(ii) Clauses that require a greater number of swine to be delivered as the contract continues.

(iii) Other clauses that provide for expansion in the numbers of swine to be delivered.

(5) *Maximum estimates of swine.* The packer's estimate of the maximum total number of swine that potentially could be delivered to each plant within each of the following 12 calendar months, if any or all of the types of expansion clauses identified in accordance with the requirement in paragraph (c)(4) of this section are executed. The estimate of maximum potential deliveries must be reported for all existing contracts by contract type as defined in § 206.1.

(d) *What if a contract does not specify the number of swine committed?* To meet the requirements of paragraphs (c)(3) and (c)(5) of this section, the packer must estimate expected and potential deliveries based on the best information available to the packer. Such information might include, for example, the producer's current and projected swine inventories and planned production.

(e) *When do I change previously reported estimates?* Regardless of any estimates for a given future month that may have been previously reported, current estimates of deliveries reported as required by paragraphs (c)(3) and (c)(5) of this section must be based on the most accurate information available at the time each report is prepared.

(f) *Where and how do I send my monthly report?* Each packer must submit monthly reports required by this section by either of the following two methods:

(1) *Electronic report.* Information reported under this section may be reported by electronic means, to the maximum extent practicable. Electronic submission may be by any form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable methods to submit information electronically, contact GIPSA through the Internet on the GIPSA Web site (*http://www.gipsa.usda.gov*) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309.

(2) *Printed report.* Each packer may deliver its printed monthly report to USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309.

(g) *What information from monthly reports will be made available to the public and when and how will the information be made available to the public?*

(1) *Availability.* GIPSA will provide a monthly report of estimated deliveries by contract types as reported by packers in accordance with this section, for public release on the first business day of each month. The monthly reports will be available on the Internet on the GIPSA Web site (*http://www.gipsa.usda.gov*) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309.

(2) *Regions.* Information in the report will be aggregated and reported by geographic regions. Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality in accordance with section 251 of the Agricultural Marketing Act (7 U.S.C. 1636) and may be modified from time to time.

(3) *Reported information.* The monthly report will provide the following information:

(i) The existing contract types for each geographic region.

(ii) The contract types currently being made available to additional producers or available for renewal to currently contracted producers in each geographic region.

(iii) The sum of packers' reported estimates of the total number of swine committed by contract for delivery during the next 6 and 12 months beginning with the month the report is published. The report will indicate the number of swine committed by geographic reporting region and by contract type.

(iv) The types of conditions or circumstances as reported by packers that could result in expansion in the numbers of swine to be delivered under the terms of expansion clauses in the contracts at any time during the following 12 calendar months.

(v) The sum of packers' reported estimates of the maximum total number of swine that potentially could be delivered during each of the next 6 and 12 months if all expansion clauses in current contracts are executed. The report will indicate the sum of estimated maximum potential deliveries by geographic reporting region and by contract type.

(h) *Where and how do I file a waiver request?* The waiver request must be submitted in writing and include a statement that the packer does not procure swine using marketing agreements. The packer must send the waiver request to the GIPSA Regional Office in Des Moines, Iowa. If the waiver request is approved, GIPSA will inform the packer in writing that it has been granted a waiver for 12 months following the date of receipt of the waiver request unless the status of the packer changes during that year. The packer will be notified to submit the information required in this part if it begins using marketing agreements during the waiver period or if GIPSA determines that the packer utilizes marketing agreements.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

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FARM CREDIT ADMINISTRATION

12 CFR Chapter VI

RIN 3052–AC39

Statement on Regulatory Burden

AGENCY: Farm Credit Administration.

ACTION: Final notice of intent.

SUMMARY: This notice of intent is part of the Farm Credit Administration's (FCA, Agency, or we) initiative to reduce regulatory burden for Farm Credit System (FCS or System) institutions. Several System institutions responded to our June 2008 notice of intent inviting comments on FCA regulations that may duplicate other requirements, are ineffective, or impose burdens that are greater than the benefits received. In response to some of those comments, we plan to publish a direct final rule separately in the **Federal Register** to make technical changes and corrections to some of our regulations. This notice of intent responds to the comments that address regulatory projects we have identified for FCA consideration and regulations we are not changing at this time.

FOR FURTHER INFORMATION, CONTACT:

Jacqueline R. Melvin, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or

Mary Alice Donner, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

I. Background

On June 23, 2008, we published a notice of intent in the **Federal Register** inviting the public to comment on FCA regulations that may duplicate other requirements, are ineffective, or impose burdens that are greater than the benefits received. *See* 73 FR 35361. We specifically requested comments on regulations concerning (1) assessment and apportionment of administrative expenses, (2) loan policies and

operations, (3) leasing, (4) borrower rights, (5) general provisions, and (6) nondiscrimination in lending. In addition, we received comments on regulations concerning (1) organization, (2) standards of conduct and referral of known and or suspected criminal violations, (3) eligibility and scope of financing, and (4) grounds for appointment of conservators and receivers.

We received letters from AgFirst Farm Credit Bank (AgFirst); AgriBank, FCB (AgriBank); CoBank, ACB (CoBank); Farm Credit Bank of Texas (FCBT); and the Farm Credit Council (FCC) containing comments covering a range of FCA regulations. The purpose of this notice of intent is to inform the public of regulations commented on that will not be changed in connection with this regulatory burden project. Some of the regulations will be retained without amendment because they implement statutory requirements or safety and soundness measures that cannot be changed or need significant further evaluation before we can consider whether changes are appropriate. Many of these comments are the same or similar to those we received and considered (but did not implement) in the past. Other comments concern regulations that will not be changed as part of this regulatory initiative because they are the subject of other regulatory initiatives. For example, since June 2008, we have published proposed rules on director elections and effective interest rates. Some comments concerning those issues will be considered by the Agency in the development of the respective final rule, but not in this regulatory burden notice. FCA's Regulatory Performance Plan (RPP) projects those rules going final in December 2009 and January 2010, respectively. *See http://www.fca.gov/law/perf_plan.html.* Also, a number of the issues raised by commenters are the subject of other regulatory projects scheduled for consideration by the FCA as set forth in the RPP and FCA's semiannual Unified Agenda of Regulatory and Deregulatory Actions published at *www.reginfo.gov.* Those comments will be considered as part of the regulatory process of those projects.

The following section summarizes the comments we received on regulations that (1) we cannot change or are not proposing to change at this time, or (2) we will consider in regulatory projects that have been identified by the FCA.

II. Regulations That We Are Not Proposing To Change at This Time

A. Organization—Director Elections

Comments: AgriBank stated that our regulations governing director elections inappropriately create the impression that FCA, as an arm's-length regulator, is the party most capable of determining how the owners of an institution should choose their representatives on a board of directors. Further, AgriBank stated that stockholders should be allowed to nominate and elect directors in any manner they deem appropriate, as provided in the Farm Credit Act of 1971, as amended (Act), so long as whatever process they choose provides for fair and equitable representation for all stockholders.

FCA Response: The FCA published a proposed rule at 74 FR 17612 on April 16, 2009, that would amend FCA rules on System bank and association director elections and other voting procedures. The comment will be addressed in that rulemaking. We are planning to issue a final rule early next year.

B. Standards of Conduct and Referral of Known or Suspected Criminal Violations—Joint Officers

Comments: The FCC stated that the FCA should consider revising § 612.2157 prohibiting employment of joint officers by a System bank and one of its affiliated associations because some System institutions have noted that there may be situations in which the best ''business case'' practice for cost-effective operations could be the use of joint officers. AgriBank stated that § 612.2157 prohibits joint officers of a Farm Credit bank and an association in the same district and that such a prohibition prevents a Farm Credit bank and association from voluntarily combining some or all of the operations of the two entities to achieve greater efficiency. AgriBank commented that this regulation prevents the members/owners of these institutions, and their elected directors, from determining the manner in which they choose to operate these interdependent institutions.

FCA Response: On May 13, 1994, the FCA published a final rule at 59 FR 24889 prohibiting bank officers from being employed by an association in its district to preserve the integrity and independence of the supervisory process. However, employees other than officers may serve jointly provided each institution appropriately reflects the expense of such employees in its financial statements. As illustrated in its Unified Agenda, the FCA is conducting a review of its Standard of Conduct regulations. In that review, we will consider whether and when waivers of certain standards of conduct provisions may be permitted. This comment will be considered as part of that review.

C. Eligibility and Scope of Financing—Financing for Farm-Related Service Businesses

Comments: The FCC stated that we should consider a revision to § 613.3020 regarding eligibility for farm-related service financing. The FCC believes that the Act allows FCA considerable discretion in defining the types of businesses eligible to be considered ''farm-related'' services and that the 50-percent requirement for full financing is too restrictive. To support its comment, the FCC stated that in many cases involving farm-related businesses the service component is so interwoven with the product being provided that an attempt to distinguish the service amount from the value of the product can be arbitrary. The FCC also stated that the FCA should include ''aquatic-related'' service providers as eligible for System financing and that the FCA should undertake a comprehensive review of the statutory authority, removing any impediments to eligibility for System financing that is not based on the Act.

FCA Response: This request is beyond the scope of regulatory burden and, while we are not proposing any changes to our regulations at this time, we will consider this comment in any future reviews of § 613.3020.

D. Loan Policies and Operations

Comments: We received numerous comments on part 614 regarding FCA regulations on loan policies and operations. The FCC stated that we should review § 614.4040 in regard to the required amortization period for intermediate-term loans and that loan terms should be based on sound lending practices, the borrower's credit strength, and the cash flow analysis of the operation. AgriBank stated that while FCA regulations limit the amortization of intermediate-term loans to 15 years, the Act does not. AgriBank added that prohibiting amortization over a period greater than 15 years prevents production credit associations (PCAs) from being able to meet the needs of creditworthy borrowers who desire such terms. AgriBank further stated that § 614.4040(a) provides that a PCA intermediate-term loan may not be made solely for the purpose of acquiring unimproved real estate, and that this restriction has no statutory basis and creates inconsistency in that it does not apply in situations where the real estate

offered as security is presently owned by the borrower.

FCA Response: The Act does not explicitly address amortization limits. The FCA may conduct a review to determine if its regulations concerning intermediate-term loans should be updated. If such a review is conducted, it would include FCA rules concerning amortization. However, we are not proposing any changes at this time.

Comments: The FCBT stated that § 614.4165(b) requires Farm Credit banks to develop policies that direct associations to establish young, beginning, and small (YBS) farmers and ranchers programs that ensure coordination with other System institutions and other governmental and private sources of credit and provide reports to the funding bank. Section 614.4165(c) requires YBS programs to contain other minimum components, including a mission statement, quantitative targets, qualitative goals, and methods to ensure safety and soundness. Paragraph (d) provides for the supervising bank to review association programs, but only with respect to the requirements of paragraph (c) and not those of paragraph (b). The FCBT comments that this distinction does not appear to be consistent with the Act, serves no apparent purpose, and results in a confusing and burdensome differentiation in the bank's approval process. The FCBT further stated that the bank's approval of the association's program should be based on compliance with the bank's policy as provided in the statute.

FCA Response: We believe Congress intended that YBS programs be developed by the System lenders who have the most knowledge of their territories. The review and approval requirement is mandated by statute, and we developed this section to allow each direct lender association the maximum flexibility in creating a YBS program that takes into consideration the economy and demographics of its territory, as well as its risk-bearing capacity. The review and approval requirement was limited in response to comments from System institutions received during the notice and comment period for § 614.4165. The rule recognizes the changing relationship between the funding banks and their affiliated associations, and that associations operate much more independently from their funding banks. Therefore, we are not proposing any changes to our regulations at this time.

Comments: AgriBank stated that our current definition of ''small'' farmers, ranchers, or producers or harvesters of aquatic products (as set forth in revised bookletter BL–040, issued on August 10, 2007) should be modified to be consistent with small borrower reporting utilized by the commercial lending industry, which is based on loan size rather than borrower annual gross farm sales. To support its comment, AgriBank stated that in adopting a loan size approach to small business and small farm reporting, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve Board concluded that the risk of inaccuracy is limited because loan size approximately correlates with the size of a business or farm borrower.

FCA Response: The FCA has defined YBS borrowers in a manner to minimize burden on the System lenders by using characteristics such as age, number of years farming, and gross farm sales. These characteristics are most relevant to farming and are consistent with the definition of small farmer used by the United States Department of Agriculture. We believe our definition of small farmer is the least burdensome one to meet the purposes of, and measure performance under, section 4.19 of the Act. Therefore, we are not proposing any changes to our definition at this time.

Comment: CoBank stated that the FCA should amend the definition of ''interests in loans'' in § 614.4325(a)(1) to make clear that it includes not only whole loans, but also participation interests since both types of interests qualify as ''interests in loans.''

FCA Response: The FCA's definition of ''interests in loans'' is ownership interests in the principal amount, interest payments, or any aspect of a loan transaction and transactions involving a pool of loans, including servicing rights. We specifically address loan participations in § 614.4330, and to amend the definition of ''interests in loans'' to include loan participations would create redundancies and overlap between the regulatory provisions that could lead to confusion and contribute to regulatory burden. Therefore, we are not proposing any changes to our regulations at this time.

Comments: The FCC stated that the existing requirements in § 614.4325(e) for each institution to make an independent judgment on the creditworthiness of the borrower may not be cost-effective, and there may be alternative methods of making appropriate credit decisions regarding purchase of a participation, particularly in cases involving a pool of loans. AgriBank stated that System institutions should be permitted to underwrite loan participations on a composite analysis basis where the purchase of a group or pool of loans would determine the extent of analysis required. AgriBank stated that the analysis could entail evaluation of the originator's or lead lender's underwriting policies and loan-servicing procedures; assessment of financial and operating statements; and review of loan pool characteristics such as secured/unsecured, term, amortization, minimum/maximum size, minimum ownership by pool administrator, industry concentrations, source of loans, pricing strategy, and reporting requirements.

FCA Response: The overarching intent of this regulation remains safety and soundness of the System institutions. While we believe that the commenter's suggestion with respect to loan pools may be worthy of further review, more research is necessary; therefore, we are not proposing any changes to our regulations at this time.

Comments: CoBank stated that the FCA should consider adding a provision in loan purchases and sales similar to § 614.4325(h) that explicitly authorizes loan sales, including participations, through the use of agents as well. To support its comment, CoBank stated that the FCA has expressly allowed agency relationships where one System institution performs various functions (*e.g.,* underwriting and approval) as agent for a second originating System institution if the loan is designated for sale to the agent and as long as they are based on standards set forth in board policies and in agreements between two System institutions.

FCA Response: The authority of an FCS institution to purchase loans is not commensurate with its authority to sell loans. For example, section 1.5(16) of the Act authorizes a Farm Credit bank to sell interests in loans to non-System institutions, but authorizes the bank to purchase or sell interests in loans to System institutions. Further, a System institution has additional fiduciary responsibilities when it purchases loans. For example, § 614.4325(e) requires a purchasing System institution to make an independent judgment on the creditworthiness of the borrower, which judgment may not be delegated to any person not employed by the institution. Section 614.4325(h) addresses the use of an agent to perform some of the unique responsibilities of the purchasing System institution. Because System institutions are not subject to the same regulatory and statutory requirements, or the same fiduciary responsibilities, when they sell loans, a provision parallel to § 614.4325(h) for sales of loans is

unwarranted. Loans and interests in loans may be sold in accordance with each institution's lending authorities as set forth in part 614, subpart A. Use of an agent in the sale of loans would be permissible subject to subpart A and to the institution's own lending authorities and policies. Therefore, we believe that additional regulations addressing the use of agents in the sale of loans are unnecessary.

Comments: AgriBank stated that FCA should remove the provision in § 614.4325(h) that obligates a funding bank that serves as agent in a transaction to purchase all loans from the association if the association determines that the loan does not comply with the terms of the agency agreement or the association's loan-underwriting standards. AgriBank commented that the purchase obligation creates a perpetual contingent liability on the funding bank's balance sheet and that it serves no useful purpose and imposes an unacceptable burden. AgriBank suggested that, in the alternative, the regulation should be amended to require the association's exercise of this ''put'' option within a specified period or not more than 12 months, sufficient time to allow the association to make its determination.

FCA Response: Section 614.4325(h)(4) provides that if an association's funding bank serves as its agent, the agency agreement must provide that the association can terminate the agreement upon no more than 60 days notice to the bank and that the association may, in its discretion, require the bank to purchase from the association any interest in a loan that the association determines does not comply with the terms of the agency agreement or the association's loan-underwriting standards. This provision ensures safety and soundness by providing a remedy to an association injured by a bank's breach of the agency agreement and minimizes any possible effect of an unequal bargaining position between a bank and an association. While we are not proposing any changes to the regulations at this time, we may consider future rulemaking or guidance that would put a time limit on the exercise of the ''buyback'' option if it would facilitate the accounting of the selling bank.

Comments: CoBank stated that § 614.4335(b) should be amended to address the stock purchase requirement that impacts loans designated at closing for sale (either a 100-percent whole or a 100-percent participation interest, including loans closed under an agency agreement under which the FCS agent would purchase a 100-percent participation or whole loan immediately after loan closing). CoBank also stated that the regulation should be amended to permit bylaws to provide that the minimum stock purchase requirement shall not apply to these types of transactions (similar to how secondary market sales are addressed). CoBank commented that such an amendment would address the administrative burden of requiring a $1,000 purchase of an originating lender's equity by customers whose only contact with the originating lender thereafter will be minimal or nonexistent.

FCA Response: Section 4.3A(f)(1) of the Act allows a bank or association's bylaws to provide, in the case of a loan that is designated, at the time the loan is made, for sale into a secondary market, that no voting stock or participation certificate purchase requirement shall apply to the borrower for the loan. The regulatory language is parallel to the statutory authority, and to make the change suggested would require further inquiry and notice and comment rulemaking. It is beyond the scope of this regulatory burden initiative, and while we may consider this change in future guidance or rulemaking, we are not proposing any changes to our regulations at this time.

Comment: CoBank commented that the FCA should amend § 614.4337(a) to permit the disclosure to borrowers to be made by the purchasing institution with the written consent of the selling institution. In the alternative, CoBank suggested that the regulations should require the selling institution to copy the purchasing institution on its disclosure to the borrower to ensure that the purchasing institution can meet its obligations.

FCA Response: The originator of a loan is accountable to the borrower for the disclosure requirements of § 614.4337(a). The Act requires that System banks and associations issue voting stock or participation certificates to borrowers and that System ''qualified lender'' institutions provide borrower rights to certain borrowers. These institutions are in the best position to explain the impact of the sale on these matters. The selling and purchasing institutions can work out notice requirements in the purchase agreement as they deem appropriate. Therefore, we are not proposing any changes to this regulation at this time.

Comments: The FCC commented that existing rules regarding loan approval authority should be re-evaluated (§§ 614.4460–4470) to reflect both structural changes in the System (reference to the ''district board''), as well as the relationship between banks and affiliated associations. The FCC further commented that direct lender associations already have extensive procedures for ''official'' loans, in terms of loan underwriting, credit administration, and internal review and reporting, and that a regulatory requirement for bank approval of these loans conflicts with the debtor-creditor relationship between the bank and an association. AgriBank commented that System banks should be removed from the loan approval process for loans made by an association to designated parties because, as direct lenders, associations are fully capable of administering their own loan approval processes and implementing appropriate internal controls, including reporting of loan approval actions to their boards of directors.

FCA Response: Sections 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 April 24, 1995, the FCA issued a rulemaking eliminating certain prior approvals by the FCA as an arm's-length regulator. *See* 60 FR 20008. Given the passage of time, it may be appropriate to update this section and review the loan approval process in general. This effort would take place in the context of guidance or a rulemaking and is beyond the scope of this regulatory burden initiative.

Comments: CoBank stated that the requirement in § 614.4550 that prohibits banks from funding an ''other financing institution (OFI)'' outside of its chartered territory unless proper notification is granted to the bank chartered to serve the territory is unnecessarily restrictive. CoBank also stated that because it is not always clear when an ''application'' is received (could be in stages, withdrawn, resubmitted later, etc.), a dispute could result between the two banks as to whether the notice was properly and timely given. CoBank further states that a fairer and much more workable standard would be that a bank could not enter into a funding relationship with an OFI outside of its territory until 45 days after notification of its intent to commence funding to allow ample time for the ''in territory'' bank to seek its business.

FCA Response: Section 614.4550 states that a Farm Credit bank or agricultural credit bank cannot fund, discount, or extend other similar financial assistance to an OFI that maintains its headquarters or has more than 50 percent of its outstanding loan volume to eligible borrowers who conduct agricultural or aquatic operations in the chartered territory of

another Farm Credit bank unless it notifies such bank in writing within 5 business days of receiving the OFI's application for financing. The FCA has previously received similar comments from System institutions concerning the 5-day written notice requirement. As we have previously responded, the 5-day notice requirement has no relationship to the credit approval process, and providing written notice to another bank within 5 days should not be costly or difficult for any bank that receives applications from OFIs outside its chartered territory. We would expect a bank to make a good faith effort to determine when notification should be made, and although we may consider future guidance to this effect, we are not proposing any changes to the regulation at this time.

Comment: CoBank states that it sees no reason for a prohibition on two or more Farm Credit banks simultaneously funding an OFI.

FCA Response: In the past, we acknowledged that System arguments against this ban may have some merit, but determined that policy concerns justify the FCA's decision to retain it. Generally, each FCS association receives all its funding from one Farm Credit bank, and therefore, the ban on two or more Farm Credit banks simultaneously funding the same OFI is consistent. Further consideration of this issue is outside the scope of regulatory burden.

E. Leasing—Stock Purchase Requirements

Comment: CoBank requested that the stock purchase requirement exception in § 616.6700 be amended to apply to the Farm Credit Leasing Services Corporation (Leasing Corporation) or its legal successor, upon merger or dissolution of the Leasing Corporation. The Leasing Corporation is wholly owned by CoBank, and CoBank has considered other structures for it.

FCA Response: Section 616.6700 provides each System institution making an equipment lease must require the lessee to buy or own stock or a participation certificate in the institution making the lease, but provides an exception from this requirement for the Leasing Corporation. The FCA agrees that the exception may also apply to the Leasing Corporation's legal successor, but will make that determination if and when the Leasing Corporation's structure is changed.

F. Borrower Rights

Comments: The FCBT stated that the borrower rights requirements of § 617.7015(c) regarding loan sales are unduly restrictive, particularly with respect to parties who have a junior lien or other interest in the loan. The FCBT further states that while the requirements of this regulation could perhaps be justified for some sales to third parties who have no prior interest in or liability on the loan, it is difficult to see how the policies of the Act are served by imposing borrower rights obligations to junior lien holders or family members who may have cosigned or furnished collateral for a borrower's loan.

FCA Response: Borrower rights were created to protect the borrower from foreclosure by providing the borrower the opportunity to restructure a distressed loan. Borrower rights are part of the agricultural credit extended by the FCS and belong to the borrower, not the lender. It is therefore the borrower's choice whether to relinquish these rights to facilitate a loan sale. Thus, we do not believe the decision to waive or otherwise relinquish borrower rights should be made when the borrower is in an unequal bargaining position to the lender. As such, §§ 617.7010 and 617.7015 provide limited circumstances when a borrower is in a sufficiently equal bargaining position in which to waive these rights. In the case of loan sales to nonqualified lenders, our rule requires the lender to either make provisions for the borrower to relinquish borrower rights at the time of loan making or to obtain the borrower's release before the loan is sold. We do not believe there is a basis for distinguishing junior lien holders or holders of other interests in the loan with regard to borrower rights.

Comment: The FCC commented that the statutory requirements for disclosure of effective interest rates is less restrictive than the regulation and that the FCA should consider the use of standardized representative examples regarding the impact of stock purchase on effective interest rates.

FCA Response: Section 4.13(a)(3) of the Act states that, at loan closing, the purchase of borrower stock must be disclosed as a cost of the credit in determining the effective rate of interest on a loan. Section 617.7125(a) states that a qualified lender must calculate the effective interest rate (EIR) on a loan using the discounted cash flow method, showing the effect of time on the value of money. Accordingly, we believe that in order for borrower disclosure to be ''meaningful,'' as is required by statute, the disclosure should take into account the specific loan for which the disclosure is being provided. The EIR disclosure should be derived from the interest rate and related charges applicable to the loan being made to the borrower. We are not proposing changes responsive to this comment at this time.

Comments: The FCBT stated that the regulatory disclosure requirements in § 617.7135(a) and (b) could be simplified for FCS institutions without materially harming the interest of borrowers if the notification of changes in the interest rate was the same for all loans, whether or not the rate is tied to an external index. The FCBT also stated that where an interest rate is based on a widely published external index plus a spread, disclosure of a change of rate should not be required merely when the index changes, but should be required only when the change of rate is caused by a change in the spread. AgFirst stated that where the loan transaction is priced with the use of an external index added to a set margin, no additional disclosure should be required as the lender has not modified the interest rate. AgFirst also stated that the cost of mailing the notifications places institutions at a competitive disadvantage relative to other lenders that are not required to disclose changes unless resulting from a modified margin. AgFirst further stated that the additional notification does not provide the borrower any more information than is already available in financial journals or news Web sites for the current value of the index. The FCC believes the disclosure procedures for rate change notices on loans with an external index can be streamlined.

FCA Response: On June 19, 2009, we published a proposed rule amending our EIR regulation regarding interest rate changes. *See* 74 FR 29143. Comments discussed above will be considered by the FCA during that rulemaking project.

G. General Provisions

Comment: The FCBT stated that the requirement in § 618.8025(a) for a Farm Credit bank's board of directors to verify that a System association has performed a feasibility analysis before offering a related service is beyond the Act, is burdensome, and accomplishes very little that could not be performed by FCA.

FCA Response: Section 2.5 of the Act authorizes a PCA to offer related services as determined feasible by the board of directors of a Farm Credit bank. Section 2.12(15) of the Act authorizes a Federal land bank association to offer related services that it determines, with Farm Credit bank approval, are feasible. Thus, a Farm Credit bank has a statutory role in the determination of whether a related service program is feasible for an association to offer. Therefore, we are

not proposing any changes to our regulations at this time.

Comment: The FCBT commented that the regulatory requirement in § 618.8040(b)(9) is not required by the Act and may be viewed as an imposition on the borrower. Section 618.8040(b)(9) prohibits a bank or association from conditioning the extension of credit or other provision of service on the purchase of insurance sold or endorsed by a bank or association. At the time insurance is offered, a bank or association must present a written notice that the service is optional, and the borrower must sign the notice.

FCA Response: Section 4.29(b)(1) of the Act requires FCA regulations to provide that in any case in which insurance is required as a condition for a loan or other financial assistance from a bank or association, notice be given that it is not necessary to purchase the insurance from the bank or association and that the borrower has the option of obtaining the insurance elsewhere. The signed notice gives effect to this statutory requirement and we do not believe it imposes an undue burden on the bank, association, or the borrower. Thus, the FCA believes it is important to continue this requirement and we are not proposing any changes in our regulations at this time.

Comments: CoBank stated that FCA should amend § 618.8330(b) to permit disclosure of confidential borrower documents upon the issuance of an administrative subpoena with the proviso that the FCS institution may insist on a judge's order if there is reason to believe that the request is inappropriate under the circumstances. AgFirst stated that the current process related to the production of documents during civil litigation creates unnecessary burdens of time and expense for an association, while affording no additional protection to the borrower. The FCC stated that in regard to the provisions of the regulations on confidentiality of borrower information, the Agency should revisit the requirements as they relate to issuing subpoenas.

FCA Response: On August 9, 1999, the FCA published a direct final rule at 64 FR 43046 that allowed a bank or association that is a party to litigation with a borrower to disclose confidential information, and required that if the government, bank or association is not a party to litigation, confidential documents or testimony may be produced only under the lawful order of a court. We believe that this requirement is necessary to protect confidentiality of borrower information because only the judge can impartially decide whether the litigant needs the information in the institution's possession. Therefore, we do not believe this request warrants any change to our regulations at this time.

H. Disclosure to Shareholders

Comment: The FCC stated that the FCA's regulations that allow associations the option of disclosing information regarding compensation of senior officers in either the annual report or in the annual meeting information statement should be reviewed because System banks should have the similar ability to disclose that information in some other manner to their stockholders.

FCA Response: The FCA is currently conducting a review of compensation, retirement programs, and related benefits to consider changes addressing disclosure and compliance requirements for executive compensation, pension, and other benefit programs in the FCS. This comment will be considered in the course of that review.

I. Conservators, Receivers, and Voluntary Liquidations

Comments: AgriBank stated that § 627.2710(b) prohibits a funding bank from enforcing the terms of its general financing agreement (GFA) upon a default by an association without the prior approval of the FCA. AgriBank commented that this is an unwarranted infringement on the bank-association contractual relationship that places the bank in the precarious position of entering into a lending relationship with an association without the ability to collect the indebtedness due absent the approval of a third-party regulator.

FCA Response: This regulation does not prevent or prohibit a funding bank from enforcing the terms of its GFA. The regulation does, however, provide that one of the grounds for appointment of a receiver or conservator is a default by the association on one or more terms of its GFA with its affiliated bank if the FCA determines the default to be material. As we stated in our July 22, 1998, rulemaking, the FCA, not the bank or the association, has the statutory authority for determining the grounds for appointing a conservator or receiver. *See* 63 FR 39219. We cannot delegate that authority to a funding bank, and we will be the authority that determines whether a default of the GFA is materially sufficient to warrant appointment of a conservator or receiver. Due to the significance of a material default of the GFA to an association's financial condition and ability to continue operations, we believe that this is a material safety issue. Thus, we are not proposing any changes to our regulations at this time.

III. Future Efforts To Reduce Regulatory Burden on FCS Institutions

As noted above, we will consider remaining regulatory burden issues raised during the comment period in separate regulatory projects. We will continue our efforts to remove regulatory burden. However, we will maintain those regulations that are necessary to implement the Act and that are critical for the safety and soundness of the System.

Dated: October 20, 2009.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–19559; Directorate Identifier 2004–NE–03–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 700 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Rolls-Royce plc (RR) RB211 Trent 700 series turbofan engines. That AD currently requires initial and repetitive borescope inspections of the high pressure-and-intermediate pressure (HP–IP) turbine internal and external oil vent tubes for coking and carbon buildup, and cleaning or replacing the vent tubes if necessary. This proposed AD would require the same actions, but would add additional inspections of the vent flow restrictor. This proposed AD results from further analysis that the cleaning of the vent tubes required by AD 2007–02–05 could lead to loosened carbon fragments, causing a blockage downstream in the vent flow restrictor. We are proposing this AD to prevent internal oil fires due to coking and carbon buildup that could cause uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by December 28, 2009.