the 1993 crop year only, by allowing a six month delay in the payment of premiums. The intended effect of this rule is to provide temporary relief to farmers who suffered damages as a result of Hurricane Andrew. At the voluntary discretion of the private reinsured companies, the premium billing date may be deferred for up to six months from September 30, 1992 to March 31, 1993 for, Collier, Dade, Lee, and Palm Beach Counties, Florida; and Acadia, Avoyelles, Evangeline, Iberia, Iberville, Lafayette, Point Coupee, Rapides, St. Landry, St. Martin, Vermilion, and West Baton Rouge Parishes, Louisiana.

EFFECTIVE DATE: November 20, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254-8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. The sunset review date established for these regulations is October 1, 1993.

James E. Cason, Manager, FCIC, has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, state, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

James E. Cason also certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities, or the farmers served by this totally voluntary crop insurance program because this action imposes no additional burden on the insured farmer, does not require participation in the program, or increase what is currently paid to gain insurance protection.

Further, this action requires of the reinsured company or sales and service contractor what is considered normal in the ordinary conduct of business, therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith amends the Nursery Crop Insurance Regulations (7 CFR part 406) for the 1993 crop year only, to provide that notwithstanding the terms of the crop insurance, premium will be deferred for those producers in areas devastated by Hurricane Andrew from September 30, 1992, until March 31, 1993. Because of the financial devastation Hurricane Andrew caused to nursery producers, James E. Cason, Manager, has determined that the deferment of nursery premiums should be implemented as quickly as possible to respond to the needs of the affected nursery producers. The Manager has determined that this rule will be effective upon publication in the **Federal Register** without providing the normal period for notice and comment before its effectiveness.

FCIC requests is soliciting written public comment on this proposed rule for 60 days following its publication. Written comments should be addressed to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, USDA, Washington, DC 20250. This rule will be scheduled for review so that any amendment made necessary by such public comment may be published as quickly as possible.

Written comments received pursuant to this rule will be made available for public inspection and copying in suite 500, 2101 L Street NW., Washington, DC during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 406

Crop Insurance, Nursery, Premium deferred.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance hereby amends the Nursery Crop Insurance Regulations (7 CFR part 406) effective for the 1993 crop year only, by making a mandatory amendment to the provisions for coverage therein. This rule amends the regulations set forth herein in the following instances:

PART 406—[AMENDED]

1. The authority citation for 7 CFR part 406 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 406.7 is amended by revising subsection 5.a. to read as follows:

§ 406.7 The application and policy.

* * * * *

5. Annual Premium.

a. The annual premium is due and payable on or before September 30 preceding each crop year and will be earned in full when the policy becomes effective. For the 1993 crop year, the premium may be deferred until March 31, 1993, for Broward, Collier, Dade, Lee, and Palm Beach Counties, Florida, and Acadia, Avoyelles, Evangeline, Iberia, Iberville, Lafayette, Point Coupee, Rapides, St. Landry, St. Martin, Vermilion, and West Baton Rouge Parishes, Louisiana.

* * * * *

Done in Washington, DC on October 26, 1992.

David L. Bracht,

Associate Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-28219 Filed 11-19-92; 8:45 am]

BILLING CODE 3410-08-M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052-AB34

Loan Policies and Operations; Collateral Evaluation Requirements, Actions on Applications, and Review of Credit Decisions

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts a final regulation relating to collateral evaluation requirements for Farm Credit System (FCS or System) institutions engaged in lending or leasing. The final collateral evaluation regulation: Sets forth minimum standards for performing a collateral evaluation; establishes evaluation requirements for various types of transactions, which include what type of evaluation may be used; distinguishes those transactions requiring the services of an evaluator from those requiring the services of either a State certified or a

State licensed appraiser; requires the board of directors of each FCS institution engaged in lending or leasing to adopt policies and standards for the evaluation of all real, personal, and intangible property and to prescribe qualifications for evaluators that are consistent with the regulation; and requires the board of directors of each FCS institution to adopt collateral evaluation policies and standards for appraisals of real property and to prescribe qualifications of real estate appraisers that are consistent with the requirements of the regulation and the Uniform Standards of Professional Appraisal Practices (USPAP) as adopted by the Appraisal Foundation.

DATES:

Effective Date: The regulation shall become effective March 1, 1993, or upon the expiration of 30 days after publication during which either or both houses of Congress are in session, whichever is later. Notice of the effective date will be published in the **Federal Register.**

Compliance Date: Evaluations of all collateral, including appraisals of real estate, completed on or after the effective date of this regulation must comply with the standards of this regulation on its effective date. However, the effective date for the requirement to use State certified or State licensed appraisers, as appropriate, is the effective date of this regulation, or such later date as may be established by the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC), pursuant to section 1119 of the Financial Institutions Recovery, Reform and Enforcement Act of 1989 (FIRREA), Public Law 101–73, 103 Stat. 183 (1989) as codified at 12 U.S.C. 3348.

Real estate appraisals contracted for before the effective date of this regulation do not have to comply with the standards of this regulation. Moreover, sales of loans that were originated before such effective date will not require an appraisal to be performed in accordance with this regulation. An appraisal will be deemed contracted for and a loan will be deemed originated if there is a binding commitment to perform before the effective date of this regulation.

During the period from the effective date of this regulation, to March 1, 1994, any funding bank, on behalf of itself and/or its affiliated associations, and any bank for cooperatives (BC) that has made good faith efforts to comply with this regulation may apply to the FCA for a waiver from the use of State certified or State licensed real estate appraisers if the funding bank or the BC presents written evidence that the scarcity of certified or licensed appraisers in a State to perform real estate appraisals is causing significant delays in the performance of such appraisals.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Christine C. Dion, Attorney, Regulatory and Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. General

Amendments relating to appraisal standards, lending limits, and loan participations were originally included as part of the Eligibility/Lending Authorities regulations proposed on November 3, 1988, 53 FR 44438. The amendments were removed from the regulations prior to their adoption and were reproposed on January 23, 1991, 54 FR 2452. The comment period on the reproposed amendments ended on March 25, 1991. The FCA received approximately 430 letters of comment in response to the published reproposed regulations. A substantial number of the comment letters expressed concern about the potential impact of the lending limits and appraisal requirements of the reproposed regulations. The FCA published a Notice of Public Hearings on May 10, 1991, 54 FR 21637, to provide an opportunity for Farm Credit borrowers, institutions, and other interested parties to state their views and to offer constructive suggestions on issues of concern in the reproposed regulations. The Notice of Public Hearings solicited comments on specific topics. Testimony was presented by 121 individuals during the 4 days of the public hearings; 94 comment letters responded to questions asked by the FCA in the Notice of Public Hearings and at the hearings, and 85 additional letters were received by the FCA during the comment period, which ended on July 31, 1991.

All comments received after publication of the reproposed regulations, as well as all documents, testimony, and comments relating to the public hearings were considered by the FCA in the development of the final collateral evaluation requirements regulation. The FCA notes that the lending limits and loan participation regulations, which were reproposed with the appraisal regulation, are being addressed separately.

The FCA Board recognizes the importance of this topic to the business operations of the institutions and acknowledges the high level of concern about the content of this final regulation. Some commenters have continued to request that the Board repropose rather than adopt the regulations in the form published today. The Board desires to be responsive to the concerns of the FCS institutions, yet must be aware of the time involved if the regulation were to be reproposed and the operational constraints that could be placed on the institutions in the absence of final regulations. However, it should be noted that these regulations will not be effective until Congress reconvenes in January 1993 and is in session for 30 days or March 1, 1993, whichever is later. Therefore, the Board believes that the public will have ample opportunity to further review the regulation and bring any technical or substantive concerns to the Board's attention prior to the effective date of the regulation. As always, the Board can consider requests for further clarification or amendments to the regulations prior to or after their effective date.

Amendments reproposed on January 23, 1991, ("reproposed regulation") comments received on the reproposed regulation, and the regulation published as final today ("final regulation") are described below. Significant changes to the reproposed regulation, including comments received on their subject matter, are explained below in the Summary of Comments and in the Section-by-Section Analysis.

II. Subpart F—Collateral Evaluation Requirements

A. Background

On November 3, 1988, the FCA published a proposed rule (53 FR 44438) implementing changes resulting from the amendment of the Farm Credit Act of 1971, as amended (Act) by the Agricultural Credit Act of 1987,[1] (1987 Act), relating to borrower eligibility and the lending authorities of FCS institutions. The proposed rule contained amendments to provisions of several parts of the Act to make conforming changes and to eliminate a number of FCA prior approvals.

Included in the provisions was an amendment to part 614, subpart F, titled, "Appraisal Standards." The amendment to the appraisal regulation was proposed to ensure that FCS institutions

[1] Public Law No. 100–233, 101 Stat. 1568 (1988).

develop a more structured and uniform collateral appraisal process that would conform to the uniform standards of the appraisal industry. The proposed regulation would also have removed the existing FCA prior approval of the Farm Credit banks' appraisal policies and procedures and replaced the approval with general criteria for the establishment of FCS institutions' policies and procedures governing appraisals. The proposed regulation would have required each bank and association board to develop policies governing appraisal standards and standards for the qualifications of staff and fee appraisers. The proposed regulation did not prescribe such standards in the regulation.

While the comments received on the proposed regulation were under consideration, Congress enacted FIRREA. Title XI of FIRREA prescribed appraisal standards and appraiser qualifications for all federally related real estate loans and required bank regulatory agencies to prescribe regulations implementing these provisions. Although the FCA is not subject to the requirements of title XI of FIRREA, the FCA supports the policy underlying title XI of FIRREA, namely that appraisals that accurately reflect the value of collateral are essential to the safe and sound exercise of the lending authorities vested in FCS institutions.

As a result of its consideration of comments received and the passage of FIRREA, the FCA concluded that the proposed amendment to its appraisal regulation should be adjusted. Accordingly, on January 23, 1991, the FCA published for comment reproposed amendments to its regulation relating to appraisal requirements. See 56 FR 2452 (January 23, 1991). The reproposed amendments closely paralleled in most respects the real estate appraisal regulations that had been proposed at that time by other Federal financial institutions regulatory agencies subject to title XI of FIRREA.

Under the provisions of title XI of FIRREA, appraisals used in connection with real estate-related transactions must be performed in accordance with uniform standards by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. Toward this end, title XI of FIRREA provides for the adoption and implementation by the States of standards and procedures for certification and licensing of real estate appraisers. The ASC is required under the statute to monitor State appraiser certification and licensing programs. Federal financial institutions regulatory agencies subject to FIRREA are required to use State licensed or State certified appraisers in federally related real estate transactions.

Title XI of FIRREA also requires such agencies to adopt regulations regarding appraisals used in connection with certain real estate-related financial transactions entered into by financial institutions that are regulated by these agencies. The regulations must, at a minimum, require that all such appraisals be written and conform to the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. The regulations must also prescribe which categories of federally related transactions must be performed by a State certified appraiser, and which by a State licensed appraiser. An agency has authority under title XI of FIRREA to establish such additional qualification criteria as may be necessary or appropriate to carry out its statutory responsibilities. In accordance with the regulatory mandate of title XI of FIRREA, final appraisal regulations have been adopted by the Resolution Trust Corporation (RTC) and the five-member agencies of FFIEC, which include the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS).

The effective date for the use of State licensed and State certified appraisers for all appraisals performed in connection with federally related transactions under title XI of FIRREA was extended from July 1, 1991, to January 1, 1993.[2] By that date, it is anticipated that a nationwide, comprehensive, and uniform real estate appraiser regulatory system in conformity with title XI of FIRREA will be in place. At present, a number of States have already established an appraiser certification and licensing system in conformity with title XI of FIRREA. Individuals in those States may seek accreditation as a State licensed and a State certified appraiser. The ASC encourages lenders to use appraisers certified and licensed by those States' systems as soon as possible.

B. Collateral Evaluations

The FCA's final regulation adopts the appraisal requirements of title XI of FIRREA and also incorporates general collateral evaluation requirements to address the specific needs of FCS institutions. The final regulation, entitled "Collateral Evaluation Requirements," requires an evaluation of all collateral taken as security on extensions of credit by FCS institutions. It requires the board of directors of each FCS institution engaged in lending and leasing to adopt evaluation policies and standards for collateral evaluation. Toward this end, the final regulation sets forth minimum requirements for the development of evaluation policies and standards, and distinguishes transactions that require the services of an evaluator from those requiring a State licensed or State certified real estate appraiser. The regulation requires that the evaluation of all collateral, whether by an evaluator or by an appraiser, must be performed by a "qualified" individual who has demonstrated the knowledge and experience necessary to value the type of collateral that is subject of the evaluation.

The FCA notes that the collateral evaluation requirements of the final regulation relating to appraisals of real estate are consistent in most respects with the regulatory requirements of other Federal financial institutions regulatory agencies adopted pursuant to title XI of FIRREA, as these have recently been modified. They are also generally consistent with those of government agencies providing guarantees supported by real estate, and with the standards of the appraisal industry. The final regulation recognizes that FCS staff and fee appraisers cannot be certified or licensed under State law unless they satisfy FIRREA's appraisal standards and appraiser qualifications criteria.

Furthermore, while it is not bound by the appraisal requirements of title XI of FIRREA, the FCA recognizes that Congress, through the enactment of FIRREA, has expressed a strong belief that all financial transactions involving real estate-related collateral should be supported by adequate and accurate collateral evaluations. Congress also expressed the belief that such collateral evaluations of real estate should be based on standards and guidelines that are consistently applied by the financial and appraisal industries.

The congressional policy reflected in FIRREA has been supported and implemented not only by the Federal financial institutions regulatory agencies but also by the Office of Management and Budget (OMB). Specifically, OMB

[2] *Id.*, amended section 1119(a)(1) of FIRREA (12 U.S.C. 3348(a)(1)) by extending the effective date for use of State certified and State licensed appraisers from July 1, 1991, to December 31, 1992.

Bulletin 91–05 [3] extends title XI real estate appraisal standards for Federal credit programs, including federally guaranteed loan programs. Under OMB's guidelines, any loan sold to secondary market entities, [4] including loans sold by a FCS institution, is subject to the appraisal requirements of title XI of FIRREA. However, any loan sold into the Federal Agricultural Mortgage Corporation (Farmer Mac) is subject to the appraisal requirements of title XI only if the lender selling the loan is subject to title XI. OMB Bulletin 92–06 further extends title XI real estate appraisal standards to Federal agencies subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended. The bulletin also directs all Federal agencies not subject to the Uniform Act and not otherwise covered by Bulletin 91–05 to implement regulations that follow the appraisal requirements of FIRREA on Federal and federally assisted real estate transactions within their jurisdictions.[5] The FCA believes that the real estate appraisal requirements of the final collateral evaluation regulation, which are similar to the appraisal requirements of FIRREA, are necessary to enable FCS institutions to conduct real estate lending activities with other Federal financial institutions and with the various government agencies which follow the congressional policy set forth in FIRREA.

The FCA emphasizes that the requirement for an appraisal in accordance with standards similar to those required by title XI of FIRREA has been modified under the final collateral evaluation regulation. As will be discussed in subsequent sections, the final regulation has raised the *de minimis* level at which appraisals are required, and has dropped appraisal requirements for both personal property and for real property taken solely out of an abundance of caution.

C. Regulatory Issues

The FCA adopts this final regulation to enhance the safe and sound operation of the institutions it regulates. The soundness of loans and investments made by FCS institutions depends upon the adequacy of the analysis used to support those transactions. The FCA believes that an evaluation of collateral is one of several essential components of a prudent lending process. Accordingly, through the integration of minimum collateral evaluation policies and standards with the additional appraisal requirements of title XI of FIRREA for real estate loans, the final regulation provides the FCA with reasonable assurance that evaluations of collateral supporting the lending and leasing authorities of FCS institutions will be completed in a reliable manner.

The FCA anticipates that adoption of this regulation may increase costs to some degree for borrowers and regulated institutions stemming primarily from the use of certified or licensed appraisers. However, those institutions already having strong appraisal policies should have limited cost increases. The FCA further anticipates that ensuring that loans are collateralized adequately will reduce defaults along with loan losses, thus decreasing costs to FCS institutions of all sizes.

After considering the comments received, the FCA made a number of significant changes to the reproposed regulation that should help reduce costs, particularly for smaller FCS institutions. The final regulation has been revised to focus primarily on the evaluation of collateral, codifying minimum standards and policies which are usual and customary for prudent lenders. The appraisal requirements of the final regulation have been limited to those transactions for which the additional appraisal standards and additional appraiser qualifications required under this regulation are most important. The principal changes to the reproposed regulation made in the final regulation are as follows:

1. The final rule drops the FIRREA-based appraisal requirements for loans collateralized by personal property. This deletion substantially reduces costs and delays that commenters anticipated would result under the reproposed regulation because of the extensive use of personal property as collateral in the System. Such collateral is subject to collateral evaluation requirements, but these are considerably less onerous and costly than the FIRREA-based appraisal requirements.

2. The *de minimis* or threshold level has been raised from $50,000 to $100,000, thus eliminating smaller loans from the appraisal requirements of the final regulation and focusing those requirements on those large transactions where the exposure to loss is greater.

3. The final regulation exempts certain additional types of transactions from the appraisal requirements. Such transactions include the advancement of new funds under certain conditions on a transaction supported by a prior appraisal, and the guarantee of a loan by an agency of the Federal government on a transaction supported by a conforming appraisal.

4. Finally, the reproposed regulation required an appraisal under the Departure Provision of the USPAP for collateral taken solely through an abundance of caution. The final regulation only requires that such collateral be evaluated and that the use of an abundance of caution exception be justified by documentation.

D. Summary of Comments

A substantial number of comments was received by the FCA regarding its reproposed appraisal regulation. The FCA carefully considered all comments received and has modified portions of the final collateral evaluation regulation in response to the comments. The major areas of concern and significant changes from the reproposed regulation, as well as a summary of the comments and suggestions received, are discussed more fully below.

1. Personal Property Appraisals

The majority of comments received on the reproposed appraisal regulation opposed the personal property appraisal requirements. Major concerns expressed in the comments were that such appraisals would: (a) Increase costs without corresponding benefits; (b) be unnecessary, as there is no evidence of fraud or abuse contributing to losses on loans secured by personal property or intangibles; (c) be of minimal value given the specialized and fluctuating nature of most of the personal property; (d) encourage the use of unsecured credit or increase reliance on real estate collateral in preference to personal property; (e) delay credit decisions; and (f) place FCS institutions at a competitive disadvantage.

At the time the FCA's proposed appraisal regulation was developed, the appraisal industry, the banking industry and the other Federal financial regulators were considering extending FIRREA's appraisal requirements to personal property. When the FCA issued its proposed regulation imposing FIRREA-based appraisal requirements on personal property, it recognized that the scope of evaluation of personal

[3] OMB Circular A–129, "Managing Federal Credit Programs," as amended by OMB Bulletin No. 91–02, dated November 26, 1990, entitled "Guidance for the Management of Guaranteed Loan Programs."

[4] Such secondary market entities include the Federal National Mortgage Corporation (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).

[5] OMB Bulletin No. 92–06, dated March 16, 1992, entitled "Guidance on Real Estate Appraisal Standards and Practices," extends title XI real estate appraisal standards to agencies subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, which was implemented by regulations in 49 CFR part 24.

property collateral in its final appraisal regulation would be influenced by the coverage of the final regulations of the other Federal financial regulators. To date, the other Federal regulators have chosen not to extend the FIRREA-based appraisal requirements to personal property collateral.

In March 1991, the ASC reported to Congress pursuant to section 1122(e) of title XI of FIRREA, its findings regarding the feasibility and desirability of extending the provisions of title XI of FIRREA to the function of personal property appraising and to personal property appraisers. The "Personal Property Appraisal Study" of the ASC concluded that some form of extension of the real estate appraisal/appraising requirements of title XI of FIRREA to personal property is feasible, but is not desirable or necessary at the current time. The primary reason for the conclusion was that the comments indicated that significant losses have not resulted from personal property collateral evaluations. This was due largely to the secondary role that personal property collateral plays in the lending process of commercial institutions.

The FCA, upon review of the comments and the position taken by the other Federal regulatory agencies, has deleted the appraisal requirements for personal property in its final regulation. Although FCS institutions may rely more heavily on personal property for collateral than commercial banks, the FCA is persuaded that FCS institutions should not be placed at a competitive disadvantage in the absence of historical loss data demonstrating that such appraisal requirements are needed.

Although the FCA has determined to drop the appraisal requirements for personal property in its final regulation, the FCA continues to believe that there is a need for controls with regard to personal property valuation because of the extensive use of such property as loan collateral within the System. During its public hearings, the FCA specifically asked witnesses what they would consider to be appropriate controls. The overwhelming response was that the valuation of personal property collateral should be addressed in the policy and procedures adopted by the lending institution. While comments varied in specificity regarding recommended guidelines, they agreed that procedures to identify personal property values should be well defined and provide for ongoing monitoring of those values with appropriate documentation and with an objective internal review process.

The final regulation has been revised to require that the board of directors of each FCS institution adopt policy guidelines for the evaluation of personal property used as collateral to support the conditions of its credit decisions. Section 614.4266, entitled "Personal and intangible property evaluation," sets forth the minimum guidelines that FCS institutions must follow to assure consistent, reliable valuations of personal property collateral. The final regulation clarifies that the collateral evaluation of personal and intangible property should be completed by a qualified evaluator based on market value documented by a collateral evaluation report consistent with institution-established policies and standards. Such collateral evaluations may also be supported, as appropriate, by published source information, such as that relating to the sale price for new or used equipment and commodity market reports. However, such information may not be the sole basis for determining market value, as defined in § 614.4240, where conditions such as special financing terms, special sales, or leasing concessions may affect the market value. An appraisal of such collateral is only required when the institution determines that an appraisal is necessary due to the distressed condition, size, complexity, or the specialized nature of the collateral. The FCA notes that, when an institution determines that an appraisal of personal property is necessary, the appraisal must be completed by a qualified appraiser consistent with the Competency and Ethics Provisions of the USPAP.

2. Appraisals Not Primary Basis for Credit Decision

A significant number of commenters, as well as witnesses at the public hearings, alleged that the reproposed regulation would cause FCS institutions to rely on collateral value as the primary basis for a credit decision. Commenters alleged that loan officers would have less incentive to conduct an involved credit analysis using repayment capacity because the reproposed regulation's message is that collateral value at the time the credit is issued is a very critical credit factor, and that both the FCA and the BCs would use it to evaluate the quality of the loan. The commenters uniformly pointed out that BCs rely upon cashflow analysis of borrowers to support credit provided. They argued that it is cashflow that services the debt, not the value of underlying collateral. They further stated that the creditworthiness of any company is based on its viability as an ongoing business, not on the market value of its physical assets. They urged that loan repayment ability continue to be the basis of credit extensions.

The National Bank for Cooperatives (CoBank) asserted that the reproposed regulation would require the BCs to reverse existing policies prohibiting reliance on appraisals except for special situations. The BCs stated that real estate is only taken as collateral out of an abundance of caution, as a means of control or support for the cashflow-generating chattel assets of the borrower. The BCs also argued that their customers and operations are unlike the rest of the Farm Credit System and, therefore, that the BCs should not be included under the same collateral evaluation requirements.

Contrary to the allegations of the commenters, the reproposed regulation does not suggest that collateral value should become the sole or the primary basis for credit decisions. Under § 614.4160 (a) through (d) of the existing regulations, FCS institutions are required to consider five credit factors in evaluating creditworthiness of a loan application, which include both repayment capacity and adequacy of the collateral. The reproposed regulation merely provides standards for determining the adequacy of collateral that is relied on as security for a loan. An appraisal of that collateral is necessary to determine the collateral's adequacy and appropriateness. It does not make the appraisal the sole or the primary basis for determining creditworthiness. The FCA sought to clarify this misconception at the public hearings by noting that FCS institutions cannot become solely asset-based lenders and continue to be in compliance with FCA regulations. The FCA again emphasizes that while an appraisal plays an important role in the loan approval process, undue reliance should not be placed upon the collateral value in place of an adequate assessment of the borrower's repayment ability or any of the other credit factors prescribed by § 614.4160.

Under the final regulation, all real, personal, and intangible collateral taken as security in any credit decision must, at a minimum, be evaluated to determine its adequacy and appropriateness. However, a formal written appraisal is required only in transactions of over $100,000 that are secured by real estate when the real estate collateral is not taken solely out of an abundance of caution or is not otherwise specifically excepted under the regulation.

As stated in the preamble of the reproposed regulation (56 FR 2453, January 23, 1991), the FCA sees no material difference between the structure and requirements for the BCs' security, and similar requirements for large complex short- and intermediate-term production credit association (PCA) and agricultural credit association (ACA) loans. In view of the commercial nature of BC lending, the BCs should have security and evaluation requirements comparable with the standards of commercial banks and other competitors of the BCs. Furthermore, in response to the BCs' complaint that some of their competitors, such as insurance companies and other financial intermediaries, are not restricted by FIRREA-based appraisals, the FCA notes that those competitors are answerable to the financial markets as well as to their investors and/or stockholders. Unless they adhere to adequate collateral evaluation criteria to prevent losses, investor and/or stockholder support and confidence will not only decline, but will result in demands for greater controls through external and internal standards. The FCA further notes that under the final regulation, if collateral is taken out of an abundance of caution, lending institutions, such as the BCs, are only required to complete an evaluation of such collateral. They are not required to complete an appraisal of such collateral under the USPAP. To qualify for the use of the abundance of caution exception, lending institutions must document in the appropriate loan files the reasons why the collateral was not considered a necessary credit factor in support of the credit decision.

3. De minimis

The overwhelming majority of comments received on the *de minimis* (threshold) level suggested that it be raised. Suggested values ranged from $100,000 to $1,000,000. While a few commenters requested a threshold level of $250,000, the greatest number of commenters recommended that the threshold amount be raised to $100,000. Numerous commenters stated that they had not experienced substantial losses resulting from improper appraisals in connection with transactions below $100,000. Many commenters anticipated that delays and increased costs associated with obtaining appraisals for transactions below $100,000 would outweigh any benefits that might be obtained from requiring appraisals by certified or licensed appraisers for those transactions.

To determine an appropriate and cost-effective threshold level for real estate appraisals, the FCA requested data from public hearing witnesses on cost projections (per average loan volume) to borrowers based on threshold levels of $50,000, $100,000, and $250,000. It also solicited data on historical losses on loans in each of the tiers in the last 10 years. In addition to the data received during the public comment period and in response to the public hearings, the FCA also reviewed loan and collateral data that is periodically provided by the FCS institutions to the FCA.

After a thorough review of the solicited data, the FCA believes that the proposed $50,000 threshold level is too low. The data indicates that the average loan size of FCS institutions, excluding the BCs, is approximately $70,000. The proposed $50,000 threshold level would, therefore, require an appraisal of a substantial number of an institution's loans. The data further indicates that while a large percentage of the FCS institutions' loans are $100,000 or less in size, the concentration of loan volume and portfolio risk intended to be addressed by real estate appraisal requirements is contained in the smaller percentage of loans over $100,000. Transactions involving amounts below $100,000 have not led to substantial losses for FCS institutions and do not pose a systemic threat to the Farm Credit System.

Since the loss data did not demonstrate that the risk of loss on small loans was sufficient to warrant the cost of complying with the appraisal requirements of the regulation, the FCA has set the threshold level at $100,000 in the final regulation. This threshold level is consistent with the threshold level adopted by the RTC, the FRB, the OCC, the OTS, and the FDIC, who reached similar conclusions.

4. Evaluation Requirements

Under the final regulation, any real estate-related transaction value exceeding the $100,000 threshold level must have an appraisal of its real estate collateral that complies with the appraisal requirement, unless the collateral is taken out of an abundance of caution or is otherwise specifically excepted. Transactions with values of $250,000 or less but in excess of $100,000 require, at a minimum, an appraisal of real estate collateral performed by a State licensed appraiser. The services of a State certified appraiser may be used instead of the State licensed appraiser for such transactions. Transactions with values in excess of $250,000 must have an appraisal of real estate collateral by a State certified appraiser.

The final regulation requires collateral evaluations for all real, personal, and intangible property taken as collateral, even though they may be exempt from the appraisal requirement. Hence, under the final regulation, any evaluation of real estate with a transaction value at or below the $100,000 threshold level, or otherwise excepted from the appraisal requirements of this regulation, must have an evaluation of its collateral. The FCA expects all FCS institutions, as a matter of prudent banking practice, to obtain an appropriate evaluation of the collateral by a competent person (who need not be a certified or a licensed appraiser, except as required) before entering into any financial transaction. Consequently, any financial transaction that does not require an appraisal under this regulation still must have an evaluation of the collateral that complies with policy guidelines and standards adopted by the institution's board of directors.

The FCA is aware that Congress recently made several amendments to title XI of FIRREA. One of the amendments directed the OMB to conduct a study of whether there is a need to establish *de minimis* or threshold levels for commercial real estate.[6] The FCA will study the recommendation of the OMB study, and any future studies, and will review the threshold level adopted in the FCA's final collateral evaluation regulation in light of the study's recommendation.

Under the reproposed regulation, the FCA allowed appraisals on transactions with values over $50,000 but less than $1,000,000 to be performed by a "designated appraiser." The term is not used in the regulations of other agencies. When it was proposed, the FCA recognized the practical difficulty institutions might have in securing the services of a State certified appraiser during the implementation of FIRREA appraisal requirements and the adoption of State certification programs. The "designated appraiser" option was proposed only as an interim step and would have ceased to be effective January 1, 1994.

The FCA has deleted references to the "designated appraiser" from the final regulation. The extension of the effective date for the use of State licensed and certified appraisers to

[6] "Federal Deposit Insurance Corporation Improvement Act of 1991," Public Law 102-242, 105 Stat. 2386, December 19, 1991, amended section 1119 of FIRREA (12 U.S.C. 3348) by requiring the Director of OMB to conduct a study of a need to establish *de minimis* levels for commercial real estate. The final report was published and reported to Congress during August 1992.

March 1, 1993, or such later effective date as may be established by this regulation, limits the services of the "designated appraiser" to the 14-month period following the effective date of title XI of FIRREA. The final regulation addresses approximately the same concerns and covers the same period that the "designated appraiser" was proposed to address. Under the final regulation, for the period of March 1, 1993, or such later effective date as may be established by this regulation, to March 1, 1994, any funding bank, on behalf of itself and its affiliated associations, and any BC that has made good faith efforts to comply with this regulation may apply to the FCA for a waiver from the use of State certified or licensed real estate appraisers. To obtain such a waiver, the funding bank or the BC must provide reasonable written evidence that there is a scarcity of such appraisers in a State to perform real estate appraisals, leading to significant delays in the performance of such appraisals. It is the present intention of the Board of the FCA not to grant or extend such a waiver beyond March 1, 1994.

5. Abundance of Caution

The reproposed regulation allowed appraisals to be performed using the Departure Provision of the USPAP in several types of financial transactions. One such transaction is where a lien on property has not been taken as the primary security but has been taken solely through an abundance of caution, and the terms of the transaction have not, as a consequence, been made more favorable than they would have been in the absence of the lien.

The FCA views the "abundance of caution" exception narrowly. The exception requires that no material term of a loan be more favorable to the borrower because the institution takes real estate as collateral for the extension of credit. Neither the amount of the loan, the rate of interest, the term of the loan, the presence or absence of a guarantor, nor any other term affecting the institution's ability to recover on the loan may be more favorable to the borrower. By allowing this exception, the FCA recognized that an institution should not be required to obtain a full appraisal of real estate taken as collateral if the institution would have extended credit to the borrower on exactly the same terms without the collateral. The FCA believes that requiring a full appraisal under these circumstances would discourage institutions from accepting additional protection in this form. Accordingly, the reproposed regulation permitted the use of the Departure Provision of the USPAP to except collateral taken through an abundance of caution from the requirements of a full appraisal under the USPAP.

Comments were received acknowledging that the Departure Provision allows some flexibility to depart from one or more of the detailed requirements of the USPAP. For example, use of the Departure Provision would allow updating the existing appraisal through incorporation of the previous appraisal by reference. However, numerous commenters complained that the Departure Provision does not allow shortcutting of the appraisal process or the appraisal report, both of which must also conform with the Ethics and Competency Provisions of the USPAP. The commenters asserted that using the Departure Provision would result in a disproportionate effort in connection with routine loan maintenance or abundance of caution-related actions. The commenters requested that the requirement that the Departure Provision be satisfied to qualify for the abundance of caution exception be deleted.

The FCA is persuaded by the comments that collateral taken through an abundance of caution should not be required to satisfy the Departure Provision of the USPAP in order to qualify for the exception. Accordingly, the final regulation has been revised to require merely that all FCS institutions obtain an appropriate evaluation of real estate taken as collateral out of an abundance of caution, provided such evaluations are in accordance with the policy guidelines adopted by the board of directors of the institution under this regulation for the evaluation of collateral that is not subject to the appraisal requirements of this regulation.

In addition to performing an evaluation of the collateral, the final regulation continues to require documentation in the loan file to support an institution's use of the abundance of caution exception. The documentation must demonstrate that the credit decision is sufficiently supported by the credit factors without consideration of the subject collateral. The FCA notes that such credit decisions may be supported by the taking of collateral other than the collateral which is taken solely out of an abundance of caution.

6. Appraiser Independence

A variety of comments was received concerning appraiser independence. The majority of commenters objected to the independence requirement because they asserted that it prevented loan officers from appraising property, which would result in unnecessary costs for training other employees, hiring new employees, or retaining outside fee appraisers. Several commenters alleged that in their experience costly appraisals done by outside fee appraisers were not always as accurate or as reliable as those done by their loan officers.

Numerous commenters asserted that the reproposed regulation's appraiser independence requirement was too restrictive. Some requested that the final regulation allow FCS institutions the flexibility to develop their own structures and procedures to ensure that appraisers are independent.

The FCA continues to believe that any transaction requiring an appraisal of collateral must be performed by an appraiser who can produce an objective opinion about the market value of that collateral. This objectivity may be compromised if the appraiser is engaged in the marketing, lending, collection, or credit decision processes of the institution or an institution under common management. Also, a direct or indirect interest of the appraiser in the property appraised may undermine the accuracy of the appraisal.

While the FCA continues to support appraiser independence, the requirement of the reproposed regulation has been restricted under the final regulation to those transactions requiring an appraisal. For transactions not requiring an appraisal, the final regulation requires the collateral to have an evaluation performed by a "qualified evaluator." Under the final regulation, the qualified evaluator performing such an evaluation is not subject to the independence requirements of the USPAP, but is subject to the evaluation policy and standards adopted by the institution's board of directors, as prescribed by the final regulation, which only require transactional independence of the evaluator. They are less restrictive than the standards of the USPAP for appraisals, which require functional independence of the appraiser. Therefore, an individual involved in the loan-making function, such as a loan officer, may perform the evaluation, provided he or she has no personal interest in the collateral being evaluated and provided that the evaluation is reviewed by the institution's senior management or its board of directors.

The final regulation continues to require an appraisal of real estate collateral for transactions with values over $100,000, unless taken out of an abundance of caution or otherwise specifically excepted. The appraisal must be performed by a qualified appraiser who is State licensed or State certified, as appropriate. The appraiser is subject to the functional independence requirement of the USPAP. This means that the appraiser cannot be involved in the loan-making function of the institution. The appraiser must have no direct or indirect interest, financial or otherwise, in the property or transaction. The appraiser must be independent of the marketing, lending, collection, or credit decision processes of the institution making the loan, an institution under common management, or an institution purchasing an interest in the loan. Directors or officers should abstain from any vote and/or approval involving assets on which they (as State licensed or certified appraisers) have performed an appraisal. If an appraisal is prepared by a fee appraiser, the appraiser must be engaged directly by the institution and must have no direct or indirect interest, financial or otherwise, in the property or the transaction. Furthermore, FCS institutions must ensure that all appraisers are qualified to appraise the type of collateral that is the subject of the appraisal. The FCA believes that the use of a qualified State licensed or certified appraiser will promote the accuracy and adequacy of an appraisal, and that the exercise of independent appraiser judgment will protect the integrity of the appraisal process.

Under the final regulation, a FCS institution may accept an appraisal that was prepared by an appraiser engaged directly by another FCS institution or by an institution subject to title XI of FIRREA, if the FCS institution that accepts the appraisal has: (a) Established procedures for reviewing real estate appraisals; (b) reviewed the appraisal under the established review procedures and found the appraisal acceptable; and (c) documented the review in writing.

7. Reciprocity

Several comments were received requesting clarification of whether a State licensing and certification agency will recognize the certification or license of an appraiser from another State. These commenters noted the multi-State structure of all Farm Credit districts and many associations. They requested that the FCA's final regulation address reciprocity by permitting licensed or certified appraisers to complete FCS appraisals in all States whenever permitted by State law.

Section 1122 of title XI of FIRREA (12 U.S.C. 3351) requires a State appraisal certifying or licensing agency to recognize on a temporary basis the certification or license of an appraiser issued by another State provided: (a) The property to be appraised is part of a federally related transaction; (b) the appraiser's business is of a temporary nature; and (c) the appraiser registers with the State regulatory agency in the State of temporary practice.

The ASC has published "Revised Guidelines" (56 FR 26088, June 6, 1991) to assist the States in establishing effective certification and licensing procedures for real estate appraisals. The guidelines reflect the general framework that the ASC will use in reviewing a State's program for compliance with title XI of FIRREA. The "Revised Guidelines" address temporary practice and reciprocity among States.

The ASC believes that States should not require temporary practitioners to obtain a certification or license in the State of temporary practice. Instead, the ASC recommends that the State should recognize the certificate or license issued by the individual's State of permanent certification or licensure. However, under title XI of FIRREA, a State may establish temporary practice and registration procedures. These procedures should measure "temporary" by specific appraiser assignments and not by a fixed time period or number of properties to be appraised.

Other than the temporary practice provisions of title XI of FIRREA, no Federal requirements exist regarding State reciprocity agreements. The ASC, in its "Revised Guidelines," encourage the States to consider permanent reciprocity arrangements to address the need of appraisers who practice on a permanent, multi-State basis. The FCA supports the ASC's recommendation, but the establishment of reciprocity is an issue for the States and is not within the FCA's purview. However, for purposes of complying with these regulations, an appraiser need not be licensed or certified by the State in which the appraised property is located provided the appraiser can legally perform appraisals in the State. Thus, until title XI of FIRREA is amended to require permanent reciprocity arrangements among the States, it appears that appraisals across State boundaries are limited to the temporary practice provisions of title XI of FIRREA unless or until the States voluntarily provide for permanent reciprocity. Section 614.4260(d) has been added to the final regulation to clarify that, subject to State law, staff appraisers or fee appraisers, appraising on behalf of FCS institutions, may appraise real property across State boundaries and in the Commonwealth of Puerto Rico.

8. Confidentiality

One comment was received noting that applications for licensing and certification in some States require that an affidavit be signed by the appraiser that the appraiser will, on request, provide the State with copies of his or her appraisals. The commenter pointed out that under existing regulation, § 618.8320 of this chapter, employees of FCS institutions are prohibited from providing copies of an appraisal report. The commenter requested that the prohibition be repealed in order that its staff appraisers may seek licensing and certification in those States and still be in compliance with FCA regulations.

In recognition of the fact that existing regulations may present a barrier in some States to employees of FCS institutions from obtaining their appraisal license and certification, the FCA is reviewing the applicable regulations and appropriate action is being considered to resolve the conflict.

9. Other Financial Institutions (OFIs)

Comments were received from several OFIs inquiring whether they must comply with the provisions of the reproposed appraisal regulation. The OFIs, which obtain their financing under agreements with Farm Credit Banks (FCBs), stated that such compliance would be detrimental to their ability to do business.

The FCA stated during its public hearings that the requirements of the reproposed appraisal regulation did not apply directly to the OFIs. The FCA noted that, while it has authority to regulate the discount relationship between the OFIs and the FCBs, it does not have direct regulatory authority over the OFIs. It is the FCA's position that collateral evaluation requirements for loans discounted for OFIs are an appropriate subject for the lending agreement between the FCBs and the OFIs.

E. Section-by-Section Analysis

Subpart F—Collateral Evaluation Requirements

The title of part 614, subpart F, of the final regulation has been changed from "Appraisal Requirements" to "Collateral Evaluation Requirements" to more appropriately reflect the subject of the subpart and its emphasis on evaluations of loan collateral. Subpart F of the final regulation addresses collateral evaluation requirements for all collateral taken as loan security, including collateral evaluations requiring appraisals.

1. Section 614.4240—Collateral Definitions

Section 614.4240 of existing regulation, entitled "General," provides an overview of the FCA's existing regulatory requirements for real estate appraisals and chattel inspections. The reproposed and final regulations revise the existing section to identify and define specific terms that are applicable to collateral evaluations, including appraisals. The definitions section of the reproposed regulation has been revised in the final regulation as follows:

a. *Appraisal.* Comments were received requesting that the FCA redefine "appraisal" as the process of developing an opinion of market value, and separately define "appraisal report" as the written statement of an opinion of market value. While some entities separately define appraisal and appraisal report (as in the USPAP), the FCA is retaining the definition from the reproposed regulation because it enjoys widespread use and acceptance among governmental agencies and private entities and follows the statutory language requiring all appraisals used for federally related transactions to be in writing. For purposes of this regulation, the term "appraisal" is intended not only to address the evaluation process, but also its product, the written report.

b. *Designated appraiser.* The term "designated appraiser" has been deleted from the final regulation as it is not used in the final regulation.

c. *Evaluation.* A definition of "evaluation" has been added to the final regulation to clarify the FCA's position regarding collateral evaluation. The final regulation narrows the focus of the specific appraisal requirements to certain real estate transactions and imposes less onerous general evaluation requirements for all collateral taken as security for a loan. Although an appraisal may be used for any type of collateral, the requirement for an evaluation requiring an appraisal is limited to real estate transactions. The term "evaluation" means a study of the nature, quality, or utility of, or interest in, or aspect of, an asset. An appraisal is a type of evaluation.

d. *Fee appraiser.* Under the final regulation, the term "fee appraiser" has been expanded to include an evaluator, in addition to an appraiser. The definition also clarifies that for personal and intangible collateral evaluations, a fee appraiser may include knowledgeable industry experts, such as certified public accountants, equipment dealers, grain buyers, livestock buyers, and auctioneers.

e. *Income capitalization approach.* Several comments were received requesting revision of the term "income capitalization approach" to recognize that the income approach should address annual cashflows. The FCA in the reproposed regulation considered the annual cashflows to be implicitly addressed in the income capitalization approach definition. However, in response to comments, the FCA has revised the final regulation to explicitly address the discounting of annual cashflows.

f. *Qualified evaluator.* The final regulation has replaced the term "qualified appraiser" with the term "qualified evaluator." The substitution was made to address the focus of the final regulation requiring collateral evaluations which may include appraisals. The term "qualified evaluator" means an individual who is competent, reputable, impartial, and has demonstrated sufficient training and experience in evaluating the property of the type that is the subject of the evaluation. For purposes of this definition, the term "qualified evaluator" includes an appraiser with similar qualifications.

The term "qualified evaluator" may include, but is not limited to, loan officers, accountants, auctioneers, grain or livestock buyers, and equipment dealers.

g. *Real estate.* The term "real estate" has been added to the final regulation to distinguish between the terms "real estate" and "real property" as they are used in the collateral evaluation process. "Real estate" is defined to mean an identified parcel or tract of land, including improvements, if any.

h. *Real property.* The term "real property" has been added to the final regulation to distinguish between the terms "real property" and "real estate" as they are used in the collateral evaluation process. "Real property" is defined to mean all interests, benefits, and rights inherent in the ownership of real estate.

i. *State certified appraiser.* The definition of "State certified appraiser" has been expanded in the final regulation in recognition of the Appraisal Subcommittee's role in the approval and monitoring process of the States' appraiser certification programs and the Appraisal Qualifications Board's role in establishing certification criteria.

j. *State licensed appraiser.* The definition of "State licensed appraiser" has been expanded in the final regulation in recognition of the required conformance to FIRREA of the States' appraiser licensing requirements and the Appraisal Subcommittee's authority to approve the States' programs.

k. *Valuation.* A definition of "valuation" has been added to the final regulation to distinguish a collateral evaluation not requiring an appraisal from one requiring an appraisal. A valuation results from the completion of a collateral evaluation that does not require an appraisal.

2. Section 614.4245—Collateral Evaluation Policies

The title of this section under the reproposed regulation was "Appraisal policies." The section has been retitled, "Collateral evaluation policies," in the final regulation. The section addresses the development of policies by FCS institutions, currently contained in § 614.4240 of the existing regulation. However, the policy development requirements set forth in § 614.4245 of the final regulation remove existing FCA prior approval requirements, include all FCS institutions that are engaged in lending or leasing activities secured by collateral, and establish the basic framework under which such policies are to be developed.

The reproposed regulation addressed the development of appraisal policies and standards for all types of collateral. The regulation's focus was changed to expand the types of collateral that may be evaluated under less stringent standards than are required for appraisals under the USPAP. Under the final regulation, the institution's board of directors is responsible for establishing specific guidelines relating to the type of collateral evaluations that are required and the circumstances under which such evaluations are appropriate. The regulation requires that, at a minimum, the institution's policies and guidelines contain the basic criteria contained in the sections of part 614, subpart F, of the final regulation.

3. Section 614.4250—Collateral Evaluation Standards

Sections 614.4250 through 614.4260 of the existing regulations were removed and reserved by the Eligibility and Lending Authority regulations which were adopted by the FCA as final regulations on June 19, 1990 (55 FR 24877).

In the reproposed appraisal regulation, this section was titled "Appraisal Standards." The section provided specific criteria for the establishment of policies and procedures for collateral appraisal, including the requirement that the

USPAP be used for all collateral appraisals. Comments received on this section's requirements related to benchmark appraisals, recovery value, legal descriptions, environmental impact analysis, and the application of highest and best use.

a. *Benchmark approach.* The FCA published its position on the use of a benchmark system of real estate appraisals in the reproposed regulation at 56 FR 2456 on January 23, 1991. The FCA considers a benchmark system to be a form of sales comparison approach where the comparable properties are reflected in a comparison to a single property rather than several properties and adjustments are made for the differences in the subject property from the comparable, or benchmark, based on past experience. A benchmark system could be recognized as a form of the comparable sales approach, which is one of the three permitted approaches, provided the institution maintains a current market evaluation of the benchmark properties supplemented with sales data developed from ongoing sales comparisons.

b. *Recovery value.* The existing regulation requires the use of recovery value for personal property collateral. Recovery value is defined as the amount the lender should realize from a sale of the property on reasonable terms less estimated maintenance, selling costs, and prior liens and encumbrances, at the date of inspection or appraisal. The reproposed regulation required personal property, as well as intangibles, to be valued on the basis of a market value. Under the USPAP standards, the "market value" of certain types of personal property involving transportation costs or related expenses associated with the marketing of such products includes consideration of such factors and costs. In addition, the FCA recognizes that the characteristics of a sale of property as formerly defined by "recovery value" may more accurately reflect the liquidation valuation of collateral for underwriting purposes.

Therefore, although the reproposed regulation discontinued the use of recovery value as the required basis for valuing personal property, the FCA believes that institutions should continue to consider the net realizable value of collateral in their credit underwriting standards. However, the FCA has concluded that the use of "market value" as the basis for valuation for real, personal, and intangible property is consistent with industry standards. For these reasons, the final regulation continues to require "market value" as the basis for collateral evaluations of personal and intangible property as well as real property.

c. *Legal descriptions.* Commenters also expressed concern with the requirement that legal descriptions be required as part of the appraisal documentation included under § 614.4250 of the reproposed regulation. The FCA agrees that the general guidelines for collateral evaluations need not contain such a specific requirement where an appraisal is not required. Consequently, the legal description requirement has been deleted from the criteria of § 614.4250 of the final regulation. However, the FCA continues to believe that a legal description should be included in an appraisal report to ensure proper identification of the property being appraised. The legal description of any real property taken as primary security for a loan is necessary to ensure full closure of the property and the absence of any conditions that may jeopardize the validity of the appraisal and/or the legal position of the lender. Accordingly, the final regulation continues to require a legal description for real estate appraisals under § 614.4265.

d. *Environmental impact analysis.* Several commenters stated that the reproposed regulation imposed an environmental impact analysis requirement on appraisers. They argued that an appraiser is not qualified to perform such an analysis and that the requirement would introduce a higher degree of liability for the appraiser. The reproposed regulation did not require an appraiser to complete an environmental analysis of any property. It did require an appraiser or evaluator, in the exercise of due diligence to identify any obvious environmental concerns in the appraisal or evaluation report on the real property collateral. Once an environmental concern has been documented in the appraisal or evaluation report, it is the institution's responsibility to engage an expert to conduct an analysis to ascertain: (1) The impact of the environmental concern; (2) the associated cost of any necessary cleanup; and (3) the effect of the environmental concern on the market value of the subject property.

e. *Highest and best use.* Commenters also objected to the requirement contained in this section of the reproposed regulation that collateral be appraised in its "as is" condition. They requested substitution of the "highest and best use" requirement as defined in § 614.4240 for the "as is" requirement. The final regulation incorporates this suggestion, to avoid limiting construction and facility financing and because the "as is" requirement is adequately addressed in the USPAP.

4. Section 614.4255—Independence Requirements

Under the reproposed regulation, this section only addressed independence of the appraisal function within FCS institutions and required functional independence of the appraisal process. This meant that appraisals of all collateral had to be performed separately from the lending, marketing, and collection processes. The reproposed regulation required only transactional independence on loan transactions that were under the *de minimis* level, taken out of an abundance of caution, or were otherwise excepted from appraisal requirements.

Where an appraisal of real estate is required, the final regulation continues to require that the appraiser be functionally independent or separate from the lending, marketing, and collection processes of the institution. On all other collateral evaluation, only transactional independence is required. Under the final regulation, this section provides guidance for transactional independence in all evaluations of personal, intangible, and real property collateral. Under transactional independence, a loan officer or some other qualified employee engaged in the lending, marketing, or collection processes may complete the collateral evaluation, provided the credit decision is reviewed by the institution's senior management or board of directors.

5. Section 614.4260—Evaluation Requirements

This section under the reproposed regulation required that all collateral be appraised by a qualified appraiser and that State licensed or State certified real estate appraisers be used to complete the appraisals on all real estate-related transactions with values above $50,000. The reproposed regulation also created an interim "designated appraiser" category until January 1, 1994.

This section of the final regulation sets forth the evaluation requirements for a valuation of collateral and for an appraisal of collateral. Section 614.4260 provides that all collateral taken as security must be evaluated by a qualified evaluator. It also prescribes that real property that is above the *de minimis* level, and is not otherwise excepted, must be appraised in accordance with USPAP by a State licensed or a State certified appraiser. Specifically, appraisals of real estate securing loan transactions valued at $250,000 or less but in excess of $100,000 must be completed by a State licensed appraiser. Appraisals of real estate securing loan transactions valued in excess of $250,000 must be completed by a State certified appraiser.

Section 614.4260 of the final regulation sets forth in paragraphs (a) and (b) the evaluation requirements for individuals completing an evaluation and an appraisal of collateral. Paragraph (a) provides that all collateral taken as security must be evaluated by a qualified evaluator. Paragraph (b) requires that real property transactions that are above the *de minimis* level, and are not otherwise excepted, be appraised by a State licensed or a State certified appraiser. Specifically, appraisals of real estate securing loan transactions valued at $250,000 or less but in excess of $100,000 must be completed by a State licensed appraiser. Appraisals of real estate securing loan transactions valued in excess of $250,000 must be completed by a State certified appraiser.

Paragraph (c) of § 614.4260 sets forth the criteria under which real property may be exempted from the appraisal qualification requirements of paragraph (b). Such real property is subject only to the evaluation requirements of paragraph (a).

Paragraph (c) of the final regulation also provides that an appraisal performed by a State certified or State licensed appraiser is not required for a real estate-related financial transaction in the following instances:

a. *De minimis.* A real estate-related financial transaction having a transaction value less than or equal to $100,000.

b. *Abundance of caution.* A real estate-related financial transaction in which a lien on real property has been taken as collateral solely through an abundance of caution.

c. *Renewals.* A real estate-related financial transaction in which there is a subsequent transaction resulting from a maturing extension of credit, provided that the borrower has made all scheduled payments under the note, no new funds are advanced other than previously agreed, the borrower remains creditworthy, and there has been no obvious and material deterioration in market condition or in the physical aspects of the property which would threaten the institution's collateral protection.

d. *Advancement of new funds.* When new funds are advanced on an existing real estate-related financial transaction, that is supported by an appraisal, provided that such funds are advanced within 2 years of the date of the prior appraisal; the financial condition of the borrower has not deteriorated; and there has been no obvious and material deterioration in the market value or the physical condition of the property that would threaten the institution's collateral protection.

e. *Pools.* When a FCS institution purchases a loan or an interest in a loan, pool of loans, or interests in real property, including mortgage-backed securities, provided that: (1) The appraisal prepared for each loan, pooled loan, or real property interest, when originated, met the standards of this regulation, other Federal regulations adopted pursuant to FIRREA, or the requirements of government-sponsored secondary market intermediaries under whose auspices the interest is sold; and (2) there has been no obvious and material deterioration in the market value or the physical condition of the property that would threaten the FCS institution's collateral position.

f. *Government-guaranteed loans.* A real estate-related financial transaction involving a loan guaranteed by an agency of the Federal government, provided that the transaction is supported by a current appraisal that conforms to the requirements of the Federal agency providing the guarantee.

The FCA notes, with regard to exemptions a. and e. stated above, that any loan to be sold in the secondary market is subject to the appraisal requirements of this regulation as well as the appraisal requirements of the purchaser. To date, Fannie Mae, Freddie Mac and Farmer Mac have not adopted a *de minimis* level for appraisals of secondary market loans. Therefore, all such loans require an appraisal regardless of transaction value.

The FCA further notes that exemptions d. and f. stated above were not contained in the reproposed regulation. Both exemptions have been adopted by the FCA in its final regulation in recognition that requiring those transactions to meet additional appraisal requirements would increase costs for FCS institutions without providing additional benefits or furthering the purposes for which title XI of FIRREA was enacted.

The FCA emphasizes that to qualify for any of the six exemptions of § 614.4260(c) from the appraisal requirements of this subpart, the institution must document support for such exemption in the applicable loan file(s).

Section 614.4261 of the existing regulation addressing separate BC security and appraisal standards has been removed from the final regulation. Under the final regulation, where collateral is taken as security for the BCs' loans, the collateral evaluation requirements of subpart F would be applicable to such loans.

6. Section 614.4265—Real Estate Evaluations

This section has been revised in the final regulation to address evaluations of real property, which may or may not require appraisals. Under the revised section, when appraisals are required for real estate collateral, these appraisals must conform to the USPAP. In addition, the appraisal report must include a legal description of the property being appraised, to avoid confusion that may arise from less precise identification. This requirement enables a reader to compare the legal description in the appraisal report to the legal description in the loan documents. The legal description is to be provided in addition to, and not in lieu of, the type of description required in the USPAP.

Consistent with the approach of other financial regulators, § 614.4265 of the final regulation also prohibits the use of the Departure Provision of the USPAP when an appraisal is completed on a real estate-related transaction requiring the services of a State licensed or a State certified appraiser. The FCA believes that the Departure Provision in the USPAP allows for the omission of data that should be included in developing and reporting appraisals rendered in connection with real estate-related transactions. Therefore, the FCA has determined that the Departure Provision shall not apply to such appraisals.

Under § 614.4265 of the final regulation, income-based evaluations of real estate collateral are required where the transaction value exceeds $100,000 and the collateral properties are rentable, income producing, and primarily support the source of loan repayment. The income approach is also required where the transaction value exceeds $100,000 and the collateral property is not an integral part of and does not support the principal source of loan repayment, but has demonstrable rental market appeal, is statutorily required as loan collateral, and fully or partially constitutes, or is an integral part of, an agricultural or aquatic operation.

The FCA notes that, under the final regulation, the income approach must be completed and documented for any such property and for the credit analysis on any related loan action, whether or not the income approach is used as the final determination of market value. If an institution does not consider the completed income approach to be an appropriate final determination of the property's market value, the institution may select either the sales comparison approach or the cost approach as the basis of market value. The institution must, however, explain the elimination of each approach not used as the final determination of market value.

Numerous commenters also objected to the inclusion of underwriting standards, such as account officers' collateral inspection requirements, that were applicable to collateral evaluations as opposed to appraisal requirements. It is the FCA's continued position that such related standards are appropriate criteria for the consideration and control of the collateral evaluation process. In addition, the final regulation emphasizes the requirement that, while a loan officer may not be the evaluator of the subject collateral, the loan officer is still expected to be familiar with the collateral, its location, quantity, and quality. The loan officer should, as a part of prudent credit administration, periodically review and monitor the collateral securing a loan and, where applicable, verify the collateral against any borrowing base/collateral reporting requirements of the loan.

7. Section 614.4266—Personal and Intangible Property Evaluations

The reproposed regulation required all personal and intangible property taken as security for loans to be appraised by qualified appraisers under the USPAP. The final regulation merely requires a collateral evaluation of personal and intangible property taken as security for loans to be completed by a qualified evaluator based on market value documented by a collateral evaluation report consistent with institution-established policies and standards.

8. Section 614.4267—Professional Association Membership; Competency

a. *Membership in appraisal organizations.* Section 1122 (12 U.S.C. 3351) of title XI of FIRREA addresses Congress' concern that applicants for licensing and certification might be discriminated against on the basis of membership or nonmembership in certain appraisal organizations.[7] Paragraph (d) of section 1122 prohibits the exclusion of a certified or licensed appraiser for consideration of an assignment solely by virtue of membership or lack of membership in any particular appraisal organization. This prohibition is set forth in § 614.4256 of the FCA's final collateral evaluation regulation. The FCA believes that an institution should review the qualifications of appraisers rather than the qualifications of appraisal organizations to ensure that a qualified individual is being employed. Membership in an organization may be considered; however, it may not be the sole determining factor in accepting or rejecting an appraiser.

b. *Competency.* The FCA recognizes that not all evaluators and appraisers are qualified to perform every type of evaluation. The competency provision of this regulation requires that all evaluators and appraisers be qualified by having demonstrated knowledge and experience to perform evaluations of the specific type of property that is the subject of the evaluation. The provision also provides that an evaluator or an appraiser should not be considered competent solely because he or she is accredited, or State certified or State licensed. Institutions should look beyond an individual's title to determine if he or she has the requisite experience and training to complete a particular assignment competently.

This provision is not intended to prohibit an individual from appraising a type of property with which he or she is not familiar in every circumstance. However, in such instances, an appraiser may perform the appraisal only in accordance with the Competency Provision in the USPAP. In addition, an individual who is not a State certified or licensed appraiser may assist in the preparation of an appraisal if he or she is directly supervised by a licensed or certified appraiser (as appropriate), and the appraisal is approved and signed by a certified or licensed appraiser.

III. Subpart L—Actions on Applications; Review of Credit Decisions

A. Section 614.4440—Definitions

This section under the existing regulation does not provide a definition for an "independent appraiser." The need for the definition was discussed in the preamble to the final borrower rights regulation (53 FR 35452, September 14, 1988). The preamble stated that the definition would be subsequently developed under revisions to part 614, subpart F. Accordingly, the reproposed regulation (56 FR 2452, January 23, 1991) defined an independent appraiser as a State certified, a State licensed, a designated, or an accredited appraiser who was qualified to appraise the subject property and who was not a FCS institution employee.

Several commenters requested clarification of the words "designated," "accredited," and "qualified" in the definition of an "independent appraiser." After review of the comments received and in consideration of the revised focus of the final regulations contained in subpart F, the FCA has revised the definition of "independent appraiser" in subpart L of the final regulation. Section 614.4440 has substituted the term "independent evaluator" for the term "independent appraiser" in recognition that collateral evaluations must be completed by individuals on properties where an appraisal may not be required. The final regulation also includes "qualified evaluator" as a defined term under § 614.4240 and eliminates the term "designated appraiser." The revisions to the regulation recognize that all collateral securing loans is not real estate-related and that valuation of such collateral may be developed without full compliance with the USPAP.

Review of comments received indicated that some commenters believed that a "qualified" appraiser is a separate appraisal designation. The final regulation clarifies that all evaluators, including State licensed and certified appraiser, must be "qualified" to complete the particular collateral evaluation assignment competently. Qualification and competency standards for evaluators and appraisers are general criteria applicable to all evaluators, including appraisers, and are not intended to be a separate designation.

B. Section 614.4443—Review Process

Section 614.4443(c)—Independent collateral evaluations. The existing regulation addresses the general requirements for an independent appraisal completed by an accredited appraiser in connection with a review of a loan decision, which is required by section 4.14(d) of the Act. Under the reproposed regulation, a definition of an "independent appraiser" was added to recognize current practices of the appraisal industry resulting from the enactment of title XI of FIRREA. The reproposed regulation required that the borrower engage an independent appraiser and that the appraiser comply with the applicable requirements of part 614, subpart F, in completing an appraisal report.

Commenters asserted that the inclusion of State licensed, State certified, or designated appraisers in the definition of an independent appraiser

[7] See, *e.g.*, House Banking Committee Report at 464; see also H.R. Conf. Rept. No. 222, 101st Cong., 1st Sess., at 457 (1989).

exceeded the "accredited appraiser" criteria contained in section 4.14(d) of the Act. Commenters also expressed concern with the practical application and the ability of the FCA to compel compliance with the regulations contained in subpart F when the appraisers are engaged by the borrower.

The independent appraiser definition in the reproposed regulation recognized and incorporated the financial and appraisal industries' compliance with the requirements of title XI of FIRREA, which did not exist when section 4.14(d) of the Act was enacted. The comprehensive approach to real estate appraisals contemplated by FIRREA supplants to a large degree the concept of accreditation in the appraisal industry. In addition, the FCA believed that it would be unfair and unsafe and unsound for a FCS institution to be required to reconsider a credit decision on the basis of an appraisal meeting a lesser standard than the institution is required to meet. However, under the final regulation, appraisals are not required for all types of transactions. Therefore, this section has been revised in the final regulation to reflect the changes made in subpart F. The effect is to impose the same standards on the independent evaluation obtained by the borrower as upon the institution. It would be unfair to hold the institution to an evaluation standard and allow the borrower to appeal a credit decision based on an evaluation meeting a lesser standard. It would also be unfair to the borrower to require the borrower to meet a more stringent standard than the institution is required to meet. The effect of this change is to define "accredited appraiser" to be a qualified evaluator in those circumstances not requiring an appraisal, and a State certified or licensed appraiser in those circumstances in which an appraisal is required.

This section of the final regulation also recognizes the commenters' concerns relating to the institutions' lack of control of independent evaluators' compliance with the requirements of part 614, subpart F, when the evaluator is retained by the borrower. Under this section of the final regulation, the applicant/borrower engages the services of the independent evaluator and is responsible for the associated cost of the evaluation. Therefore, in the final regulation, this section requires that a copy of part 614, subpart F, be provided to the applicant/borrower. The applicant/borrower must then provide a copy of subpart F to the independent evaluator as part of the evaluation engagement agreement. The evaluator, as a condition of his or her engagement, will acknowledge receipt of a copy of part 614, subpart F, and will document the final evaluation report with the signed copy of subpart F as an attachment. It is the FCA's position that for comparison purposes the borrower's independent evaluator's report must be completed under evaluation standards comparable to those standards applicable to FCS institutions. Therefore, a FCS institution's credit review committee need not consider a borrower's application for reconsideration, where an independent collateral evaluation is requested, unless the independent evaluator has completed a collateral evaluation in conformance with the requirements described in subpart F of part 614 relative to collateral evaluation standards, independence requirements and qualification requirements.

List of Subjects in 12 CFR Part 614

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

For reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

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 of the Farm Credit Act: 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, 101 Stat. 1568, 1639.

2. Subpart F is revised to read as follows:

Subpart F—Collateral Evaluation Requirements

Subpart F—Collateral Evaluation Requirements

§ 614.4240 Collateral definitions.

For the purpose of this part, the following definitions shall apply:

(a) *Abundance of caution*, when used to describe decisions to require collateral, means that the collateral is required in circumstances in which it is not required by statute, regulation, or the institution's policies and it would not be required by a prudent lender to support the credit decision. To qualify for the abundance of caution exception to the requirements of this subpart, the institution must document in the loan file that the application, when evaluated on the credit factors set forth in § 614.4160 of this part without considering the collateral that is the subject of the collateral evaluation, would support the credit decision.

(b) *Appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

(c) *Appraisal Foundation* means the Appraisal Foundation established on November 30, 1987, by professional appraisal organizations, as a not-for-profit corporation under the laws of Illinois, in order to enhance the quality of professional appraisals.

(d) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(e) *Cost approach* means the valuation process by which an evaluator establishes an indicated value by measuring the current market cost to construct a reproduction of or replacement for the improvements, minus the amount of depreciation (physical deterioration, or functional and/or external obsolescence) evident in the structure from all causes, plus the market value of the land.

(f) *Evaluation* means a study of the nature, quality, or utility of, or interest in, or aspects of, an asset. This may or may not include a valuation or an appraisal.

(g) *Fee appraiser* means a qualified evaluator/appraiser who is not an employee of the contracting party and who performs an evaluation/appraisal on a fee basis. For purposes of this subpart, a fee appraiser may include a staff evaluator/appraiser from another Farm Credit System institution only if the employing institution is not operating under joint management with the contracting institution. In addition, for purposes of personal and intangible collateral evaluations, the term "fee appraiser" includes, but is not limited to, certified public accountants, equipment dealers, grain buyers, livestock buyers, and auctioneers.

(h) *FIRREA* means the Financial Institutions Recovery, Reform, and Enforcement Act of 1989.

(i) *Highest and best use* means the reasonable and most probable use of the property that would result in the highest market value of vacant land or improved property, as of the date of valuation; or that use, from among reasonably probable and legally alternative uses, found to be physically possible, appropriately supported, financially feasible, and which results in the highest land value.

(j) *Income capitalization approach* means the procedure that values property by measuring the present value of the expected future benefits of property ownership. This value is derived from either:

(1) Capitalizing a single year's income expectancy or an annual average of several years' income expectancies at a market-derived capitalization rate that reflects a specific income pattern, return on investment, and change in the value of the investment; or

(2) Discounting the annual cashflows for the holding period and the reversion at a specified yield rate or specified yield rates which reflect market behavior.

(k) *Market value* means the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably, and assuming neither is under duress. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and acting in what they consider their best interests;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(l) *Personal property* for purposes of this subpart, means all tangible and movable property not considered real property or fixtures.

(m) *Qualified evaluator* means an individual who is competent, reputable, impartial, and has demonstrated sufficient training and experience to properly evaluate property of the type that is the subject of the evaluation. For the purposes of this definition, the term "qualified evaluator" includes an appraiser with similar qualifications.

(n) *Real estate* means an identified parcel or tract of land, including improvements, if any.

(o) *Real estate-related financial transactions* means any transaction involving:

(1) The sale, lease, purchase, investment in or exchange of real property, including interests in property or the financing thereof; or

(2) The refinancing of real property or interests in real property; or

(3) The use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.

(p) *Real property* means all interests, benefits, and rights inherent in the ownership of real estate.

(q) *Sales comparison approach* means the procedure that values property by comparing the subject property to similar properties located in relatively close proximity, having similar size and utility, and having been recently sold in arms-length transactions (comparable sales). The sales comparison approach requires the evaluator to estimate the degree of similarity and difference between the subject property and comparable sales. Such comparison shall be made on the basis of conditions of sale, financing terms, market conditions, location, physical characteristics, and income characteristics. Appropriate adjustments shall be made to the sales price of the comparable property based on the identified deficiencies or superiorities of the subject property to arrive at a probable price for which the subject property could be sold on the date of the collateral evaluation.

(r) *State certified appraiser* means any individual who has satisfied the requirements for and has been certified as a real estate appraiser by a State or territory whose requirements for certification currently meet or exceed the minimum criteria for certification issued by the Appraiser Qualification Board of the Appraisal Foundation. No individual shall be a State certified appraiser unless such individual has achieved a passing grade on a suitable examination administered by a State or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualification Board of the Appraisal Foundation. In addition, the Appraisal Subcommittee must not have issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI of FIRREA.

(s) *State licensed appraiser* means any individual who has satisfied the requirements for licensing and has been licensed as a real estate appraiser by a State or territory in which the licensing procedures comply with title XI of FIRREA and in which the Appraisal Subcommittee has not issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI of FIRREA.

(t) *Transaction value* means:

(1) For loans or other extensions of credit, the amount of the loan, loan commitment, or other extensions of credit;

(2) For sales, leases, purchases, and investments in or exchanges of real property, the market value of the property interest involved; and

(3) For the pools of loans or interests in real property, the transaction value of the individual loans or the market value of the real property interests comprising the pool.

(u) *USPAP* means the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Foundation.

(v) *Valuation* means the process of estimating a defined value of an identified interest or interests in a specific asset or assets as of a given date. A valuation results from the completion of a collateral evaluation that does not require an appraisal.

§ 614.4245 Collateral evaluation policies.

(a) The board of directors of each Farm Credit System institution that engages in leading or leasing secured by collateral shall adopt well-defined and effective collateral evaluation policies and standards to ensure that collateral evaluations are:

(1) Performed based on criteria established for the purpose of determining the circumstances under which collateral evaluations will be required and when they will be required. Such criteria must, at a minimum:

(i) Establish when an institution will require a collateral appraisal completed under the USPAP rather than a collateral valuation; and

(ii) Take into account such factors as market trends, market volatility, and various types of credit, loan servicing, collection, and liquidation actions; and

(2) Completed by a qualified evaluator in an unbiased manner.

(b) The policies and standards required by this section shall, at a minimum, address the criteria outlined in §§ 614.4250 through 614.4267 of this subpart.

(c) A Federal land bank association shall, with the approval of its respective Farm Credit bank, adopt collateral evaluation policies that are consistent with the bank's policies and standards.

§ 614.4250 Collateral evaluation standards.

(a) When real, personal, or intangible property is taken as security for a loan or is the subject of a lease, an evaluation of such property shall be performed in accordance with this section, § 614.4260, and the institutions' policies and procedures. Such a collateral evaluation shall be identified as either a collateral valuation or a collateral appraisal. Specifically, all collateral evaluations must:

(1) Value the subject property based upon market value as defined in § 614.4240(l);

(2) Be presented in a written format;

(3) Consider the purpose for which the property will be used and the property's highest and best use, if different from the intended use;

(4) Be sufficiently descriptive to enable the reader to ascertain the estimated market value and the rationale for the estimate;

(5) Provide sufficient detail and depth of analysis to reflect the relevant characteristics and complexity of the subject property;

(6) Analyze and report, as appropriate, on:

(i) The current income-producing capacity of the property;

(ii) A reasonable marketing period for the property;

(iii) The current market conditions and trends that will affect projected income, to the extent such conditions will affect the value of the property;

(iv) Identify the appropriate deductions and discounts as they would apply to the property, including but not limited to, those based on the condition of the property, as well as the specialization of the operation and property; and

(v) Identify potential liabilities, including those associated with any hazardous waste or other environmental concerns.

(7) Include in the evaluation report a certification that the evaluation was not based on a requested minimum valuation or specific valuation or approval of a loan; and

(8) Contain sufficient supporting documentation (including an identification and description of the property) with all pertinent information reported so that the evaluator's reasoning, judgment, and analysis in arriving at a conclusion indicate to the reader the reasonableness of the market value reported.

(b) For purposes of determining appraisal value as required in section 1.10(a) of the Act, the definition of market value and the requirements of this subpart shall apply.

§ 614.4255 Independence requirements.

(a) *Evaluator.* For all personal and intangible property, and for all real property exempted under § 614.4260(c) of this subpart, qualified persons performing an evaluation may not be involved in the marketing, lending, collection, or credit decision processes of the employing Farm Credit System institution, unless such institution takes appropriate steps to ensure that the evaluator exercises independent judgment and that the evaluation is adequate. Such steps shall include, but are not limited to:

(1) Adopting procedures for ensuring that an individual will not perform evaluations in connection with transactions in which the evaluator has a direct or indirect interest, financial or otherwise, in the loan or subject property; and

(2) Prohibiting directors, officers, and employees from participating in any vote or approval involving assets on which they performed a collateral evaluation or in performing a collateral evaluation in connection with any transaction on which they have made a credit decision.

(b) *Real estate appraiser.* Except as provided in § 614.4260(c) of this subpart, all evaluations of real property that serve as the primary security for a loan shall be performed by a qualified real estate appraiser who has no direct or indirect interest, financial or otherwise, in the loan or subject property and is not engaged in the marketing, lending, collection, or credit decision processes of any of the following:

(1) A Farm Credit System institution making or originating the loan;

(2) A Farm Credit System institution operating under common management with the institution making or originating the loan; or

(3) A Farm Credit System institution purchasing an interest in the loan.

(c) *Fee appraisers.* Fee appraisers shall be engaged directly by the Farm Credit System institution or its agent, and shall have no direct or indirect interest, financial or otherwise, in the property or transaction. A Farm Credit System institution may accept a real estate appraisal that was prepared by an appraiser engaged directly by another Farm Credit System institution or another institution subject to title XI of FIRREA, if the Farm Credit System institution that accepts the appraisal has:

(1) Established procedures for review of real estate appraisals;

(2) Reviewed the appraisal under the established review procedures and found the appraisal acceptable; and

(3) Documented the review in writing.

(d) *Loan Purchases.* In those cases where an evaluation has been performed by an individual from another Farm Credit System institution in connection with a loan in which such institution subsequently purchases an interest, the evaluator shall not participate in any decision related to the loan purchase.

§ 614.4260 Evaluation requirements.

(a) *Evaluation.* Evaluations of personal and intangible property, as well as real property exempted under paragraph (c) of this section, shall be performed by qualified individuals who meet the established standards of the Farm Credit System institution obtaining the collateral evaluation.

(b) *Appraisal.* Appraisals of real estate shall be performed as follows:

(1) Appraisals for real estate-related financial transactions with transaction values of more than $250,000 shall be performed by a qualified appraiser who is a State certified real estate appraiser.

(2) Appraisals for real estate-related financial transactions with transaction values of $250,000 or less but in excess of $100,000 shall be performed by a qualified appraiser who, at a minimum, is a State licensed real estate appraiser.

(c) *Appraisals not required.* An appraisal performed by a State certified or State licensed appraiser is not required for any real estate-related financial transaction in which any of the following conditions are met:

(1) The transaction value is $100,000 or less;

(2) A lien on real property has been taken as collateral solely out of an abundance of caution and the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of the lien;

(3) There is a subsequent transaction resulting from the maturing extension of credit, provided that:

(i) The borrower has performed satisfactorily according to the original terms;

(ii) No new monies have been advanced other than as previously agreed;

(iii) The credit standing of the borrower has not deteriorated; and

(iv) There has been no obvious and material deterioration in market conditions or physical aspects of the property that would threaten the Farm Credit System institution's collateral position;

(4) New funds are advanced on an existing loan, that is supported by an appraisal, provided that:

(i) The new funds are advanced within 2 years of the date of the prior appraisal;

(ii) The financial condition of the borrower has not deteriorated; and

(iii) There has been no obvious and material deterioration in the market value or the physical condition of the property that would threaten the Farm Credit System institution's collateral position;

(5) A Farm Credit System institution purchases a loan or an interest in a loan, pool of loans, or interests in real property, including mortgage-backed securities, provided that:

(i) The appraisal prepared for each loan, pooled loan, or real property interest, when originated, met the standards of this regulation, other Federal regulations adopted pursuant to FIRREA, or the requirements of the government-sponsored secondary market intermediaries under whose auspices the interest is sold; and

(ii) There has been no obvious and material deterioration in the market value or the physical condition of the property that would threaten the Farm Credit System institution's collateral position, or

(6) A Farm Credit System institution makes or purchases a loan secured by real estate, which loan is guaranteed by an agency of the United States government and is supported by an appraisal that conforms to the requirements of the guaranteeing agency.

To qualify for exceptions (c)(1) through (c)(6) from the requirements of this subpart, the institution must have documentation for such exception in the applicable loan file(s).

(d) *Reciprocity*. The requirements of this regulation are satisfied by the use of State certified or State licensed appraisers from any State provided that:

(1) The appraiser is qualified to perform such appraisals;

(2) The applicable Farm Credit System institution has established policies providing for such interstate appraisals; and

(3) The applicable State appraiser licensing and certification agency recognizes the certification or license of the appraiser's State of permanent certification or licensure.

§ 614.4265 Real property evaluations.

(a) Real estate shall be valued on the basis of market value.

(b) Real estate shall be valued by a reasonable valuation method that considers the income capitalization approach, the sales comparison, and/or the cost approach, as appropriate, to determine market value; reconciles those approaches and explains the elimination of each approach not used.

(c) Where real estate appraisals are required, such appraisals shall be completed in accordance with the USPAP and shall include a legal description of the subject property.

(d) At a minimum, the evaluator shall develop and document the evaluation of the income capitalization approach (establishing production earnings capacity for the property) and at least one of the other two approaches to valuing real estate, whichever is appropriate, where the transaction value exceeds $100,000 and the real estate taken as collateral:

(1) Is an integral part of and supports the principal source of loan repayment, and the property has demonstrable rental market appeal; or

(2) Is not an integral part of and does not support the principal source of loan repayment, but has demonstrable rental market appeal, is statutorily required, and fully or partially constitutes or is an integral part of an agricultural or aquatic operation.

(e) The rental gross and the net earnings capacity established under paragraph (d) of this section on such properties shall be documented as part of the credit analysis for any related loan action whether or not the income approach value is used as the basis for the market value conclusion stated in the evaluation report.

(f) Collateral closely aligned with, an integral part of, and normally sold with real estate (fixtures) may be included in the value of the real estate. All other collateral associated with the real estate, but designated as personal property, shall be evaluated as personal property in accordance with §§ 614.4250 and 614.4266 of this subpart.

(g) The evaluation shall properly identify all nonagricultural influences, including, but not limited to, urban development, mineral deposits, and commercial building development value, and the reasoning supporting the evaluator's highest and best use conclusion.

(h) The "Departure Provision" of the USPAP may not be used for real estate evaluations requiring the use of a State licensed or State certified real estate appraiser as set forth in § 614.4260(b) of this subpart.

(i) Where an evaluation of real property is completed by a fee appraiser, as defined in § 614.4240(g) of this subpart, the institution's standards shall include provisions for periodic collateral inspections performed by the institution's account officer or designee.

§ 614.4266 Personal and intangible property evaluations.

(a) Personal property and intangibles shall be valued on the basis of market value in accordance with the institution's evaluation standards and policies.

(b) Personal property evaluations shall include a description of the property being evaluated, including location of the property and, where applicable, quantity, species/variety, measure/weight, value, type of identification (such as, brand, bill of lading, or warehouse receipt), quality, condition, and date.

(c) Evaluations of intangibles shall include a review and description of the legal documents supporting the property interests and the marketability of the intangible property, including applicable terms, conditions, and restrictions contained in the document that would affect the value of the property.

(d) Where an evaluation of personal or intangible property is completed by a fee appraiser, as defined in § 614.4240(g) of this subpart, the institution's standards shall include provisions for periodic collateral inspections and verification by the institution's account officer or designee.

(e) When a Farm Credit System institution deems an appraisal necessary, personal or intangible property shall be appraised in accordance with procedures and standards established by the institution by individuals deemed qualified by the institution to complete the work under the USPAP Competency and Ethics Provisions.

§ 614.4267 Professional association membership; competency.

(a) *Membership in appraisal organizations*. A State certified appraiser or a State licensed appraiser may not be excluded from consideration for an assignment for a real estate-related transaction solely by virtue of membership or lack of membership in any particular appraisal organization.

(b) *Competency.* All staff and fee evaluators, including appraisers, performing evaluations in connection with real, personal, or intangible property taken as collateral in connection with extensions of credit must meet the qualification requirements of this subpart. However, an evaluator may not be considered competent solely by virtue of being certified, licensed, or accredited. Any determination of competency shall be based on the individual's experience and educational background as they relate to the particular evaluation assignment for which such individual is being considered.

Subpart L—Actions on Applications; Review of Credit Decisions

3. Section 614.4440 is revised by redesignating paragraphs (f), (g), and (h) as new paragraphs (g), (h), and (i), respectively, and adding a new paragraph (f) to read as follows:

§ 614.4440 Definitions.

* * * * *

(f) *Independent evaluator,* for the purposes of this subpart, means an individual who is a qualified evaluator and who satisfies the standards established by § 614.4260 of subpart F of this part and by the Farm Credit System institution for the type of property to be evaluated.

The independent evaluator may not be a Farm Credit System institution employee or have a relationship with the institution or any of its officers or directors that contravenes the provisions of part 612, subpart B of this chapter.

* * * * *

4. Section 614.4443 is amended by revising paragraph (c) to read as follows:

§ 614.4443 Review process.

* * * * *

(c) *Independent collateral evaluations.*

(1) An applicant for a loan, or a borrower who has applied for a restructuring, may, as part of the request for a review, request an independent collateral evaluation by an independent evaluator, as defined in § 614.4440 of this subpart, of any interests in property securing the loan (other than the stock or participation certificates of the lender held by the borrower). Within 30 days after a request for a collateral evaluation, the credit review committee shall present the applicant or borrower with a list of three independent evaluators approved by the qualified lender, and the borrower shall select and engage the services of an evaluator from the list to conduct the collateral evaluation, the cost of which shall be borne by the applicant or borrower. The credit review committee shall consider the results of any such collateral evaluation in any final determination with respect to the loan or restructuring provided the applicant's or borrower's evaluator has provided a copy of the evaluation report to the lender not less than 15 business days prior to any scheduled meeting of the credit review committee, and

(2) Any such collateral evaluations that are not completed in conformance with the collateral evaluation requirements described in subpart F of this part relative to collateral evaluation standards, independence requirements, and qualification requirements need not be considered by the credit review committee. To facilitate the proper completion of such collateral evaluations, a copy of part 614, subpart F, of these regulations shall be provided to the borrower for presentation to the borrower's evaluator, and a copy signed by the borrower's evaluator shall be a required exhibit in the subsequent evaluation report.

* * * * *

Dated: November 12, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92-27961 Filed 11-19-92; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 90F-0045]

Food Additives Permitted For Direct Addition to Food For Human Consumption: Food Starch-Modified

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of modified food starch prepared using alpha-amylase. This action is in response to a petition filed by the Grain Processing Corp.

DATES: Effective November 20, 1992; objections by December 21, 1992.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vincent E. Zenger, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9523.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 19, 1990 (55 FR 10113), FDA announced that a food additive petition (FAP 9A4153) had been filed by the Grain Processing Corp., 1600 Oregon St., P.O. Box 349, Muscatine, IA 52761, proposing that food-starch modified (21 CFR 172.892) be amended to provide for the safe use of alpha-amylase to treat modified food starch. In fact, the food additive under review is modified food starch, not alpha-amylase. Thus, the petition requested, and the agency evaluated, the safety of the use of modified food starch prepared using alph-amylase.

FDA has evaluated data in the petition and other relevant material. The agency concludes that modified food starch prepared using alpha-amylase is safe and that § 172.892(h) should be amended and a new paragraph (i) should be added as set forth below. The agency also concludes that alpha-amylase should more properly be identified as "alpha-amylase (International Union of Biochemistry Enzyme Commission (E.C. 3.2.1.1.))."

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before December 21, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. Section 172.892 is amended in paragraph (h) by removing the phrase"paragraphs (a) and/or (b)" and adding in its place "paragraphs (a), (b), and/or (i)", and by adding new paragraph (i) to read as follows:

§ 172.892 Food starch-modified.

* * * * *

(i) Food starch may be modified by treatment with the following enzyme:

Enzyme	Limitations
Alpha-amylase (E.C. 3.2.1.1).	The enzyme must be generally recognized as safe or approved as a food additive for this purpose. The resulting nonsweet nutritive saccharide polymer has a dextrose equivalent of less than 20.

Dated: October 27, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–28178 Filed 11–19–92; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 178

[Docket No. 90F–0217]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of decanoic acid, nonanoic acid, phosphoric acid, propionic acid and sodium 1-octanesulfonate, and sulfuric acid as an optional ingredient, as components of a sanitizing solution to be used on food-processing equipment and utensils, including dairy-processing equipment. This action responds to a petition filed by West Agro, Inc.

DATES: Effective November 20, 1992; written objections and requests for a hearing by December 21, 1992.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 30, 1990 (55 FR 30983), FDA announced that a food additive petition (FAP 0B4203) had been filed by West Agro, Inc., 11100 North Congress Ave., Kansas City, MO 64153–1222, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of decanoic acid, nonanoic acid, phosphoric acid, propionic acid and sodium 1-octanesulfonate, and sulfuric acid as an optional ingredient, as components of a sanitizing solution to be used in contact with food.

I. Safety and Functional Effect of Petitioned Use of the Additives

Sanitizing solutions are regulated as mixtures of chemicals which function together to sanitize food-contact surfaces. Each listed component in a sanitizing solution has a functional effect. In addition, FDA regulations permit the addition to a sanitizing solution of any component that is generally recognized as safe (GRAS) (§ 178.1010(b)). The subject sanitizing solution contains decanoic acid, nonanoic acid, phosphoric acid, propionic acid and sodium 1-octanesulfonate, and sulfuric acid as an optional ingredient. The function of each component and the basis for FDA's determination of the safety of each component in the subject sanitizer are described below.

A. Decanoic Acid

Decanoic acid functions as an antimicrobial agent in the subject sanitizing solution. Decanoic acid is listed as a component in regulated sanitizing solutions under § 178.1010(b)(27), (b)(35), and (b)(36). On the basis of the data submitted in support of these already regulated uses and the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of decanoic acid is safe in the subject sanitizing solution.

B. Nonanoic Acid

Nonanoic acid functions as an antimicrobial agent in the subject sanitizing solution. Nonanoic acid is regulated for use as a direct food additive under 21 CFR 172.515. On the basis of the data submitted in support of this already regulated use and the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of nonanoic acid in the subject sanitizing solution is safe.

C. Phosphoric Acid

Phosphoric acid functions as an acidulant in the subject sanitizing solution. Phosphoric acid is listed as GRAS under 21 CFR 182.1073. It is also regulated for use in several sanitizing solutions under § 178.1010. On the basis of the data submitted in support of these already regulated uses, the data contained in the food additive petition submitted in support of this sanitizing solution, and other available data, FDA