

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. However, this proposed rule is part of FSIS' new approach to OCP as discussed in the ANPR published elsewhere in this issue of the **Federal Register**. Because the Office of Management and Budget designated the OCP ANPR as significant, FSIS submitted this rule to OMB for review.

Establishments producing cured pork products must comply with the food standards that specify a minimum percentage of meat protein after all fat has been removed from the product (9 CFR 319.104 and 319.105). This proposed rule only removes the requirements that specify the frequency at which FSIS samples such products.

This regulatory action would enable FSIS to better allocate its resources to address matters involving food safety. Because some establishments depend on FSIS' testing as a substitute for their own quality control responsibilities, such establishments may bear higher costs. Conversely, FSIS' new approach to economic sampling will focus enforcement actions on establishments that violate the requirements of the regulations. Sample collection will be less random and arbitrary. Therefore, some sample collection activities would be reduced in some establishments.

Additional Public Notification

FSIS has considered the potential civil rights impact of this public meeting on minorities, women, and persons with disabilities. FSIS anticipates that this proposed rule will not have a negative or disproportionate impact on minorities, women, or persons with disabilities. Proposed rules generally are designed to provide information and receive public comments on substantive issues that may lead to new or revised agency regulations or instructions. Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are made aware of this proposed rule and are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

FSIS provides a weekly FSIS Constituent Update, which is

communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** Notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information with a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Office of Congressional and Public Affairs, at (202) 720-5704.

Paperwork Requirements

There are no paperwork or recordkeeping requirements associated with this proposed rule.

List of Subjects

9 CFR Part 318

Compliance.

9 CFR Part 319

Standards.

For the reasons set forth in the preamble, FSIS proposes to amend 9 CFR Parts 318, 319, and 327, as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Part 318 would continue to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450, 1901-1906; 21 U.S.C. 601-695; 7 CFR 2.18, 2.53

PART 318—[REMOVED]

2. Part 318 would be amended by removing section 318.19.

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY AND STANDARDS OF IDENTITY OR COMPOSITION

3. The authority citation for Part 319 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901-1906; 21 U.S.C. 601-695; 7 CFR 2.18, 2.53

§ 319.104 [Amended]

4. Section 319.104 would be amended by revising footnote 1 of paragraph (a), by removing the phrase at the end of the sentence, "and compliance shall be

determined under § 318.19 of this subchapter for domestic cured pork products and § 327.23 of this subchapter for imported pork product.", by removing paragraph (c), and by redesignating paragraph (d) as paragraph (c).

§ 319.105 [Amended]

5. Section 319.105 would be amended by revising footnote 1 of paragraph (a), by removing the phrase at the end of the sentence, "and compliance shall be determined under section 318.19 of this subchapter.", by removing paragraph (c), and by re-designating paragraph (d) as paragraph (c).

PART 327—IMPORTED PRODUCTS

6. The authority citation for part 327 would continue to read as follows:

Authority: 21 U.S.C. 601-695; 7 CFR 2.18, 2.53

§ 327.23 [Removed]

7. Part 327 would be amended by removing section 327.23.

Done at Washington, D.C. on: March 13, 2000.

Thomas J. Billy,
Administrator.

[FR Doc. 00-6641 Filed 3-16-00; 8:45 am]

BILLING CODE 3410-DM-P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052-AB98

Loan Policies and Operations; Loans to Designated Parties

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), through the FCA Board, issues a proposed rule amending its regulations on the approval of loans to designated parties (Farm Credit System (System) "insiders" and those FCA and Farm Credit System Insurance Corporation (FCSIC) employees who may legally borrow from the System). The purpose of our proposal is to provide greater flexibility for banks and associations to approve loans to designated parties. The proposed rule also makes technical changes to conform to the Farm Credit Act of 1971, as amended. The existing regulations require a funding bank to approve all loans that it and its associations make to designated parties. The proposed amendment would give an association the option to let its own board of directors (or a committee of the board),

or in some situations its own management, approve these loans. This amendment would benefit banks and associations because it provides clear guidelines and streamlined procedures for approving loans to designated parties.

DATES: Please send your comments to us by April 17, 2000.

ADDRESSES: You may send comments by electronic mail to "reg-com@fca.gov" or through the Pending Regulations section of our Web site at "www.fca.gov." You may also send comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 or by fax to (703) 734-5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444, or
Jennifer Cohn, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our proposed amendment are to:

- Provide greater flexibility for banks and associations to approve loans to designated parties (System "insiders" and those FCA and FCSIC employees who may legally borrow from the System);
- Keep adequate controls on loans that banks and associations make to designated parties; and
- Make our regulations easier to understand and use.

II. Background

A. Withdrawn Direct Final Rule

Sections 614.4450, 614.4460, and 614.4470 of our regulations require a funding bank to approve all loans that it and its associations make to designated parties. On August 9, 1999, we published a direct final rule with opportunity to comment.¹ This direct final rule would have, in relevant part, repealed two of these regulations and amended the third. The revision would have allowed a bank or association to

make a loan to a designated party with the approval of its own board of directors. Under direct final rulemaking, a rule becomes effective without further proceedings unless we receive significant adverse comment.

One association provided a significant adverse comment on the revision. Four other associations also provided comments on the revision. Because of these comments, we withdrew the portion of the direct final rule on loans to designated parties on October 14, 1999.²

B. Comments on Direct Final Rule

All five commenters objected to our direct final rule's requirement that the board of directors of a bank or association must approve all loans made to designated parties. Four commenters stated that we should allow an association board of directors to delegate approval of loans to designated parties to management, with post review by the board. One commenter stated that we should allow an association board of directors to delegate approval of loans under a certain dollar amount to association staff, with post review by management. The commenter further suggested that management preapprove loans over that dollar amount.

The commenters provided five main reasons for their concern. Their comments and our responses are as follows:

First Comment: Directors do not have the expertise to make credit decisions; this is a task that professional lending staff should perform.

Response: We believe directors, who are elected by their shareholders to represent them in conducting the business of their banks and associations, are qualified to make decisions on loans to designated parties. We remind directors that, as we explain in our publication entitled *The Director's Role: Farm Credit System Institutions*,³ they are ultimately responsible for all decisions their banks and associations make. In making these decisions, directors may want to consult with the professional lending staff at their banks and associations, as well as with other credit experts.

Second Comment: Directors may be biased in reviewing and analyzing audit results if they have made the credit decisions.

Response: Part 612 of our regulations requires directors to remain impartial in carrying out their duties. We expect that directors will review and analyze audit

results on their credit decisions in an unbiased manner.

Third Comment: It may be difficult for the lending staff to remain independent and responsible to the board if they disagree with the board's credit decision.

Response: Boards of directors have the ultimate responsibility for conducting the affairs of the banks and associations they are elected to serve. Boards hire management and staff to conduct day-to-day operations. Management and boards must work together as teams to ensure that banks and associations meet the needs of their borrowers and satisfy safety and soundness concerns.

Fourth Comment: Directors may find it difficult to "pass judgment" on other directors.

Response: We agree that some directors may find it difficult to make decisions on the loans of other directors. We believe, however, that management may find it even more difficult to make such decisions. Because directors are ultimately responsible for the affairs of their bank or association, we believe it is more appropriate for them to consider and act on the credit requests of other directors. If directors feel unable to make an unbiased decision in a particular situation, they always have the choice of recusing themselves from that particular decision.

Fifth Comment: Directors do not want other directors to have access to their financial information.

Response: Section 612.2140(b) of our regulations prohibits directors from divulging or making use of any information they learn as directors. In addition, § 612.2135(b) requires directors to "exercise diligence and good judgment in carrying out their duties." We believe, therefore, that our regulations sufficiently address the misuse of financial information.

III. The Proposed Regulation

When we withdrew the portion of the direct final rule on loans to designated parties, we said that we would continue with this rulemaking at a later date. We now propose an amended rule governing loans to designated parties. In developing this proposed rule, we considered carefully all the comments that we received.

Our proposed regulation would provide greater flexibility for you⁴ to approve loans to designated parties, while keeping adequate controls on

¹ See 64 FR 55621.

³ Farm Credit Administration, *The Director's Role: Farm Credit System Institutions* (Aug. 1997).

⁴ As part of our objective to use plain language in our regulations, we use the word "you" to refer to banks and associations in this preamble and the proposed regulation.

¹ See 64 FR 43046.

these loans. The proposed regulation would continue to allow you to make loans to designated parties with bank approval, but it would also let an association's board of directors, and in some situations its own management, approve such loans. Because we are proposing the regulation in plain language, we believe it will be easier to understand and carry out.

The proposal would delete all references to district boards because the Agricultural Credit Technical Corrections Act of 1988⁵ abolished these boards. The proposal would also repeal § 614.4450, which provides "the authority for loan approval is vested in the Farm Credit banks and associations." More specific regulations providing for System lending authorities make this provision unnecessary.⁶

A. Section 614.4450—Definitions Used in the Proposed Regulation

We provide definitions of three key terms used in the proposed regulation. As part of our goal to use plain language in our regulations, we use the word "you" in the text of the proposed rule. Accordingly, we define "you" as a bank or association.

We define the term "designated parties" by providing a list of these parties. We updated this list from the existing §§ 614.4460 and 614.4470. The list includes bank and association "insiders" as well as certain employees of FCA and FCSIC.⁷

We define the term "loan" broadly. "Loan" means:

- The total of all loans and undisbursed commitments from you to a designated party; plus
- The total of all loans and undisbursed commitments from you to any other borrower if the designated party has a significant interest in the loan, proceeds or collateral.

B. Section 614.4460—Policy for Approval of Loans to Designated Parties

The proposed rule would require you to adopt a policy addressing the approval of loans to designated parties. Your policy must describe the procedures, as set forth in the proposed

rule, you will follow in making these loans.

Depending on the size of the loan, you may choose any one of three procedures for making loans to designated parties. The first procedure allows your board of directors (or a committee of your board) to approve loans that you make to designated parties. The second procedure permits the existing practice of allowing the funding bank to approve a loan made by an association. Finally, the third procedure permits your board of directors to delegate approval of loans of \$25,000 or less to designated parties to your management. Your board of directors must post review all loans to designated parties that management approves.

We continue to believe that management should not approve loans over \$25,000 to designated parties. Because of their size, these loans have greater risk potential for banks and associations. Requiring board or funding bank preapproval of these credit decisions will help ensure the approval decision is independent, objective, and free from any real or perceived conflicts of interest. The commenters contended that association boards may be uncomfortable with their own members approving loans to designated parties. If this is the case, association boards have the option of continuing to have decisions on loans to designated parties made by their funding banks.

Because loans of \$25,000 or less are relatively smaller, they create less potential risk for the banks and associations that make them. We believe our proposal will help to reduce the administrative burden of making loans of \$25,000 or less to designated parties.⁸

List of Subjects in 12 CFR Part 614

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

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

PART 614—LOAN POLICIES AND OPERATIONS

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

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13,

⁸ This proposed \$25,000 threshold is consistent with the "insider lending" regulations of the Office of the Comptroller of the Currency and the Federal Reserve System. See 12 CFR Parts 31 and 215, respectively.

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, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279c-1, 2279f, 2279f-1, 2279aa, 2279aa-5); sec. 413 of Pub. L. 100-233, 101 Stat. 1568, 1639.

2. Revise subpart M to read as follows:

Subpart M—Approval of Loans to Designated Parties

Sec.

614.4450 What definitions are used in this subpart?

614.4460 What approval policy must you adopt to make loans to designated parties?

Subpart M—Approval of Loans to Designated Parties

§ 614.4450 What definitions are used in this subpart?

(a) *You* means a Farm Credit bank or association.

(b) *Designated parties* means:

- (1) Farm Credit Administration employees allowed to borrow from you under 5 CFR 4101.104;
- (2) Farm Credit System Insurance Corporation employees allowed to borrow from you under 5 CFR 4001.104;
- (3) Your directors and employees;
- (4) Directors and employees of another bank or association under a joint management agreement with you;
- (5) Directors and employees of your funding bank if you are an association;
- (6) Cooperatives and other legal entities if any of their directors, officers, partners, or employees are also members of your board of directors; and
- (7) Other borrowers if any of the parties identified in this paragraph are:
 - (i) Recipients of the loan proceeds;
 - (ii) Stockholders or other equity owners of the borrowers who have significant interests in the loan funds or collateral; or
 - (iii) Endorsers, guarantors or comakers on the credit.

(c) *Loan or loans* means:

- (1) The total of all loans and undisbursed commitments from you to a designated party; plus
- (2) The total of all loans and undisbursed commitments from you to any other borrower if the designated party is:

- (i) A recipient of the loan proceeds;
- (ii) A stockholder or other equity owner of the borrower who has significant interests in the loan funds or collateral; or

⁵ Pub. L. No. 100-399, 102 Stat. 1003 (Aug. 17, 1988).

⁶ See 12 CFR part 614, Subpart A—Lending Authorities.

⁷ Our proposed regulation refers explicitly to the Supplemental Standards of Ethical Conduct regulations that we and FCSIC enacted in 1995. These regulations, at 5 CFR parts 4101 and 4001, respectively, specifically prohibit most FCA and FCSIC employees from borrowing from you. For example, FCA and FCSIC Board members, examiners, procurement personnel, and all employees over a certain civil service grade level cannot legally borrow from you.

(iii) An endorser, guarantor or comaker on the credit.

§ 614.4460 What approval policy must you adopt to make loans to designated parties?

You must adopt an approval policy to make loans to designated parties. Your policy must set forth the procedures you will follow in approving loans to designated parties. Depending on the size of the loan, you may choose from any of the following approval procedures:

(a) If you are a bank or association, your board of directors (or a committee of your board) may approve loans to designated parties;

(b) If you are an association, your funding bank may approve loans to designated parties; or

(c) If you are a bank or association, your board of directors may delegate to your management approval for loans of \$25,000 or less to designated parties, with post review by your board of directors.

Dated: March 13, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.
[FR Doc. 00-6568 Filed 3-16-00; 8:45 am]

BILLING CODE 6705-01-P

FARM CREDIT ADMINISTRATION

12 CFR Part 620

RIN 3052-AB94

Disclosure to Shareholders; Annual Report

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: Our regulations require Farm Credit Banks (FCBs) and agricultural credit banks (collectively referred to as banks) that present their financial statements on a combined basis to distribute their annual reports to the shareholders of their related associations. We propose to revise this requirement to provide that a bank generally need not distribute its annual report to the shareholders of any related association that discloses, in a separate section of its annual report, specified information about its financial and supervisory relationship with the bank. The proposed amendment would, however, require any bank that experiences a "significant event" to distribute its annual report to the shareholders of its related associations. We also propose to amend our regulation to provide that shareholders of Farm Credit System (System) institutions may obtain copies of an institution's financial reports by

electronic mail or on its Web site, as well as by traditional mail or telephone. This revision would benefit banks, associations and their shareholders because it would allow them to share necessary information at a reduced cost.

DATES: Please send your comments to us by April 17, 2000.

ADDRESSES: You may send comments by electronic mail to "reg-com@fca.gov" or through the Pending Regulations section of our Web site at "www.fca.gov." You may also send comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 or by fax to (703) 734-5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Robert E. Donnelly, Senior Accountant, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4450, TDD (703) 883-4444;

or

Jennifer A. Cohn, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our proposed amendment are to:

- Allow banks (and indirectly their related associations and their shareholders) to save significant printing and mailing costs by relaxing the requirement that they must routinely distribute their annual reports to the shareholders of their related associations; and
- Ensure that association shareholders continue to receive the information they need about how their associations' relationships with related banks affect their own investments in the associations.

II. Background

A. Reducing Regulatory Burden

On August 18, 1998, we published a notice in the **Federal Register** that invited commenters to identify existing regulations and policies that impose unnecessary burdens on the System. *See* 63 FR 44176 (Aug. 18, 1998).¹ We specifically requested commenters to focus on those regulations and policies

that are ineffective, duplicate other requirements, or impose burdens that are greater than the benefits received. We took this action as part of our continuing effort to improve the regulatory environment so the System can better serve farmers and ranchers.

Among the comment letters we received, two asked us to repeal the requirement imposed by § 620.4(b)(1). This regulation requires any bank that presents its financial statements on a combined basis with its related associations to distribute its annual report to the shareholders of the related associations. One comment letter was from the Farm Credit System Accounting Standards Work Group (ASWG), on behalf of banks that present their financial statements on a combined basis. The other comment letter was from the Farm Credit Bank of Texas (which also has a representative on the ASWG). Both commenters contended the requirement that banks distribute their annual report to an association's shareholders is of minimal benefit to those shareholders. The commenters pointed out that we already require associations to include in their own annual reports information about their financial and supervisory relationships with their related banks. The commenters stated that because of the high costs of printing and mailing annual reports to the associations' shareholders (costs that are reflected in the costs of funds of the associations and interest rates to their shareholders), the regulation imposes an undue burden. We considered these comments in drafting this proposed rule.

B. Policy Background of This Rule

We first required banks to distribute their annual reports to their related associations' shareholders in March 1986. At that time, our regulations required banks to supervise closely the activities of their related associations. In addition, many associations were experiencing severe financial difficulties and were relying heavily on their related banks for financial assistance. During the mid-1980s, banks were also experiencing their own financial difficulties. These financial difficulties were caused both by rapid changes in interest rates that hindered the banks' debt funding strategies and by the financial stress from the banks providing financial assistance to their related associations.

In part because banks and associations were so interdependent, in the mid-1980s we issued a regulation requiring banks to distribute their annual reports to shareholders of related associations. In this way, the

¹ On November 18, 1998, we extended the comment period to January 19, 1999. *See* 63 FR 64013 (Nov. 18, 1998).