

Communications During Rulemaking

Effective Date: 08-JUL-11

Effect on Previous Actions: Replaces previous Farm Credit Administration (FCA or Agency) Board policy on public communications during a rulemaking, adopted March 25, 1992. [See 57 FR 11083, April 1, 1992](#). Amended July 8, 2011.

Source of Authority: None.

The FCA Board finds that it is in the public interest and consistent with the requirements of the Administrative Procedure Act to revise its policy on communications with the public during the rulemaking process.

THE FCA BOARD HEREBY ADOPTS THE FOLLOWING POLICY STATEMENT:

In keeping with the need to ensure an open, freely accessible, and well-informed rulemaking process while balancing the need for impartiality and fairness, the FCA adopts the following guidelines governing substantive oral communications between the public and Board members and staff during the course of a related rulemaking.

Before a rulemaking begins

Unrestricted communication with the public before rulemaking begins supports and promotes the Agency's efforts to design creative and effective regulatory policy. No specific guidelines apply to that communication.

From publication of notice of proposed rulemaking to the end of the comment period

After a particular rulemaking has begun with publication of a notice of proposed rulemaking (including publication of an advance notice of proposed rulemaking), FCA encourages members of the public to provide written comments during the public comment period. All written comments are placed in a public file, where they are available for examination and copying during normal business hours. The comments receive careful consideration and become part of the public record of the rulemaking.

Where appropriate, FCA may also conduct public hearings or open meetings to take testimony or hold discussions on a rulemaking. Such opportunities for comment from the public will be announced in advance and the comments received will be placed in the public rulemaking file.

Substantive oral communications during the comment period between FCA personnel, including Board members and staff, and members of the public regarding the subject of an ongoing rulemaking will be summarized in writing and placed in the public rulemaking file. While FCA personnel are always available to explain or clarify proposed rules, if an individual wants to engage FCA personnel in substantive discussion concerning a published proposed rule, he or she should first file a written comment covering the matter to be discussed, particularly if he or she has not already filed a written comment. If new substantive comments are discussed, FCA staff will reduce the substance of such comments to

writing, promptly place it in the public rulemaking file, and urge the individual to submit a written comment.

From the close of the comment period to the adoption of the final rule

From the close of the comment period until adoption of the final rule, substantive discussions between members of the public and FCA personnel relating to the proposed rule should be curtailed. In the interest of fairness, if new facts or arguments must be brought to the attention of the FCA, the communication must be in writing so that it can promptly be placed in the public rulemaking file.

FCA believes these guidelines will help ensure a complete rulemaking record for future agency consideration of the rule or in the event of court review. Further, FCA strongly believes that the rulemaking process must be open and evenhanded in order to avoid even the appearance of impropriety or undue influence that might arise from private communication during certain periods. Finally, if a substantive comment on a proposed rule were transmitted to FCA in a private communication that did not become part of the public record, other members of the public would not have an opportunity to respond to any new arguments or facts contained in that communication. Because FCA believes that its rulemaking process benefits from give and take among commenters who are able to consider each others' comments, this policy statement requires all comments to be placed in the public rulemaking file.

This policy statement does not apply to public communications regarding any rulemaking issue unless and until the matter becomes the subject of a notice of proposed rulemaking. Nothing in the policy statement is meant to affect the ability of FCA to use negotiated rulemakings, open meetings or other types of public forums to augment its rulemaking under section 553 of the Administrative Procedure Act.

DATED THIS 8th DAY OF JULY 2011

BY ORDER OF THE BOARD

**Dale L. Aultman
Secretary to the Board**