this section was previously designated as § 614.4520, it was redesignated as § 614.4525 with the implementation of the borrower rights regulations, when § 614.4520 became part of subpart N. *See* 53 FR 35456, September 14, 1988. The designation is correct and the final regulation incorporates the proposed amendment without change.

Section 614.4530

Section 614.4530 of existing regulations, which addresses the authority of PCAs to make special-type loans on commodities covered by price support programs, was proposed to be amended to reflect the existence of ACAs and their authority to make loans under similar provisions as PCAs. There were no comments on this proposed amendment, which is adopted in the final regulation without change.

Subpart P—Federal Intermediate Credit Bank Financing of Other Financing Institutions

Technical changes were proposed to subpart P to reflect the restructuring possible under the 1987 Act, primarily substituting "Farm Credit Bank" for "Federal intermediate credit bank." Only technical comments were received and were incorporated in the final regulation where appropriate.

Subpart Q—Bank for Cooperatives Financing International Trade

Subpart Q was proposed to be amended to reflect the BC restructuring that occurred as a result of the 1987 Act and to delete FCA prior approvals of various required bank policies. In addition, amendments were proposed to § 614.4710(a)(1)(i) to change the intervals at which net worth must be computed for the purpose of determining limitations on bankers acceptances outstanding to a single borrower. Paragraph (a)(1)(i) of existing § 614.4710 requires net worth to be computed on June 30 and December 31 of each year, or on such other interim date as the FCA determines, for the purpose of determining the limitation on bankers acceptance financing outstanding at any time to any one borrower. The November 3, 1988, proposal would have substituted a requirement that net worth be calculated on an ongoing basis. Technical amendments were proposed to paragraph (c) of existing § 614.4710, which provides that discounted acceptances outstanding at any one time to any one borrower from one or more district banks and the Central Bank for Cooperatives shall not exceed 10 percent of the combined net worth of the banks for cooperatives, to delete the reference to the CBC and to substitute "net worth available to support such acceptances" for "combined net worth."

Comments were received on both proposed amendments and on paragraphs not proposed to be amended. Several respondents objected that calculating net worth on an ongoing basis would be burdensome and ill-advised and could cause some operational problems. Quarterly calculations were thought to be sufficient by respondents. In addition, respondents suggested that § 614.4710(a)(2) be revised to clarify that the exceptions of § 614.4710 are also applicable to § 614.4710(a)(2). Also, some respondents noted that the 100-percent limitation of § 614.4710(c) is not consistent with existing or pending regulatory revisions being considered by the Comptroller of the Currency for national banks. Respondents also suggested that the word "combined" may have been inadvertently deleted in the phrase "net worth available to support the acceptances" in § 614.4710(b) of the proposed amendment (§ 614.4710(c) of existing regulations). Respondents also noted that paragraph (a)(1) of existing regulations is not a complete sentence and requested clarification of its meaning.

FCA response. It is FCA's position that net worth, for the purpose of determining the limitation on bankers acceptance financing to a single borrower, should be calculated more frequently than semiannually in order for the regulatory limitation to provide an effective risk-containment tool. Under the existing regulations this problem is addressed by FCA's interim determinations. The provision for a risk containment mechanism that is sufficiently responsive to material changes in an institution's net worth to be effective avoids the need for FCA to require calculations on interim dates. The FAC regards this as a particularly important issue in view of the increased concentration of loan risk resulting from the merger of 10 BCs into the National Bank for Cooperatives. The final regulation states the expectation of the FCA in this regard more explicitly by requiring net worth to be computed on a monthly basis. Since updating the institution's financial information on a monthly basis is a prudent business practice that is consistent with the practice of other Farm Credit institutions, the FCA does not believe that montly computations of net worth will constitute an undue burden. Furthermore, the use of average daily

balances are now required to compute permanent capital ratios pursuant to § 615.5210(b) of part 615 of FCA regulations.

With respect to the request to clarify § 614.4710(a)(2), the FCA declines to incorporate the suggested wording, but confirms the respondent's understanding that paragraph (a)(2) does not in any way abrogate the exception from lending limits for rediscounted acceptances stated in the introductory text. Rather, it clarifies that rediscounted acceptances are subject to the 10-percent limit even though they do not count against the lending limit.

The final regulation § 614.4710(b) is amended in the final regulation to increase the limitation on total acceptances outstanding from 100 to 150 percent of capital stock and unimpaired surplus. When the existing FCA regulation was adopted, it mirrored the statutory limitation for Federal Reserve member banks (12 U.S.C. 372). It was and continues to be the intention of the FCA to mirror the statutory limitation and any modifications by the Federal Reserve Board permitted by the statute. Since the existing regulation was adopted, Congress has raised the statutory limitation to 150 percent. Accordingly, the final regulation makes the adjustment requested by the respondents.

As a result of considering comments on proposed § 614.4710(b) (§ 614.4710(c) of existing regulations) in light of the merger of BCs to form the NBC, the FCA has concluded that the System limitation on bankers acceptances, exclusive of the portion participated out, are redundant of the individual bank limitations, since each BC, including the NBC, is subject to the individual limitation on bankers acceptances. Since there is no longer a Central Bank for Cooperatives which was not subject to the individual limitations of paragraph (a) of § 614.4710), the System limitation would be the same as the sum of the individual limitations. Accordingly, the final regulation deletes the provisions of § 614.4710(c) of existing regulations in their entirety. However, the final regulation requires the calculation of net worth to eliminate any double counting of capital resulting from participations.

In response to the request to clarify the meaning of § 614.4710(a)(1), the FCA provides the following explanation: As originally adopted and published October 22, 1981, (46 FR 51879) the paragraph reads as follows:

> The Fiscal Agency's authority to accept drafts or bills of exchange includes the authority to accept drafts or bills of exchange drawn upon a district bank for cooperatives
> * * *

The Code of Federal Regulations (CFR) made an error in printing the regulation, deleting the text after the first "authority" up to and including the second "authority," which resulted in an incomplete sentence. In 1986, this paragraph was amended by the FCA by substituting "Funding Corporaton" for "Fiscal Agency." Since the amendment was made to the erroneous language of the CFR rather than the language actually adopted by the FCA Board and published in the **Federal Register**, the legal effect of the amendment was to adopt the erroneous language as an FCA regulation. To correct the error, the FCA Board in these final regulations amends § 614.4710(a)(1) by reinserting the deleted text. The reinserted language makes clear that the intent of the section is to authorize the issuance and holding of acceptances eligible for discount with Federal Reserve banks. The final regulation also adopts proposed technical changes to § 614.4710 to reflect BC restructuring.

Section 614.4720

Section 614.4720 of existing regulations, which addresses letters of credit, was proposed to be amended to remove FCA approval of BC board policies governing the issuance of letters of credit. Section 614.4720(a) was also proposed to be amended to require letters of credit to be written commitments. The FCCA asserted that this revision is not necessary, because the requirement that letters of credit be in writing is clearly implied in the existing regulation. However, past practices of some Farm Credit institutions suggest that such an implication was not in fact clearly understood. Consequently, the final regulation specifically requires letters of credit to be in writing.

Section 614.4800

Section 614.4800 of existing regulations, which addresses guarantees and contracts of suretyship, was proposed to be amended to remove the requirement for FCA approval of BC policies governing guarantees and contracts of suretyship. In addition, the FCA proposed to add a sentence to the regulation stating that BCs may require remuneration for guarantees and contracts of suretyship. No comments were received on this proposed amendment. The final regulation adopts the proposed deletion of the requirement for FCA approval of bank policies governing guarantees and contracts of suretyship, but does not adopt the additional statement on remuneration. It is unnecessary to authorize BCs to charge fees for guarantees, and prudent lending practices would ordinarily require it.

Section 614.4900

Section 614.4900 of existing regulations, which sets forth guidelines for foreign exchange activities of the banks for cooperatives, was proposed to be amended to remove the requirement for FCA prior approval of foreign exchange activities and to reflect BC restructuring. No comments were received on this proposed amendment, which is adopted as a final regulation.

Part 615—Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

Subpart C—Deposit of Funds

Section 615.5190

Section 615.5190 of existing regulations, which governs the deposit of funds by Farm Credit banks and associations, was proposed to be revised to reflect the new corporate entities that are possible under the 1987 Act. The FCCA objected to the use of the term "affiliated bank" rather than "supervisory bank" in the description of the association's authority to deposit funds with its funding bank. The final regulation uses the term "funding bank" rather than "affiliated bank" to describe more accurately the relationship between the bank and the associations in its district.

Section 615.5550

Section 615.5550, which addresses bankers acceptances, was proposed to be revised to remove the requirement for FCA approval of bank board policies for the delegation of authorities to bank management. No comments were received on the proposed revision and it is adopted as proposed.

Part 616—Coordination

Part 616 of existing regulations, which addresses the manner in which specified activities are to be coordinated by System institutions, was proposed to be removed and reserved, as System restructuring required by the 1987 Act has eliminated the need for it. The proposal is adopted as proposed.

Part 618—General Provisions

Subpart A—Technical Assistance and Financially Related Services

Section 618.8000

Section 618.8000 of existing regulations, which addresses financially related services that may be offered by

Farm Credit institutions, was proposed to be amended to eliminate the requirement for FCA prior approval of the board policies governing such services. However, the requirement for FCA approval of any new financially related service programs proposed to be offered within a district was not proposed for deletion.

Comments were received from the FCCA, the CBC, and several FCBs, arguing that the FCA has no statutory authority to require prior FCA approval of financially related services to be offered by Farm Credit institutions.

The FCA believes that section 5.17(a)(9) and (10) of the Act provides sufficient authority to regulate financially related services. The FCA believes that implicit in this authority is the authority to adopt a regulation that will allow the FCA to make a determination prior to the initiation of new services that such services are legally permissible and subject to appropriate regulatory controls to ensure that the safety and soundness of the institution is not impaired. Nevertheless, the FCA does not adopt the proposed amendment at this time, but intends to repropose amendments to this section. Until a revised regulatory proposal is presented, § 618.8000 remains in effect, applicable to all Farm Credit institutions proposing implementation of financially related and technical services.

Section 618.8050

Section 618.8050 of existing regulations, which sets forth the authority of Farm Credit institutions to engage in equipment leasing, was proposed to be amended to reflect the restructuring of Farm Credit institutions by stating the authority generally for all direct lenders. The final regulation adopts the proposed amendment with a clarification to reflect that leasing authorities extend to farming, aquatic, and eligible agriculturally related operations as defined in part 613 of these regulations. The clarification was made in response to a concern that the use of the terms "farming and aquatic operations" could be viewed as a restriction on the leasing authorities of a BC.

Section 618.8430

Section 618.8430 of existing regulations, which addresses internal controls, was proposed to be amended by adding a new § 618.8430(b) which would impose upon banks and associations the responsibility for adequate review and assessment of their loans and loan-related assets. This provision would replace the requirement for bank credit reviews of association loan portfolios, which was proposed to be deleted. (See discussion under "Subpart A—General Authorities" above.) The proposed amendment would require banks and associations to adopt policies for the evaluation and assessment of credit, operations, financial, and management functions. This expansion of internal controls was promulgated pursuant to FCA's general regulatory authority stated in section 5.17(a)(9) of the Act and was proposed in order to ensure that adequate controls over the lending function are maintained.

Several comments were received relating to the structuring of the regulation and the emphasis of the internal control programs. One respondent suggested that proposed § 618.8430(b) did not sufficiently emphasize the need for a review program for loans and loan-related assets. It was suggested instead that part or all of § 618.8430(b) be subsumed in previous paragraphs. One respondent also suggested that the proposed regulation should be expanded to include a reference to appraisal review requirements set forth in § 614.4220. Both respondents suggested that the FCA clarify that the regulation does not necessarily require the use of the Uniform Classification System adopted by the Federal Financial Institutions Examination Council (FFIEC).

FCA response. In the final regulation, § 618.8430(b) is revised to place more emphasis on the institutions' policy and review requirements. While the final regulation does not require the use of the FFIEC's Uniform Classification System, the FCA recommends it be used, since it is the standard upon which the FCA's examination of the institution's assets will be based.

Part 619—Definitions

Part 619 was proposed to be amended by adding definitions for terms to reflect new corporate entities created or made possible by the 1987 Act. Definitions of the terms "agricultural credit association" (association formed from the merger of an FLBA or FLCA and a PCA), "agricultural credit bank" (bank formed from the merger of an FCB and a BC), "direct lender," "association," "banks for cooperatives," and "Farm Credit System banks" were proposed to be added. The definition of "Farm Credit System institutions" was proposed to be amended to define the term more generally without enumerating specific institutions. Existing definitions were proposed to be redesignated to incorporate new definitions in alphabetical order.

The only comment received on proposed amendments to part 619 was a suggestion from FCCA that the definition of Farm Credit System bank(s) include as an introductory clause "Unless the context otherwise requires," to provide for those situations in which the term is not intended to be all inclusive.

FCA has not accepted the suggestion of the FCCA because it would introduce an element of uncertainty in determining the applicability of regulations. The FCA believes that regulations should delineate their applicability as precisely as possible, and where the term is not intended to be all inclusive, the names of the institutions to which the regulation is applicable should be used instead of the general term. In addition to changes to part 619 proposed on November 3, 1988, the final regulation incorporates a definition of "Federal land credit association," the name given to a Federal land bank association to which an FCB has transferred long-term real estate lending authority by 53 FR 50381, December 15, 1988, and "Farm Credit Bank," the bank formed from the statutorily mandated merger of the Federal intermediate credit bank and the Federal land bank in each district. Also included in the final regulation is the definition of the "Funding Corporation" which refers to the Federal Farm Credit Banks Funding Corporation established pursuant to section 4.9 of the Act.

General technical revisions. In response to editorial comments, the FCA has made minor technical revisions in the final regulation.

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 chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for part 613 is revised to read as set forth below and all other 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.

2. Subpart A is revised to read as follows:

Subpart A—General

Sec.
613.3000 Authority.
613.3005 Lending objective.

Subpart A—General

§ 613.3000 Authority.

Farm Credit Banks, agricultural credit banks, Federal land credit associations, production credit associations and agricultural credit associations are authorized to make loans under titles I and II of the Act of bona fide farmers, ranchers, producers or harvesters of aquatic products, persons eligible for financing of the processing and marketing of agricultural or aquatic products of eligible borrowers under § 613.3045, rural residents, and persons furnishing services directly related to the on-farm operating needs of farmers and ranchers. Banks for cooperatives are authorized, under title III of the Act, to make loans to eligible cooperatives and other eligible entities, as defined in § 613.3110, and loans to domestic or foreign parties not otherwise eligible in connection with transactions related to the import or export of agricultural or aquatic products, when the loan substantially benefits an eligible cooperative that is a voting stockholder of the bank. Eligibility requirements are set forth in part 613, and lending authorities and requirements are set forth in part 614.

§ 613.3005 Lending objective.

(a) It is the objective of each bank and association, except banks for cooperatives, to provide full credit, to the extent of creditworthiness, to the full-time bona fide farmer (one whose primary business and vocation is farming, ranching, or producing or harvesting aquatic products); and conservative credit to less than full-time farmers for agricultural enterprises, and more restricted credit for other credit requirements as needed to ensure a sound credit package or to accommodate a borrower's needs as long as the total credit results in being primarily an agricultural loan. However, the part-time farmer who needs to seek off-farm employment to supplement farm income or who desires to supplement off-farm income by living in a rural area and is carrying on a valid agricultural operation, shall have availability of credit for mortgages, other agricultural purposes, and family needs in the preferred position along with full-time farmers. Loans to farmers shall be on an increasingly conservative basis as the emphasis moves away from the full-time bona fide farmer to the point where agricultural needs only will be financed for the applicant whose business is essentially other than farming. Credit shall not be extended where investment in agricultural assets for speculative appreciation is a primary factor.

(b) It is the objective of banks for cooperatives to provide a full range of credit services to eligible cooperatives, as defined in § 613.3110(b), to assist such cooperatives in increasing the income of their members as patrons. The type of cooperative operation, quality of management, and basic financial factors shall be carefully evaluated as to their effect upon long-range benefit to members. Each bank for cooperatives shall develop policies and procedures for the administration of quality standards that fully consider the needs of, support by, and service performed for members, and risk protection afforded the lender.

(c) Each Farm Credit bank and association board shall adopt policies providing direction to management in administering credit and lending standards. Management shall prescibe operating procedures to administer board policies that include provisions to ensure that proper weight is given to the wide variety of relationships between applicants, types of property serving as collateral and financing purposes that can exist. For institutions operating under titles I and II of the Act, these policies shall require that loans made under the eligibility provisions of § 613.3020 be predominantly for agricultural or aquatic purposes and shall ensure that nonagricultural-related assets owned by applicants or included in collateral appraisals are not given undue weight in the final loan decision. Management procedures administering these policies shall identify the portion of mixed value (agricultural and nonagricultural) assets that may be considered agricultural for lending purposes.

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 Credit Associations

4. Section 613.3010 is revised to read as follows:

§ 613.3010 Definitions.

For the purposes of determining eligibility, the following definitions shall apply:

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

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

(c) *Person* means an individual who is a citizen of the United States or who has been lawfully admitted into the United States for permanent residence, as defined in 8 U.S.C. 1101(a)(20), and is so domiciled or a legal entity in which essentially all of the outstanding stock or equity and voting control is directly or indirectly owned by, or held for the benefit of such individual(s).

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

5. Section 613.3020 is revised to read as follows:

§ 613.3020 Eligibility.

(a) *Generally.* To be eligible to borrow from a bank or association under title I or II of the Act, an applicant must be:

(1) A person who is a bona fide farmer, rancher or producer or harvester of aquatic products;

(2) A person qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products;

(3) A rural resident, as defined in § 613.3040(a)(1); or

(4) A farm-related business, as defined in § 613.3050.

(b) *Eligibility of legal entities.* For the purposes of paragraph (a)(1) of this section, if the applicant is a legal entity—

(1) The legal entity shall satisfy at least one of the criteria set forth in paragraph (b)(1) (i) through (iii) at the time of application:

(i) More than 50 percent of the value or number of shares of the entity's outstanding voting stock or equity shall be owned by the individuals conducting the agricultural or aquatic operation.

(ii) More than 50 percent of the value of the entity's assets shall consist of assets related to the production of

agricultural products or the production or harvesting of aquatic products.

(iii) More than 50 percent of the entity's income shall be generated by its production of agricultural products or the production or harvesting of aquatic products.

(2) In addition to the requirements of paragraph (b)(1) of this section, if the legal entity is one in which 50 percent or more of the ownership or control is vested directly or indirectly in another legal entity that does not satisfy the requirements of paragraph (b)(1) of this section, the applicant shall demonstrate that it 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 the general agricultural or aquatic economy. Such loans shall be appropriately designated in such a manner as to permit segregation for the purpose of monitoring the number and volume of such loans.

(3) Notwithstanding any other provision of this section, a legal entity engaged in agriculture or the 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 to borrow. Each legal entity shall demonstrate at the time of application that its purpose is to operate for profit.

(c) *Documentation of eligibility.* Each applicant shall submit a complete description of the ownership of the agricultural or aquatic operation being financed and sufficient supporting documentation to demonstrate the applicant's eligibility at the time of application.

6. Section 613.3040 is amended by removing existing paragraph (d)(3), redesignating paragraph (d)(4) as new paragraph (d)(3), and revising paragraph (d)(2) to read as follows:

§ 613.3040 Rural residents.

* * * * *

(d) *Program limitations.* * * *

(2) No Farm Credit Bank or agricultural credit bank may at any time have outstanding rural residence loans in an amount exceeding 15 percent of the total of all of its outstanding loans. No Federal land bank association shall originate and no Federal land credit association, production credit association, or agricultural credit association may have outstanding, rural residence loans in an amount exceeding 15 percent of such association's total loans outstanding or originated at the end of the preceding fiscal year, without prior approval by its funding bank; nor shall the aggregate of such loans in a Farm Credit district 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.

* * * * *

7. Section 613.3045 is revised to read as follows:

§ 613.3045 Financing of basic processing and marketing activities.

(a) Farm Credit Banks, agricultural credit banks, production credit associations, agricultural credit associations, and Federal land credit associations, are authorized to provide financing for the processing (including storage) and marketing activities of persons eligible to borrow under § 613.3020.

(b) Eligibility to obtain loans to finance basic processing and marketing activities is determined as follows:

(1) If the applicant or, as provided for in paragraph (b)(2)(iii) of this section, the applicant processing and/or marketing unit and its owners, produce 50 percent or more of the annual throughput used in the basic processing and/or marketing operation, eligibility is determined in accordance with § 613.3020 (a)(1) and (b).

(2) If the applicant, or as provided for in paragraph (b)(2)(iii) of this section, the applicant processing and/or marketing unit and its owners, produce less than 50 percent of the annual throughput, the applicant must meet the following three conditions in addition to the requirements of § 613.3020 (a)(1) and (b):

(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 vertical integration from the production stage through the basic processing and/or marketing stage.

(ii) The applicant or, as provided for in paragraph (b)(2)(iii) of this section, the applicant processing or marketing unit and its owners, 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 as may be established by the lending bank or association. Essentially all of the throughput in excess of such minimum amount that is utilized in the processing and/or marketing stage shall be purchased from or handled for eligible borrowers as described in § 613.3020 (a)(1) and (b).

(iii) Where the ownership of the processing and/or marketing operation differs from that of the basic production operation, all of the ownership of the processing and/or marketing operation shall be vested in persons eligible to borrow under § 613.3020 (a)(1) and (b).

(c) Banks and associations shall each 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) Provision for adequate documentation for an analysis of the ownership and operational features of the borrower sufficient to establish loan eligibility under this section each time a loan is made or renegotiated;

(5) Provision for appropriately designating loans in which less than 50 percent of the throughput is produced by the borrower or owners of the processing and marketing operation, so as to permit segregation of such loans for the purpose of monitoring the number and volume; and

(6) Authorities and limitations applicable to the institution's financing of processing and marketing operations.

8. 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 and associations that are direct lenders are authorized to make loans to farm-related businesses as follows:

(1) Farm Credit Banks, agricultural credit banks, agricultural credit associations, and Federal land credit associations, 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, under terms and conditions described in § 614.4210.

(2) Production credit associations and agricultural credit associations may make operating and intermediate-term loans to farm-related businesses for necessary sites, capital structures, working capital, equipment, and operating needs incident to the operation of farm-related businesses under terms and conditions described in § 614.4220.

9. The heading of subpart C is revised to read as follows:

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

10. 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 loans or other obligations for production credit associations, agricultural credit associations, Federal land credit associations, and other financing institutions in accordance with provisions in part 614 of this chapter.

11. The heading of subpart D is revised to read as follows:

Subpart D—Eligibility To Borrow From Banks for Cooperatives and Agricultural Credit Banks

12. Section 613.3110 is amended by revising the heading; redesignating paragraph (c) as (d); adding a new paragraph (c); revising the heading of paragraph (b); and revising paragraphs (a)(4), (b)(1), (b)(2), and (b)(4) to read as follows:

§ 613.3110 Domestic lending.

(a) *Definitions.* * * *

(4) *Service cooperative* is a cooperative predominately 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) *Eligible cooperatives.* * * *

(1) Except as the bank's board may establish pursuant to paragraph (b)(2) of this section, the percentage of voting control of the cooperative held by farmers, ranchers, producers or harvesters of aquatic products, or cooperatives eligible to borrow from a bank for cooperatives or agricultural credit bank shall be at least 80 percent except:

* * * * *

(2)(i) Requirements for a higher percentage of voting control by farmers, ranchers, producers or harvesters of aquatic products, or eligible cooperatives than required by paragraph (b)(1) of this section may be established by resolution of the bank's 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 board resolution.

(ii) Bank board policies shall ensure that management's 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 harvester 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 shall have more than one vote because of the amount of stock or membership capital owned therein; or, the cooperative shall 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.

* * * * *

(c) *Other eligible entities.* The following entities are eligible to borrow under section 3.7(a) of the Act from banks for cooperatives, notwithstanding their failure to meet the requirements of paragraph (b)(1) of this section:

(1) 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.

(2) Any legal entity, more than 50 percent of the voting control of which is held by one or more cooperatives or other entities that are eligible to borrow under paragraphs (b) or (c)(1) of this section provided that any such legal entity, when considered together with one or more such legal entities that hold such control, shall also meet the requirements of paragraph (b)(3) of this section.

(3) Any legal entity that:

(i) Holds more than 50 percent of the voting control of a cooperative or other entity that is eligible to borrow from a bank for cooperatives under paragraphs (b) or (c)(1) of this section; and

(ii) Borrows for the purpose of making funds available to that cooperative or entity, under the same terms and conditions as the funds are obtained by such entity from the bank for cooperatives or agricultural credit bank.

(4) Domestic lessors, to finance facilities or equipment leased to eligible cooperatives of other entities eligible to borrow under paragraph (c)(1), (c)(2), or (c)(3) of this section.

* * * * *

13. Section 613.3120 is added to subpart D to read as follows:

§ 613.3120 International lending.

To be eligible to borrow from a bank for cooperatives under section 3.7(b) of the Act and subpart Q of part 614 of these regulations, a person must be:

(a) An eligible cooperative as defined in § 613.3110(b);

(b) A party to a transaction with a voting stockholder of the bank for the import or export of agricultural commodities, farm supplies, or aquatic products through purchases, sales, or exchanges, that substantially benefits the stockholder; or

(c) A party in which an eligible cooperative, as defined in § 613.3110(b), has at least a minimum ownership interest, provided the loan is for the purpose of facilitating a transaction of the eligible cooperative for the import or export of agricultural commodities, farm supplies or aquatic products and substantially benefits the eligible cooperative.

PART 614—LOAN POLICIES AND OPERATIONS

14. The authority citation for part 614 continues to read as follows and all other 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, 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, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5; sec. 413 of Pub. L. 100–233.

§§ 614.4090, 614.4100 and 614.4130 [Removed] and §§ 614.4030, 614.4040, 614.4050, 614.4060, 614.4140, 614.4150, 614.4160, 614.4190 (c) and (d), 614.4220 and 614.4240(b) [Redesignated as 614.4100, 614.4145, 614.4135, 614.4140, 614.4150, 614.4160, 614.3005, 614.4130 (a) and (b), 614.4240 and 614.4130(c) respectively]

15. Part 614 is amended by removing §§ 614.4090, 614.4100, and 614.4130 and by redesignating the following sections:

Existing section	New section
614.4030	614.4100
614.4040	614.4145
614.4050	614.4135
614.4060	614.4140

Existing section	New section
614.4140	614.4150
614.4150	614.4160
614.4160	613.3005
614.4190 (c) and (d)	614.4130 (a) and (b)
614.4220	614.4240
614.4240(b)	614.4130(c)

16–17. Subpart A is revised to read as follows:

Subpart A—Lending Authorities

Sec.

614.4000 Farm Credit Banks.
614.4010 Agricultural credit banks.
614.4020 Banks for cooperatives.
614.4030 Federal land credit associations.
614.4040 Production credit associations.
614.4050 Agricultural credit associations.

Subpart A—Lending Authorities

§ 614.4000 Farm Credit Banks.

(a) *Long-term real estate lending.* Except to the extent such authorities are transferred pursuant to section 7.6 of the Act, Farm Credit Banks are authorized to make, subject to the requirements of §§ 614.4200 and 614.4210, real estate mortgage loans of not less than 5 years nor more than 40 years and continuing commitments to make such loans to:

(1) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible in accordance with § 613.3020;

(2) Persons qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products;

(3) Residents of rural areas to finance owner-occupant housing, in accordance with § 613.3040; and

(4) Farm-related businesses, in accordance with § 613.3050.

(b) *Extensions of credit to Farm Credit direct lender associations.* Farm Credit Banks are authorized to make loans and extend other similar financial assistance to associations with direct lending authority and discount for or purchase from such associations, with the association's endorsment or guaranty, any note, draft, and other obligations for loans that have been made in accordance with the provisions of subparts D and E of part 614 of these regulations. Such extensions of credit shall be made pursuant to a written financing agreement meeting the requirements of § 614.4130(b).

(c) *Extensions of credit to other financing institutions.* Farm Credit Banks are authorized to make loans and extend other similar financial assistance to any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers or any corporation engaged in the making of loans to farmers and ranchers or producers or harvesters of aquatic products (collectively, "other financing institutions"), for purposes eligible for financing by a production credit association in accordance with § 614.4130 and subpart P of this part. Farm Credit Banks are authorized to discount for or purchase from such institutions, with the institution's endorsement or guaranty, notes, drafts, and other obligations or loans made to persons and for purposes eligible for financing by a production credit association, in accordance with § 614.4130 and subpart P of this part.

(d) *Loan participations.* (1) Subject to the requirements of subpart H of part 614 and paragraph (d)(2) of this section, a Farm Credit Bank may enter into loan participation agreements with:

(i) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title I of the Act:

(ii) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met; and

(2) A Farm Credit Bank may participate in loans financing operations outside its chartered territory only if the requirements of § 614.4070 are met.

§ 614.4010 Agricultural credit banks.

(a) *Long-term real estate lending.* Except to the extent such authorities are transferred pursuant to section 7.6 of the Act, agricultural credit banks are authorized to make, subject to the requirements of §§ 614.4200 and 614.4210, real estate mortgage loans of not less than 5 years nor more than 40 years and continuing commitments to make such loans to:

(1) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible in accordance with § 613.3020;

(2) Persons qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products;

(3) Residents of rural areas to finance owner-occupant housing, in accordance with § 613.3040; and

(4) Farm-related businesses, in accordance with § 613.3050.

(b) *Extensions of credit to Farm Credit direct lender associations.* Agricultural credit banks are authorized to make loans and extend other similar financial assistance to associations with direct lending authority and discount for or purchase from such associations, with the association's endorsement or guaranty, any note, draft, and other obligations for loans made by the association in accordance with the provisions of this part. Such extensions of credit shall be made pursuant to a written financing agreement meeting the requirements of § 614.4130(b).

(c) *Extensions of credit to other financing institutions.* Agricultural credit banks are authorized to make loans and extend other similar financial assistance to any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers or corporation engaged in the making of loans to farmers, ranchers, or produc ers or harvesters of aquatic products (collectively, "other financing institutions"), for purposes eligible for financing by a production credit association, in accordance with § 614.4130 and subpart P of this part. Agricultural credit banks are authorized to discount for or purchase from such other financing institutions, with the institution's endorsement or guaranty, notes, drafts, and other obligations or loans made to persons and for purposes eligible for financing by a production credit association, in accordance with the requirements of § 614.4130 and subpart P of this part.

(d) *Extensions of credit to or on behalf of eligible cooperatives.* Agricultural credit banks are authorized to make loans and commitments and extend other technical and financial assistance, including but not limited to, collateral custody, discounting notes and other obligations, guarantees, and currency exchanges necessary to service transactions financed under paragraphs (d)(4) and (d)(5) of this section, to:

(1) Eligible cooperatives, as defined in § 613.3110, in accordance with §§ 614.4230, 614.4231, 614.4232, 614.4233, and subpart Q of part 614;

(2) Other eligible entities, as defined in § 613.3110(c), in accordance with §§ 614.4230, 614.4231, and 614.4232;

(3) Domestic lessors, for the purpose of providing leased assets to stockholders of the bank eligible to borrow under section 3.7(a) of the Act for use in such stockholders' operations in the United States, in accordance with § 614.4232;

(4) Domestic or foreign parties with respect to a transaction with a voting stockholder of the bank, for the export or import of agricultural commodities,

farm supplies, or aquatic products through purchases, sales or exchanges, provided such stockholder substantially benefits as a result of such extension of credit or assistance, in accordance with policies of the bank's board, § 614.4233, and subpart Q of part 614; and

(5) Domestic or foreign parties in which a voting stockholder of the bank has a minimum ownership interest, for the purpose of facilitating such stockholder's export or import operations of the type described in paragraph (d)(3) of this section, provided the stockholder substantially benefits as a result of such extension of credit or assistance, in accordance with policies of the bank's board, § 614.4233, and subpart Q of part 614.

(e) *Loan participations.* (1) Subject to the requirements of subpart H of this part and paragraph (d)(2) of this section, an agricultural credit bank may enter into loan participation agreements with:

(i) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under the Act;

(ii) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met; and

(2) An agricultural credit bank may participate in loans under titles I and II financing operations outside its chartered territory only if the requirements of § 614.4070 are met.

§ 614.4020 Banks for cooperatives.

(a) Banks for cooperatives are authorized to make loans and commitments and extend other technical and financial assistance, including but not limited to, collateral custody, discounting notes and other obligations, guarantees, and currency exchanges necessary to service transactions financed under paragraphs (a)(4) and (a)(5) of this section, to:

(1) Eligible cooperatives, as defined in § 613.3110, in accordance with §§ 614.4230, 614.4231, 614.4232, 614.4233, and subpart Q of this part;

(2) Other eligible entities as defined in § 613.3110(c), in accordance with §§ 614.4230, 614.4231, and 614.4232;

(3) Domestic lessors, for the purpose of providing leased assets to stockholders of the bank eligible to borrow under section 3.7(a) of the Act for use in such stockholder's operations in the United States, in accordance with § 614.4232;

(4) Domestic or foreign parties with respect to a transaction with a voting stockholder of the bank, for the export or import of agricultural commodities, farm supplies, or aquatic products through purchases, sales or exchanges, provided such stockholder substantially benefits as a result of such extension of credit or assistance, in accordance with policies of the bank's board and subpart Q of this part; and

(5) Domestic or foreign parties in which a voting stockholder of the bank has an ownership interest, for the purpose of facilitating the export or import operations of the type described in paragraph (a)(4) of this section, in accordance with board policy and subpart Q of this part.

(b) *Loan participations.* Subject to the requirements of subpart H of this part, a bank for cooperatives may enter into loan participation agreements with:

(1) Farm Credit banks and association that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title III of the Act:

(2) Farm Credit banks and associations that are direct lenders on loans of the type it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met.

§ 614.4030 Federal land credit associations.

(a) *Long-term real estate lending.* Federal land credit associations are authorized to make, subject to the requirements of §§ 614.4200 and 614.4210, real estate mortgage loans of not less than 5 years nor more than 40 years and continuing commitments to make such loans to:

(1) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible to borrow in accordance with § 613.3020;

(2) Persons qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products;

(3) Residents of rural areas to finance owner-occupant housing, in accordance with § 613.3040; and

(4) Farm-related businesses, in accordance with § 613.3050.

(b) *Loan participations.* (1) Subject to the requirements of subpart H of this part and paragraph (b)(2) of this section, Federal land associations may enter into participation agreements with:

(i) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title I of the Act:

(ii) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met;

(2) A Federal land credit association may participate in loans financing operations outside its chartered territory only if the requirements of § 614.4070 are met.

§ 614.4040 Production credit associations.

(a) *Short- and intermediate-term lending.* Production credit associations are authorized to make or guarantee, subject to the requirements of §§ 614.4200, 614.4220, and 614.4222, short- and intermediate-term loans and provide other similar financial assistance for a term not more than 7 years, or such longer periods, not to exceed 10 years, as are set forth in policies approved by its funding bank to:

(1) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible to borrow in accordance with § 613.3020;

(2) Persons qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products;

(3) Residents of rural ares to finance owner-occupant housing, in accordance with § 613.3040; and

(4) Farm-related businesses, in accordance with § 613.3050.

(b) *Longer intermediate-term lending.* Production credit associations are authorized, subject to the requirements of §§ 614.4200 and 614.4220, to make or guarantee loans with terms of up to 15 years to producers or harvesters of aquatic products for major capital expenditures, including but not limited to the purchase of vessels, construction or purchase of shore facilities, and similar purposes directly related to the producing or harvesting operation.

(c) *Loan participations.* (1) Subject to the requirements of subpart H of this part and paragraph (c)(2) of this section, a production credit association may enter into participation agreements with:

(i) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title II of the Act; and

(ii) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met.

(2) A production credit association may participate in loans financing operations outside its chartered territory only if the requirements of § 614.4070 are met.

§ 614.4050 Agricultural credit associations.

(a) *Long-term real estate lending.* Agricultural credit associations are authorized to make, subject to the requirements of §§ 614.4200 and 614.4210, real estate mortgage loans of not less than 10 nor more than 40 years, and continuing commitments to make such loans to:

(1) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible to borrow in accordance with § 613.3020;

(2) Persons qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products.

(3) Residents of rural areas to finance owner-occupant housing, in accordance with § 613.3040; and

(4) Farm-related businesses, in accordance with § 613.3050.

(b) *Short- and intermediate-term lending.* (1) Agricultural credit associations are authorized to make or guarantee, subject to the requirements of §§ 614.4200, 614.4220, and 614.4222, short- and intermediate-term loans and provide other similar financial assistance for a term not more than 10 years (15 years for acquatic producers and harvesters) to:

(i) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible to borrow in accordance with § 613.3020;

(ii) Persons qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers of harvesters of aquatic products.

(iii) Residents of rural areas to finance owner-occupant housing, in accordance with § 613.3040; and

(iv) Farm-related businesses, in accordance with § 613.3050.

(2) Agricultural credit associations are authorized, subject to the requirements of §§ 614.4200 and 614.4220, to make or guarantee loans for terms of up to 15 years to producers or harvesters of aquatic products for major capital expenditures, including, but not limited to, the purchase of vessels, construction or purchase of shore facilities, and similar purposes directly related to the producing or harvesting operation.

(c) *Loan participations.* (1) Subject to the requirements of subpart H of this part and paragraph (c)(2) of this section, agricultural credit associations may enter into participation agreements with:

(i) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under titles I and II of the Act; and

(ii) Farm Credit banks and associations that are direct lenders on loans of the type it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met.

(2) Agricultural credit associations may participate in loans financing operations outside its chartered territory only if the requirements of § 614.4070 are met.

18. Subpart B is revised to read as follows:

Subpart B—Chartered Territories

Sec.

614.4070 Loans and chartered territory—Farm Credit Banks, agricultural credit banks, Federal land bank associations, Federal land credit associations, production credit associations, and agricultural credit associations.
614.4080 Loans and chartered territory—banks for cooperatives.

Subpart B—Chartered Territories

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

(a) A bank or association chartered under title I or II of the Act may finance eligible borrower operations conducted wholly within its chartered territory regardless of the residence of the applicant.

(b) A bank or association operating under title I or II of the Act may finance the operations of a borrower headquartered and operating in its territory even though the operation financed is conducted partially outside its territory, provided notice is given to all Farm Credit institutions providing similar credit in the territory(ies) in which the operations being financed are conducted. A bank or association operating under title I or II of the Act may lend to a borrower headquartered outside its territory to finance eligible borrower operations that are conducted partially within its territory and partially outside its territory only if the concurrence of Farm Credit institutions providing similar credit for the territories in which the operations are conducted is obtained.

(c) A bank or association chartered under title I or II of the Act may finance eligible borrower operations conducted wholly outside its chartered territory, provided such loans are authorized by the policies of the bank and/or association involved, do not constitute a significant shift in loan volume away from the bank or association's assigned territory, and are made and administered in accordance with paragraphs (c)(1) and (c)(2) of this section.

(1) If a loan is made to an eligible borrower whose operations are conducted wholly outside the chartered territory of the lending bank or association, the lending institution shall obtain concurrence of all Farm Credit institutions providing similar credit in the territory(ies) in which the operation being financed is conducted.

(2) Loans to finance eligible borrower operations conducted wholly outside a 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, which shall be monitored by the bank or association.

§ 614.4080 Loans and chartered territory—banks for cooperatives.

Loans made under title III by banks for cooperatives and agricultural credit banks may be made to eligible domestic parties domiciled within any territory that may be served by Farm Credit institutions under section 1.2 of the Act and to eligible foreign parties without regard to domicile.

19. Subpart C is amended by revising the heading and table of contents to read as follows:

Subpart C—Bank/Association Lending Relationship

Sec.

614.4100 Policies governing lending through Federal land bank associations.
614.4110 Transfer of direct lending authority to Federal land bank associations and agricultural credit associations.
614.4120 Policies governing extensions of credit to direct lender associations.
614.4130 Direct loans to associations.
614.4135 Bank supervision of associations.
614.4140 Association responsibilities.
614.4145 Bank guideline responsibilities.

20. Newly redesignated § 614.4100 and §§ 614.4110 and 614.4120 are revised to read as follows:

§ 614.4100 Policies governing lending through Federal land bank associations.

(a) Farm Credit Banks and agricultural credit banks may delegate authority to make credit decisions to Federal land bank associations that demonstrate the ability to extend and administer credit soundly, provided the association develops, implements and maintains adequate credit administration guidelines, standards, and practices.

(b) The board of directors of each Farm Credit Bank and each agricultural credit bank lending through Federal land bank associations shall adopt policies and procedures governing the exercise of statutory and delegated authorities by such associations. Policies governing the delegated authorities shall:

(1) Define authorities to be delegated;

(2) Require the documented evaluation of the capability and responsibility of individuals exercising delegated authorities;

(3) Provide for reporting of actions taken under delegated authority to the delegating bank;

(4) Provide procedures for periodic review and enforcement;

(5) Provide for withdrawal of authority where appropriate; and

(6) Where redelegation from the association's board to association employees is authorized, require similar control measures to be used.

§ 614.4110 Transfer of direct lending authority to Federal land bank associations and agricultural credit associations.

(a) Upon the transfer of authority to make and participate in long-term agricultural real estate mortgage loans by a Farm Credit Bank or agricultural credit bank to a Federal land bank association pursuant to section 7.6(a) of the Act and subpart E of part 611 of these regulations, the association shall be designated a Federal land credit association and shall have the powers set forth in § 614.4030.

(b) Upon the transfer of the authority to make and participate in long-term real estate loans by a Farm Credit Bank or agricultural credit bank to an agricultural credit association pursuant to section 7.6(d) of the Act, the association shall have all of the powers set forth in § 614.4050.

(c) An association to which such long-term lending authority is to be transferred shall have in place, prior to the transfer, policies and procedures guiding the extension and administration of credit within its territory.

§ 614.4120 Policies governing extensions of credit to direct lender associations.

(a) The board of each Farm Credit Bank and each agricultural credit bank shall adopt policies and procedures governing the making of direct loans to and the discounting of loans for direct lender associations and other financing institutions. The policies and procedures may provide for servicing actions, including limiting funding for loans of certain types or amounts, to be taken pursuant to the general financing agreement when associations do not demonstrate the ability to extend and administer credit soundly or pose excessive risk to the bank. The policies shall require that the amount of credit extended at all times be consistent with sound financial and credit practices. The policies shall require an evaluation of the creditworthiness of the association on the basis of the factors set forth in §§ 614.4150 and 614.4160, and may permit lending to such institutions on an unsecured basis only if the overall condition of the institution warrants.

(b) The policies and procedures required by paragraph (a), of this section shall require the execution of a financing agreement between the bank and the borrowing institution that meets the requirements of § 614.4130(b).

21–22. Newly redesignated § 614.4130, paragraph (a), is amended by removing the words "production credit" and adding in their place the words "direct lender"; by removing the words "acceptable and problem (as defined by loan classification standards set forth in § 614.4051(a)(4))" and adding in their place, the words "performing loans (as defined in 12 CFR 621.2(a)(20))"; and by removing the words "Federal intermediate credit". Newly redesignated § 614.4130, paragraph (b), is amended by removing the words "Federal intermediate credit banks" and adding in their place, the words "Farm Credit Banks and agricultural credit banks". Newly redesignated § 614.4130, paragraph (c) is amended by removing the words "Direct loans to production credit associations."; and by removing the words "a production credit" and adding in their place, the word "an". The heading of newly redesignated § 614.4130 is revised to read as follows:

§ 614.4130 Direct loans to associations.

23. The table of contents of subpart D is revised to read as follows:

Subpart D—General Loan Policies for Banks and Associations

Sec.
614.4150 Sound loan.
614.4160 Credit factors.
614.4165 Special credit needs.
614.4170 [Reserved]

24. Newly redesignated § 614.4160 is revised to read as follows:

§ 614.4160 Credit factors.

Each Farm Credit bank and association shall develop policies and procedures that ensure that its lending practices result in sound loans. The policies and procedures shall ensure that the institution, in evaluating the creditworthiness of the application, analyzes and documents its analysis of the following factors:

(a) The integrity and capability of the applicant(s) to manage the enterprise being financed;

(b) The financial condition of the applicant(s);

(c) The repayment capacity of the applicant(s);

(d) The adequacy and appropriateness of the collateral; and

(e) The constructiveness and practically of the loan amount, purpose, and terms and conditions.

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

§ 614.4165 Special credit needs.

* * * * *

(c) The board of each Farm Credit Bank, agricultural credit bank, and direct lender association shall adopt policies to establish programs 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 not be limited to, the following:

* * * * *

(d) Each Farm Credit Bank and agricultural credit bank shall provide to the Farm Credit Administration an annual report summarizing the operations and achievements in its chartered territory under such programs. Such reports shall be based on the reports from each association providing services under these programs and shall be in a format prescribed by the Farm Credit Administration.

* * * * *

§ 614.4170 [Reserved]

26. Section 614.4170 is removed and reserved.

§ 614.4180 [Removed] and § 614.4190 [Amended]

27. Existing §§ 614.4180, 614.4190 (a) and (b), of subpart E are removed.

§ 614.4230 [Removed] and § 614.4240 [Amended]

28. Part 614, subpart F, is amended by removing existing §§ 614.4230, 614.4240 (a) and (c).

29. Subpart E is revised to read as follows:

Subpart E—Loan Terms and Conditions

Sec.
614.4200 General requirements.
614.4210 Long-term real estate loans.
614.4220 Short- and intermediate-term loans.
614.4222 Non-farm rural home loans.
614.4230 Loans to eligible cooperatives.
614.4231 Certain seasonal commodity loans to cooperatives.
614.4232 Loans to domestic lessors.
614.4233 International loans.

Subpart E—Loan Terms and Conditions

§ 614.4200 General requirements.

(a) *Loan agreement.* The terms and conditions of each loan made by a Farm Credit bank or association shall be set forth in a formal written loan agreement between the borrower and the lender and shall be adequately disclosed to the borrower prior to closing. The form and content of loan agreements shall be in accordance with the policies of the institution's board and may vary according to such criteria as borrower type and amount of the credit extension.

(b) *Notice of approval—(1) Loans made under titles I and II of the Act.* When the loan closing will occur more than 15 days after notification of the action taken on the loan is mailed or otherwise provided under section 4.13B of the Act, the notice of approval shall set forth the terms and conditions on which credit will be extended.

(2) *Loans made under title III of the Act.* The documents evidencing approval by a bank for cooperatives shall set out the terms and conditions under which a loan is approved.

(c) *Annual borrower financial statements.* As a condition precedent to making a loan, Farm Credit banks operating under title I and associations operating under title II of the Act shall obtain a verifiable balance sheet and income statement from each borrower that has been certified as true and correct by the borrower. The loan agreement shall require that the borrower provide a verifiable balance sheet and income statement at least annually, except that loans that meet the requirements of an institution's minimum information program having a maximum limitation of $100,000 of outstanding loans and commitments per borower, and loans with regular and frequently scheduled payments, such as rural housing or other similar amortized consumer-type loans, may be excluded from this requirement, provided there is adequate documentation to support repayment capacity.

§ 614.4210 Long-term real estate loans.

(a) *First lien requirement.* Long-term real estate mortgage loans made by Farm Credit Banks under § 614.4000(a), agricultural credit banks under § 614.4010(a), Federal land credit associations under § 614.4030, and agricultural credit associations under § 614.4050(a), must be secured by a first lien on an interest in real estate comprising agricultural property, an eligible farm-related business, an eligible rural residence, or real estate used as an integral part of an eligible aquatic operation. Additional security may be required for such loans, 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-value limitations set forth in paragraph (b) of this section for real estate mortgage loans. A borrower who has been requested to provide additional collateral shall be accorded the right to an independent appraisal set forth in § 614.4443.

(b) *Loan-to-value percentage.* (1) No funds shall be advanced, under a legally binding commitment or otherwise, if the outstanding loan balance after the advance would exceed 85 percent (97 percent if guaranteed by a Federal, State, or other governmental agency) of the appraised value of the real estate taken as primary security, established by the most recent appraisal report meeting the requirements of subpart F of this part.

(2) The Farm Credit Administration may, through the exercise of its enforcement powers or otherwise, reduce the maximum loan-to-value percentage to 75 percent for a particular institution when the Farm Credit Administration determines that the lending and business practices of the institution are imprudent.

(3) Notwithstanding the limitations of paragraph (b)(1) and (b)(2) of this section, the lending institution may advance funds for the payment of taxes or insurance premiums with respect to the real estate, reschedule loan payments, grant partial releases of security interests in the real estate, and take 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 inadequate collateral to support the debt, but the actions are considered necessary to protect the financial interest of the lender in the collateral.

(4) All actions taken pursuant to paragraph (b)(3) of this section shall be in accordance with a policy of the institution's board of directors specifically addressing such exceptions and shall be reported to the board on a regular basis.

(c) *Repayment capacity.* The borrower's earnings history, repayment record, and net earnings projections must satisfactorily support the loan and provide assurance for repayment.

§ 614.4220 Short- and intermediate-term loans.

(a) *Maturities.* (1) Short-term operating loans shall be made with maturities that are appropriate for the purpose of the loan and that coincide with the normal business cycle of the enterprises being financed.

(2) Intermediate-term loans shall be made with maturities appropriate for the purpose of the loan, in accordance with policies established by the association's board and its funding bank.

(b) *Security.* (1) Short- and intermediate-term operating loans shall be unsecured only when the creditworthiness of the borrower warrants.

(2) When specific major capital items, such as new equipment, new or remodeled buildings, or facilities are financed, the term of the loan must be shorter than the useful life of the item, and the amount outstanding must at all times be less than the value of the item after normal depreciation. The loan shall be amortized and the purpose of the loan specifically identified.

(c) *Repayment capacity.* The borrower's earnings history, repayment record, and net earnings projections must satisfactorily support the loan and provide assurance for repayment. For loans with maturities in excess of 7 years, the borrower's earnings history, repayment record, and net earnings projections must provide assurance of repayment in a level amortization period that coincides with the term of the loan.

§ 614.4222 Non-farm rural home loans.

Non-farm rural home loans for the purchase, construction or refinancing of rural residences shall be secured by a first lien interest on the residence being constructed, purchased, or refinanced and shall meet the requirements of § 614.4210. Short- and intermediate-term loans for repairs and improvements to rural homes may be secured by a lien on

real estate or other security as is determined necessary to protect the lender.

§ 614.4230 Loans to eligible cooperatives.

Except as otherwise provided in this subpart, loans made under the authority of section 3.7(a) of the Act shall be made on the following terms and conditions:

(a) *Maturity and repayment.* The maturities of loans made under the authority of section 3.7(a) of the Act shall be appropriate for the purpose of the loan.

(1) Seasonal loans shall be primarily for financing current assets and shall normally be repaid within 18 months.

(2) Term loans shall be for financing noncurrent assets for working capital and should generally be made on an amortized basis.

(3) The term of a leveraged lease loan shall not be longer than the total period of the lease.

(b) *Security.* Except as provided in § 614.4231, loans made under section 3.7(a) of the Act may be secured or unsecured, as appropriate for the purpose of the loan, the repayment period and credit factors. Loans scheduled for repayment over an extended period should be normally be secured.

§ 614.4231 Certain seasonal commodity loans to coopertives.

(a) *Definitions.* For the purpose of this section, the following definitions shall apply:

(1) *Commodities* means agricultural goods and merchandise, except for live animals, that are transportable; can be accurately classified by standards of quality and quantity; and enjoy broad regional, national, or international markets within which similar items are regularly traded and the value thereof readily and regularly determined.

(2) *Hedge* means an enforceable contract with a reliable third party to deliver at a designated point of delivery, at a designated time or within a designated period of time, commodities of specified quality and quantity at a specified price. Seller options will not generally invalidate the hedge unless they are of such a nature as to invalidate the entire contract. If options are provided to the purchase under the contract, the hedge value of the contract shall be determined on the basis of the most pessimistic combination of options. The Commodity Credit Corporation's (CCC) general offer to purchase may be accepted as a valid hedge if loan advance, expiration and maturity dates conform with CCC established availability; if maturity dates and loan agreement restrictions insure compliance with CCC quality and crop year standards; and if the following conditions exist:

(i) *Barley, corn, oats, rye, sorghum, wheat, rice, soybeans, and honey.* Borrower must possess a current letter recognizing it has a CCC approved cooperative marketing association and pledged commodity must not have been previously financed by CCC.

(ii) *Cotton.* Borrower must have entered into a current Form G agreement with CCC and pledged cotton must not have been previously financed by CCC.

(iii) *Peanuts.* Borrower must be eligible to offer commodity to CCC and be a current member and signer of an are peanut marketing agreement.

(b) *Requirements.* Seasonal loans to finance commodities that qualify for special interest rate and lending limit consideration shall be secured and subject to the following requirements:

(1) Loans that are secured by a chattel mortgage, factor's lien, security agreement, or security other than warehouse receipts or other title documents shall not exceed 65 percent of the net value of unhedged or 85 percent of the net value of hedged commodities and the borrower must have sufficient working capital to keep the loan properly margined.

(2) Loans secured by warehouse receipts or other title documents shall not exceed 75 percent of the unhedged net value of the commodity or 90 percent of the hedged value and the borrower must have sufficient working capital to keep the loan properly margined.

(3) Loans secured by contract rights under the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture, special program of payment in kind for acreage diversion for 1983 or subsequent crop years of wheat, corn, grain sorghum, upland cotton, and rice (7 CFR part 1470) shall be eligible for the same net value amounts as loans secured by title documents.

(c) Trust receipts, negotiable bills of lading, shipping documents, drafts and acceptances may be accepted in such amounts and for such periods as reasonable prudence permits as necessary to allow the orderly marketing, handling, or processing of the commodities.

(d) Documents required in conjunction with these loans may be held by a custodian selected by the bank. In such cases the bank shall provide the custodian written instructions outlining procedures and practice to be followed in the acceptance, handling, and release of all related documents. The custodian shall be adequately bonded. The bank shall provide for periodic review of custodial activities by bank officials and shall establish that activities of the custodian are subject to review and examination by the Farm Credit Administration.

§ 614.4232 Loans to domestic lessors.

Loans and financial assistance extended by banks for coopertives and agricultural credit banks to domestic lessors to finance equipment or facilities leased by a voting stockholder of the bank shall be subject to the following terms and conditions:

(a) The term of the loan shall not be longer than the total period of the lease;

(b) 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;

(c) The lessee must be a voting stockholder of the bank; and

(d) The leased equipment and facilities must be primarily for use in the lessee's operations in the United States.

§ 614.4233 International loans.

Loans made by banks for cooperatives and agricultural credit banks under the authority of section 3.7(b) of the Act to foreign or domestic parties to finance export or import transactions with a voting stockholder of the bank and loans to a foreign or domestic party in which a voting stockholder of the bank has at least a minimum ownership interest to facilitate such transactions shall be subject to the conditions of paragraphs (a), (b), and (c) of this section:

(a) The loan shall be denominated in a currency to eliminate foreign exchange risk on repayment.

(b) The borrower's obligations shall be guaranteed or insured against default under such policies as are available in the United States and other longstanding successful business relationship with an eligible cooperative borrower or an eligible cooperative which is not a borrower if the prospective borrower has a high credit rating as determined by the bank.

(c) For a borrower in which a voting stockholder of the bank has a majority ownership interest, financing may be extended for the full value of the transaction; otherwise, financing may be extended only to approximate the percent of ownership.

§§ 614.4250 and 614.4260 [Reserved]

30. Subpart F is amended by removing and reserving §§ 614.4250 and 614.4260; and revising the heading and the table of contents of subpart F to read as follows:

Subpart F—Appraisal Requirements

Sec.
614.4240 General.
614.4250 [Reserved]
614.4260 [Reserved]
614.4261 Security and appraisal standards—banks for cooperatives.

Subpart J—Lending Limits

§ 614.4354 Banks for cooperatives.

31. Section 614.4354 is amended by removing the reference "§ 614.4120" and adding in its place, "§ 614.4010(d)(3) or § 614.4020(a)(3)" in paragraph (a)(1)(iii); and by removing the reference "§ 614.4260(c)" and adding in its place "§ 614.4231" in paragraphs (a)(1)(vi), (a)(1)(viii), and (a)(1)(x).

Subpart O—Special Lending Programs

32. Section 614.4525 is amended by revising paragraph (a); removing the introductory words "Federal land bank." and revising the first sentence of paragraph (b) 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, bank and association boards may adopt policies permitting the bank or association to enter into agreements with agents, dealers, cooperatives, other lenders, and individuals to facilitate its making of loans to eligible farmers, ranchers, and producers or harvesters of aquatic products.

(b) A bank or association, pursuant to its board policies, may enter into an agreement with third parties that will accrue to the benefit of the borrower and the lender to perform functions in the making or servicing of loans other than the evaluation and approval of loans. * * *

* * * * *

§ 614.4530 Special loans, production credit associations and agricultural credit associations.

33. Section 614.4530 is amended by adding the words "and agricultural credit associations" after the words "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

34. 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".

35. 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 (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 Farm Credit Banks, as defined in section 1.3 of the Act, and agricultural credit bank(s) as defined in part 619.

(i) The term "association(s)" refers collectively to production credit associations, and agricultural credit associations.

§ 614.4545 General.

36. Section 614.4545 is amended by removing the words "Federal intermediate credit" in paragraphs (a) and (c) introductory 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.

37. 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.

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

§ 614.4560 Establishing and maintaining access.

39. Section 614.4560 is amended by removing the words "Federal intermediate credit" in paragraphs (a), (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 fourth sentence of paragraph (b)(5).

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

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

(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

41. Section 614.4700 is amended by revising paragraph (a) to read as follows:

§ 614.4700 Financing foreign trade receivables.

(a) Banks for cooperatives, 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; and
(4) Open accounts.

* * * * *

42. Section 614.4710 is revised to read as follows:

§ 614.4710 Bankers acceptance financing.

The Funding Corporation is authorized to accept drafts or bills of exchange drawn upon banks for cooperatives. 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, 614.4354, 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 § 614.4354 of this part.

(a) *Limitations.* (1) The Funding Corporation is authorized 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 commerical fishing or that have an agriculturally or aquatically related purpose; or are secured at the time of acceptance by title 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 a monthly basis after making the elimination required by § 615.5210(d)(3). 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.

(ii) The sum of all acceptance liabilities outstanding described in paragraph (a)(1) of this section, exclusive of participations sold to others, issued to all borrowers shall not exceed 150 percent of the bank for cooperatives' net worth, but the aggregate of acceptances growing out of domestic transactions shall not exceed 50 percent of net worth calculated on a monthly basis.

(2) The limit specified in paragraph (a)(1)(i) of this section is separate from and in addition to the lending limits of § 614.4354 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 § 614.4354 of this part of the customer for whom the acceptance was made.

(4) The terms and requirements for the offering and purchase of participations in acceptance financing shall be the same as those for loans made under § 614.4334 of this part.

(5) When acceptances denominated in foreign currencies are not funded in the same currency, the bank for cooperatives shall take corresponding action to minimize foreign exchange risk.

(b) *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 § 614.4354 of this part for purchasing participations in loans of another bank for cooperatives.

(2) Participations in discounted acceptances shall be offered in accordance with § 614.4334 of this part.

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

43. 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 their boards 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.

* * * * *

44. Section 614.4800 is revised to read as follows:

§ 614.4800 Guarantees and contracts of suretyship.

A bank for cooperatives, 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 otherwise 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's customer shall have an unqualified obligation to reimburse the bank for payments made under a guarantee or surety.

§ 614.4810 Standby letters of credit.

45. Section 614.4810 is amended by removing the reference "§ 614.4120" and adding in its place, "§ 614.4010(d) or § 614.4020" in paragraph (a) introductory text; and by removing the reference "§ 614.4150" and adding in its place,"§ 614.4160" in paragraph (b).

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

§ 614.4900 Foreign exchange.

(a) Before a bank for cooperatives may engage in any financial transaction which transports monetary instruments from any place within the United States to or through any place outside the United States or to any place within 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 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 banks.

* * * * *

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

47. The authority citation for part 615 is revised to read as follows and all other 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, 3.11, 3.25, 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, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233.

Subpart E—Investments

48. Section 615.5160 is amended by removing existing paragraph (c); redesignating paragraph (d) as new paragraph (c) and paragraph (e) as new paragraph (d); and revising paragraph (a) and newly designated paragraph (c) 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 the Farm Credit Bank or agricultural credit bank and each production credit association and agricultural credit association (hereinafter association(s)), such 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.

* * * * *

(c) The total amount which an association may invest in such obligations at any one time shall not exceed 15 percent of the balance of its 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

49. Section 615.5190 is amended by removing the reference "§ 614.4080(d)" and adding in its place, "section 3.7(b) of the Act" in paragraph (b); and by revising paragraph (a) to read as follows:

§ 615.5190 General.

(a) Farm Credit 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 respective funding Farm Credit banks.

* * * * *

Subpart Q—Bankers Acceptances

50. 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 of directors, under established policies, may delegate this authority to management.

PART 616—[RESERVED]

51. Part 616 is removed and reserved.

PART 618—GENERAL PROVISIONS

52. The authority citation for part 618 continues to read as follows and all other 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 C—Leasing

53. Section 618.8050 is revised to read as follows:

§ 618.8050 Leasing authority.

A Farm Credit bank or association with direct lending authority may own and lease, or lease with option to purchase, to its eligible borrowers, equipment or facilities needed in the farming and aquatic or cooperative operations of such eligible borrowers.

Subpart J—Internal Controls

54. Section 618.8430 is revised to read as follows:

§ 618.8430 Internal controls.

Each Farm Credit institution's 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 shall include, at a minimum, the items enumerated in the list which follows:

(a) Direction to management which assigns responsibility for the internal control function (financial, credit, credit review, collateral, and administrative) to an officer (or officers) of the institution.

(b) Adoption of internal audit and control procedures that evidence responsibility for review and maintenance of comprehensive and effective internal controls.

(c) Direction for the operation of a program to review and assess its assets. These policies shall include standards which address the administration of this program, described in the list which follows:

(1) Loan, loan-related assets, and appraisal 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 standardized classification system consistent among associations within a district and their funding Farm Credit Bank or agricultural credit bank.

(3) Standards for assessing credit administration, including the appraisal of collateral.

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

PART 619—DEFINITIONS

55. The authority citation for part 619 is revised to read as follows and all other 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, 2246, 2252, 2253, 2279a, 2279b, 2279b–1, 2279b–2.

§§ 619.9020, 619.9060, 619.9135, 619.9140, 619.9150, and 619.9160 [Redesignated as 619.9025, 615.9065, 619.9146, 619.9150, 619.9160 and 619.9165 Respectively].

56. Part 619 is amended by redesignating existing § 619.9020 as new 619.9025; adding new §§ 619.9015 and 619.9020; revising existing § 619.9050; redesignating existing § 619.9060 as new § 619.9065; adding a new § 619.9060; redesignating existing §§ 619.9135, 619.9140, 619.9150, 619.9160 as new §§ 619.9146, 619.9150, 619.9160, 619.9165; adding new §§ 619.9135 and 619.9140; revising newly redesignated § 619.9146; and adding new §§ 619.9145, 619.9155, and 619.9185 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 associations or Federal land credit associations and one or more production credit associations and which have received a transfer of authority to make and participate in long-term real estate mortgage loans pursuant to section 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 section 7.0 of the Act.

§ 619.9050 Associations.

The term "associations" includes (individually or collectively) Federal land bank associations, Federal land credit associations, production credit associations, and agricultural credit associations.

§ 619.9060 Bank for cooperatives.

Bank for operating under title III of the Act, including 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 banks and associations (production credit associations, agricultural credit associations, and Federal land credit associations) authorized to lend to eligible borrowers identified in § 613.3000.

§ 619.9140 Farm Credit bank(s).

Except as otherwise defined, the term "Farm Credit bank(s)" includes Farm Credit Banks, agricultural credit banks, and banks for cooperatives.

§ 619.9145 Farm Credit Bank.

The term "Farm Credit Bank" refers to a bank resulting from the mandatory merger of the Federal land bank and the Federal intermediate credit bank in each Farm Credit district pursuant to section 410 of the Agricultural Credit Act of 1987, Pub. L. 100–233, or any bank resulting from a merger of two or more Farm Credit Banks.

§ 619.9146 Farm Credit institutions.

Except as otherwise defined, the term "Farm Credit institutions" refers to all institutions chartered and regulated by the Farm Credit Administration as described in section 1.2 of the Act.

§ 619.9155 Federal land credit association.

The term "Federal land credit association" refers to a Federal land bank association that has received a transfer of direct long-term real estate lending authority pursuant to section 7.6 of the Act.

§ 619.9165 Funding Corporation.

The term "Funding Corporation" refers to the Federal Farm Credit Banks Funding Corporation established pursuant to section 4.9 of the Act.

* * * * *

§ 619.9080 Cooperative.

57. Section 619.9080 is amended by removing the reference "§ 613.3070" and adding in its place, "§ 613.3110(a)(1)".

§ 619.9165 Five basic credit factors.

58. Newly redesignated § 619.9165 is amended by removing the reference "§ 614.4150" and adding in its place, "§ 614.4160".

§ 619.9290 Recovery value.

59. Section 619.9290 is amended by removing the reference "§ 614.4220" and adding in its place, "§ 614.4140".

§ 619.9320 Sound loan.

60. Section 619.9320 is amended by removing the reference "§ 614.4140" and adding in its place, "§ 614.4150".

* * * * *

Dated: June 7, 1990

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 90–13862 Filed 6–18–90; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Room Air Conditioners

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces that the present ranges of comparability for room air conditioners will remain in effect until new ranges are published.

Under the Appliance Labeling Rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. The Commission publishes the ranges annually in the Federal Register if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range will be applicable until new ranges are published. The Commission is today announcing that the ranges published on September 22, 1989, for room air conditioners will remain in effect until new ranges are published.

EFFECTIVE DATE: June 19, 1990.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule,[1] pursuant to section 324 of the Energy Policy and Conservation Act of 1975,[2] covering certain appliance categories, including room air conditioners. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all room air conditioners presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a room air conditioner is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of test procedures developed by the Department of Energy, which are referenced in the rule.

Section 305.8(b) of the rule requires manufacturers to report the energy usage of their models annually by specified dates for each product type.[3] Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing.

To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for room air conditioners have been received and analyzed and it has been determined to retain the ranges that were published on September 22, 1989.[4] In consideration of the foregoing, the present ranges for room air conditioners will remain in effect until the Commission publishes new ranges for these products.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100–357) (1988), 42 U.S.C. § 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

[1] 44 FR 66466, 16 CFR part 305.

[2] Public Law 94–163, 89 Stat. 871 (Dec. 22, 1975).

[3] Reports for room air conditioners are due by May 1.

[4] 54 FR 38966.