

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 614, and 618

RIN 3052-AB87

Organization; Loan Policies and Operations; General Provisions; Chartered Territories

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend Farm Credit Administration (FCA or Agency) regulations to provide customers of the Farm Credit System (FCS, Farm Credit, or System) with the opportunity to do business with the FCS lender of their choice. The rule proposes to amend regulations to permit farmers, ranchers, and other eligible customers to seek financing and related services from any association or FCS bank operating under title I or II of the Farm Credit Act of 1971, as amended (Act). The rule proposes to eliminate geographic barriers that often prevent an FCS lender from serving customers with operations beyond its designated territory. At the same time, the rule proposes to ensure every eligible customer's continued access to FCS credit and services. It also continues to obligate each Farm Credit Bank (FCB), agricultural credit bank (ACB), and association to extend sound, adequate, and constructive credit and offer related services to eligible customers within its chartered territory. An institution that extends credit or offers related services to borrowers beyond its designated territory must adopt a board policy and a business plan that adequately guide these activities. The rule also proposes to make conforming amendments to other regulations.

DATES: Please send your comments to us on or before February 8, 1999.

ADDRESSES: You may mail or deliver written 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 send them by facsimile transmission to (703) 734-5784. You may also submit comments via electronic mail to "reg-comm@fca.gov" or through the Pending Regulations section of our website at "www.fca.gov." You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

S. Robert Coleman, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444;

or

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

SUPPLEMENTARY INFORMATION:

I. General

The FCA proposes to repeal the restrictions in several existing regulations so eligible customers can seek financing and related services from the System institution of their choice. This is the first major step to implement the FCA Board's Philosophy Statement on Intra-System Competition adopted July 14, 1998. We believe that the existing notice and consent restrictions on lending and related services have become burdensome to both borrowers and System institutions. This has been heightened by significant changes in agriculture and the financial markets. The removal of these restrictions will allow associations and System banks operating under title I or II of the Act to increase operating efficiencies and offer better service to creditworthy and eligible borrowers. With the removal of these existing restrictions, System lenders must modify their policies and business plans as necessary to ensure that they continue to operate in a safe and sound manner.

We believe that the most efficient and least disruptive way to provide customers greater flexibility in selecting their FCS lender and service provider is through modification of existing regulations. The rule proposes to amend the regulations in parts 611, 614, and 618 to:

- Repeal the existing notification and consent requirements for lending and

related services in §§ 614.4070 and 618.8030;

- Allow eligible customers to apply for credit and related services from any association or Farm Credit bank operating under title I or II of the Act;
- Require each association or Farm Credit bank operating under title I or II of the Act to continue to fulfill its obligation to serve all eligible and creditworthy customers within its designated territory; and
- Continue to promote safety and soundness by requiring each System lender to develop appropriate policies and revise its business plans before material amounts of credit or related services are extended beyond its designated territory.

II. History and Background

Section 1.1 of the Act states that the mission of the FCS is to furnish, on an ongoing basis, sound, adequate, and constructive credit and related financial services to America's agricultural and aquatic producers, their cooperatives, and other eligible rural residents. The FCS is organized as a nationwide network of cooperative banks, associations, and service corporations that are owned and controlled by the farmers, ranchers, aquatic producers or harvesters, and cooperatives that borrow from them. The charter of each System bank and association designates a geographic territory in which the institution will exercise its authorities. Although the two System banks that operate under title III of the Act have national charters to furnish credit and related services to cooperatives and rural utilities, all other System banks and associations have designated territories that cover a specified geographic region.

In the past, the FCA has used its broad power to charter, regulate, and examine System institutions in a way that generally promoted exclusive territories. This policy, which worked well for the agricultural sector in earlier times, now unnecessarily restricts customers' choice of lenders and service providers and hinders the System's ability to provide ample, efficient, and high-quality credit and related services. Consolidations in many sectors of the agricultural economy have created fewer, larger, and more vertically integrated producers that operate in several locations and require more diversified financial services.

Additionally, consolidations in the financial services markets and rapidly changing technologies are creating new sources and methods of delivery for credit and related services that transcend geographic boundaries.

The positive aspects of the former policy have eroded over the past decade as agriculture, in general, and the FCS, in particular, have restructured in response to significant economic changes. As a result of this restructuring, a notable amount of geographic competition has come about in the System. Both title III banks now operate nationally, providing cooperative customers with a choice of lender. In over 130 counties across the country more than one FCS association now offers the same type of financing to eligible borrowers. Thus, in many parts of the country we have seen substantial departures from the notion of exclusive territories. Customers have benefited from this change. Furthermore, no safety and soundness concerns have arisen from FCS institutions that jointly serve these shared designated territories.

Existing § 614.4070 is an obstacle to the ability of consumers to transact business with the System lender that best fits their needs. The current rule details a complex and burdensome set of notice and consent requirements that depend on the location of the customer's operations and headquarters. In most instances, the customer may do business only with the FCS lender that serves the territory in which the customer conducts operations. As a general rule, existing § 614.4070 prohibits an FCS lender from serving customers operating beyond the institution's designated territory unless the FCS institution designated to serve that territory consents. The existing regulation requires notice whenever a System lender finances the out-of-territory activities of an existing borrower who also conducts operations and maintains headquarters in its chartered territory. Another provision of existing § 614.4070 specifies that out-of-territory lending should not constitute a significant shift of loan volume away from the institution's designated territory.

Although some System lenders give the necessary consent freely upon a customer's request, others do not. The burden of obtaining consent and, at times not receiving it, impede the System's ability to serve the needs of eligible customers as Congress intended.

III. Customer Choice for Credit and Related Services

We believe that each FCS institution operating under title I or II of the Act

needs greater flexibility to serve all eligible customers, without regard to the location of the customer's operations so long as the services are conducted safely and soundly. For this reason, the FCA proposes to amend § 614.4070 so that eligible customers can freely apply for credit and financial services from the FCS institution of their choice. This approach will benefit the public by increasing the sources and availability of credit and improving the quality of services available from System lenders. Additionally, this rule proposes to provide System institutions with a more flexible regulatory environment so they can improve their operating efficiencies and better serve their customers.

Designating service territories through the chartering process has been, and will remain, the principal method of ensuring that every eligible customer has access to an FCS lender, as Congress intended. Proposed § 614.4070(a) reaffirms that each association and FCS bank that operates under title I or II of the Act is obligated to serve eligible and creditworthy farmers, ranchers, aquatic producers or harvesters, farm-related businesses, and rural homeowners in its designated territory. This obligation encompasses the responsibility to offer an appropriate array of loan products and related services to all types of agricultural and aquatic operations within the bounds of safety and soundness. The designated territory also defines each lender's obligation under the Act to be responsive to the needs of young, beginning, and small farmers. Proposed § 614.4070(a) will ensure that every eligible customer will continue to have an FCS lender that is committed to providing credit and related services in that customer's area.

Proposed § 614.4070(b) permits eligible farmers, ranchers, aquatic producers or harvesters, farm-related businesses, and rural homeowners to seek financing and related services from any association or FCS bank operating under title I or II of the Act. The proposed regulation also allows a bank or association to extend credit, participate in loans, and provide related services to any eligible applicant under its respective title I or II authorities. Implementing this authority for loan participations should help strengthen the System's safety and soundness. In particular it will benefit an FCS lender that has a high concentration of loans in only a few agricultural commodities in its designated territory. These institutions are especially vulnerable to fluctuations in commodity prices and downturns in the agricultural economy. Additionally, geographic restrictions raise concerns because institutions face

increased risk to their loan portfolios from adverse weather, disease, and pest damage. Buying and selling participations in loans with other FCS institutions and lenders in other regions of the country help institutions diversify their loan portfolios and limit their exposure to risk in a single commodity and in a specific geographic area. This proposal includes conforming amendments that repeal restrictions on loan participations in existing §§ 614.4000(d), 614.4010(e), 614.4030(b), 614.4040(b), and 614.4050(c).

Proposed § 614.4070 also enhances customer choice for related services. Some associations and FCS banks operating under title I or II of the Act offer their customers related services while other institutions offer none. This proposal will repeal § 618.8030, which contains the same consent and notice restrictions applicable to loans. This change will enable FCS customers to obtain related services even if their local FCS association does not offer the service they require.

Sound business principles dictate the importance of developing and adopting a well-reasoned policy and business plan before any company implements a new or expanded program. New programs for FCS institutions, including the offering of credit and related services provided by this proposed rule, present new opportunities and new risks for System lenders. Proposed § 614.4070(c) is designed to ensure that such programs are operated under the appropriate direction and control of each institution's board of directors.

The FCA Board expects that each FCS institution board will adopt a policy, or revise its existing policy, to address any additional risks created by new programs before an institution conducts a material amount of business with customers in new geographic markets. In considering whether the new business is material, an institution should aggregate the volume of its loans, leases, participations and other interests, and related services. Additionally, each institution should integrate the opportunities and risks created by the new programs into its operational and strategic business plans, as discussed in § 618.8040. In general, the policy and business plan should assess the institution's risk-bearing capacity and servicing capabilities to meet the needs of customers who reside in or conduct operations beyond the institution's designated territory. The institution board, in developing its policy and revising its business plan, should specifically:

- Consider how programs for providing credit and related services to a broader customer base will affect organizational efficiency, customer service, risk management, and operational capabilities;

- Establish specific operating objectives and strategies for such programs;

- Direct and control the institution's lending and related service activities conducted beyond its designated territory, ensuring that such activities are conducted in a safe and sound manner;

- Establish the types and amount of loans, loan participations, and related service activity to be permitted in new geographic markets;

- Assess risk associated with providing loans and related services in the new markets, establish risk-tolerance levels in relation to the institution's risk-bearing capacity, and consider loan portfolio concentrations; and

- Ensure existing loan underwriting criteria for loans and related services that will be offered in new geographic markets are appropriate, taking into consideration the institution's management capabilities and credit expertise, and the servicing requirements of loans made outside its designated territory.

We expect the institution's board, as part of its obligations under the Act, to continue to ensure that the institution sufficiently meets the credit and related services needs of eligible customers within its designated territory, as required by proposed § 614.4070(a). At the same time, we also expect each institution to maintain safe and sound operations, including adequate risk-bearing capacity for any new programs. As part of the board's responsibilities to ensure the continued safe and sound operations of its institution, we encourage each board to monitor, through periodic reporting requirements, the amount, quality, risk, and profitability of loans made to customers located in new geographic markets.

FCA examiners will evaluate each program in view of the potential risks and possible effects on the institution's financial condition, its asset quality, capital, and earnings capacity. To help implement these regulatory revisions in the most safe and sound manner, we will issue additional guidance to our examiners and FCS institutions once the rule becomes final.

IV. Conforming Amendments

Two additional FCA regulations, §§ 611.1124 and 614.4525, contain

consent requirements that limit the ability of customers to choose their FCS lender. We propose to revise these regulations.

Section 611.1124 addresses loan transfers that occur when the FCA modifies association charters to transfer territory from one association to another. Under existing § 611.1124(f)(6), loans are usually transferred to the association that acquires the territory, unless the associations agree otherwise. With the proposed change to § 614.4070, there is no reason to assume that any territory transfer would necessarily result in the sale of loans in that territory. As amended, proposed § 611.1124(f)(6) simply requires the association to advise its shareholders whether loans will be sold in connection with the transfer of territory and, if so, the terms of the sale.

The FCA also proposes to repeal provisions in § 614.4525(b) so that cooperation may be enhanced on special loan programs between System lenders and dealers and cooperatives that serve different geographical markets. Additionally, we are proposing to eliminate paragraphs (c) and (d) because the permissive provisions of these two paragraphs are unnecessary. FCS lenders do not need regulatory authority to make contracts with others to facilitate loan applications and closings, because this authority is clearly within their express powers under the Act. This proposal would retain existing paragraph (a) and the remainder of paragraph (b), recognizing that institutions developing and implementing special lending programs should have appropriate policies in place providing board direction and control.

Additionally, the FCA is proposing to delete § 614.4080 in its entirety. This regulation originally addressed cross-territory lending by the banks for cooperatives, but is no longer applicable since both banks that have title III authorities now have national charters as authorized by the Act.

The FCA is also aware that System institutions have entered into a wide variety of agreements to serve customers in different geographic markets. Given the proposed changes to § 614.4070 and related regulations, the FCA requests comment on whether such agreements raise issues that should be addressed in the final rule.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 614

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

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, parts 611, 614, and 618 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; sec. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003 and 1004.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

2. Section 611.1124 is amended by removing the phrase “Each borrower whose real estate or operations is located in a territory that will be transferred” in the first sentence of paragraph (l) and adding in its place, the phrase “Each borrower whose loan is sold as described in paragraph (f)(6) of this section,”; by removing the last sentence of paragraph (l); and by revising paragraph (f)(6) to read as follow:

§ 611.1124 Territorial adjustments.

* * * * *

(f) * * *

(6) A statement of whether loans will be sold in connection with the transfer of territory and, if so, the terms of the sale.

* * * * *

PART 614—LOAN POLICIES AND OPERATIONS

3. The authority citation for part 614 is revised 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, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.3A, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5, 8.9 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, 2154a, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279c-1, 2279f, 2279f-1, 2279aa, 2279aa-5, 2279aa-9; sec. 413 of Pub. L. 100-233, 101 Stat. 1568, 1639.

Subpart A—Lending Authorities

§ 614.4000 [Amended]

4. Section 614.4000 is amended by removing paragraph (d)(2); by removing the words “and paragraph (d)(2) of this section” in paragraph (d)(1); and by redesignating paragraphs (d)(1), (d)(1)(i), and (d)(1)(ii) as paragraphs (d) introductory text, (d)(1) and (d)(2), respectively.

§ 614.4010 [Amended]

5. Section 614.4010 is amended by removing paragraph (e)(2); by removing the words “and paragraph (d)(2) of this section” in paragraph (e)(1); and by redesignating paragraphs (e)(1), (e)(1)(i), and (e)(1)(ii) as paragraphs (e) introductory text, (e)(1) and (e)(2), respectively.

§ 614.4030 [Amended]

6. Section 614.4030 is amended by removing paragraph (b)(2); by removing the words “and paragraph (b)(2) of this section” in paragraph (b)(1); and by redesignating paragraphs (b)(1), (b)(1)(i), and (b)(1)(ii) as paragraphs (b) introductory text, (b)(1) and (b)(2), respectively.

§ 614.4040 [Amended]

7. Section 614.4040 is amended by removing paragraph (b)(2); by removing the words “and paragraph (b)(2) of this section” in paragraph (b)(1); and by redesignating paragraphs (b)(1), (b)(1)(i), and (b)(1)(ii) as paragraphs (b) introductory text, (b)(1) and (b)(2), respectively.

§ 614.4050 [Amended]

8. Section 614.4050 is amended by removing paragraph (c)(2); by removing the words “and paragraph (c)(2) of this section” in paragraph (c)(1); and by redesignating paragraphs (c)(1), (c)(1)(i), and (c)(1)(ii) as paragraphs (c) introductory text, (c)(1) and (c)(2), respectively.

9. Subpart B is revised to read as follows:

Subpart B—Credit Extensions, Related Services and Designated Territories

§ 614.4070 Credit extensions, related services, and designated territories—Farm Credit Banks, agricultural credit banks, Federal land bank associations, Federal land credit associations, production credit associations, and agricultural credit associations.

(a) Each association or Farm Credit bank operating under title I or II of the Act must furnish sound, adequate, and constructive credit and related services pursuant to section 1.1(a) of the Act to creditworthy and eligible borrowers who reside in or conduct operations in its designated territory.

(b) Eligible customers may seek financing and related services from any association or Farm Credit bank operating under title I or II of the Act, and the Farm Credit bank or association may exercise its powers under subpart A of this part and part 618 of this chapter to make loans, participate in loans, and provide related services to any eligible borrower.

(c) Each association or Farm Credit bank that conducts a material amount of business beyond its designated territory must adopt a board policy and business plan that address such activities.

Subpart O—Special Lending Programs

§ 614.4525 [Amended]

10. Section 614.4525 is amended by removing paragraphs (c) and (d); and by removing the second sentence in paragraph (b).

PART 618—GENERAL PROVISIONS

11. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart A—Related Services

§ 618.8030 [Removed]

12. Section 618.8030 is removed.

Date: November 4, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.
[FR Doc. 98-29998 Filed 11-6-98; 8:45 am]

BILLING CODE 6705-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-222-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747-400 series airplanes. This proposal would require installation of strap assemblies on the ceiling panels and rails that support the video monitors. This proposal is prompted by reports of the video monitor ceiling panels falling into the cabin area due to the failure of certain latch assemblies during turbulence. The actions specified by the proposed AD are intended to prevent such failure, which could cause the ceiling panels to fall into the cabin area, and consequent injury to the crew and passengers.

DATES: Comments must be received by December 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-222-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jan Risheim, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1675; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such