

September 14, 2006



FCA Proposed Rule – Financing of Processing and Marketing Operations by the Farm Credit System

This proposed rule would amend the Farm Credit Administration's (FCA) existing regulation § 613.3010 on financing processing and marketing operations by Farm Credit System (FCS) institutions under Titles I and II of the Farm Credit Act of 1971, as amended (Act).

1. The purpose for the proposed rule

As farmers, ranchers, and producers of aquatic products look for opportunities to increase farm income and diversify income sources, the importance of value-added agriculture has emerged, benefiting both producers and rural communities. Producers are pursuing value-added activities to gain more direct access to markets and a greater share of the consumer's food dollar. As such, farmers are increasingly relying on vertical integration and coordination of production, processing, and marketing to deliver products that meet consumer needs. Many of the value-added processing and marketing operations are being established as new generation cooperatives, limited liability companies, or other ownership structures. As such, our proposed rule addresses these changing needs of agriculture by clarifying eligibility criteria for System institutions to finance processing and marketing operations.

2. Maintains the current rule (§ 613.3010)

We retain intact our current rule's existing eligibility requirements that the borrower be a bona fide farmer, rancher, or a producer or harvester of aquatic products, or a legal entity in which eligible borrowers own more than 50 percent of the voting stock or equity; and regularly provide some throughput.

3. Consistent with the Act, provides three clarifying criteria to determine eligibility of processing and marketing legal entities for FCS financing

Under the Proposed Rule, a legal entity would also be eligible if it meets one of the following criteria:

- a. One or more eligible borrowers own 50 percent or less of the legal entity's voting stock or equity, regularly produce some throughput, and exercise one of the following:
 - i. majority voting control over the legal entity;
 - ii. control over management of the legal entity; or
 - iii. documented power and authority to directly determine and implement the policies, business practices, management, and decision-making process of the legal entity.
- b. Eligible borrowers own at least 25 percent of the legal entity's voting stock or equity and supply 20 percent or more of the throughput used in the processing or marketing operation.

- c. The legal entity is a direct extension or outgrowth of an eligible borrower's operation as demonstrated by meeting all of the following requirements:
 - i. The legal entity was created and operates with the active support and involvement of the eligible borrower.
 - ii. The legal entity fulfills a business need and supports the operation of the eligible borrower through product branding or other value-added business activity directly related to the operations of the eligible borrower.
 - iii. The legal entity and the eligible borrower coordinate to operate in a functionally integrated manner.
 - iv. The eligible borrower provides some throughput to the processing or marketing operation.

The FCA believes the revised regulation provides the flexibility needed to meet the needs of processing and marketing operations with varying ownership structures and conditions where benefits clearly accrue to eligible borrowers.

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