

# 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 615 and 620

RIN 3052-AB60

#### Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Disclosure to Shareholders; Director Elections

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA), by the Farm Credit Administration Board, proposes to amend the regulations relating to the implementation of cooperative principles to allow greater flexibility in the method by which directors of Farm Credit System associations and banks for cooperatives are elected, consistent with cooperative principles. The amendments are intended to permit regional election of directors.

**DATES:** Comments should be received on or before July 10, 1995.

**ADDRESSES:** Comments may be mailed or delivered (in triplicate) to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of Examination, Farm Credit Administration, McLean, Virginia.

#### FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Regulation Development, Office of Examination, (703) 883-4498, TDD (703) 883-4444; or

Rebecca S. Orlich, Senior Attorney, Regulatory Operations Division, Office of General Counsel, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** The FCA has received requests from a number of Farm Credit System associations to reconsider its regulation pertaining to the at-large election of directors of associations. This regulation is one of

many promulgated by the FCA in 1988 to implement extensive changes to the structure of the System affected by the Agricultural Credit Act of 1987. It provides that voting shareholders of associations and Banks for Cooperatives (BCs) shall:

[b]e accorded the right to vote in the election of each director and, unless otherwise provided in the capitalization bylaws, be allowed to cumulate such votes and distribute them among the candidates in the shareholder's discretion.

12 CFR 615.5230(a)(1)(ii). At the time of promulgation, the FCA believed that enabling each shareholder to vote in the election of each director was necessary to ensure that each director is accountable to all shareholders of the institution, since each director owes fiduciary duties to all shareholders. The FCA was also concerned that shareholders in regions with a small number of shareholders would be able to wield proportionately more voting power than shareholders in regions with a greater number of shareholders. It therefore required the at-large election of directors but permitted associations that, in 1988, had bylaws providing for regional elections of directors to continue to do so until January 1, 1993. In response to the desire for regional representation expressed in the comments, the FCA placed no restrictions on the institution's ability to provide for geographic representation on the board and provided for cumulative voting unless shareholders approved bylaws providing otherwise.

A number of associations have objected that the prohibition of regional election of directors imposes an unreasonable burden on director candidates, who must campaign over widespread territories, and deprives voting shareholders of the ability to elect a representative to the board who lives and farms in their area, and with whom they could become acquainted. Furthermore, these associations have argued that regional voting in agricultural cooperatives is increasingly commonplace and is consistent with cooperative principles. In response to these concerns, the FCA has reconsidered the issue and has determined that its concerns about director accountability and equitable voting power can be addressed in a less burdensome way, consistent with cooperative principles, that will permit

the regional election of directors. The Agency has also determined that regional voting should be an option for BCs. This proposed regulation has no application to agricultural credit banks at this time, because issues pertaining to corporate governance for an agricultural credit bank, including board structure, are being studied separately. The FCA does welcome comments concerning Farm Credit Bank director elections on a regional basis, as stated later in this proposed rule.

The FCA proposes to amend § 615.5230(a)(1)(ii) to permit the regional election of directors of associations and BCs subject to the following conditions:

(1) To ensure that a director is accountable to all shareholders, institutions with bylaws providing for shareholder removal of directors must provide that each director may be removed by a majority vote of all voting shareholders and may not be removed by a vote of only the shareholders in his or her region; and

(2) The bylaw provides for the apportionment of the institution's territory into voting regions with approximately equal numbers of voting shareholders and ensures equitable representation from each voting region through an annual evaluation by the institution's board of directors.

The bylaw procedure to ensure equitable voting regions may, for example, contain procedures to redraw the boundaries of the voting regions, alter the number of directors from a region, or other similar action.

The FCA also proposes a conforming amendment to § 620.21(d)(1) of the FCA regulations. This regulation would be amended to require disclosures regarding regional voting in the association's annual information statement.

Since these proposed amendments would significantly affect the voting rights of individual borrower/shareholders and cooperatives, rather than the rights of associations and BCs, the FCA specifically seeks comment on the proposals from voting shareholders. The FCA strongly encourages the associations and BCs to call on their member-borrowers to make their views known to the FCA on this matter.

There are certain director election matters that would not be changed by an association's or BC's adoption of