

April 10, 2008



Fact Sheet on Processing and Marketing Final Rule

Board Action: A Final Rule that amends the Farm Credit Administration's (FCA's) eligibility and scope of financing regulations for processing and marketing operations (12 C.F.R. § 613.3010) to more effectively meet the credit needs of farmers, ranchers, and producers or harvesters of aquatic products ("eligible borrowers").

Purpose and Objective of Rule: The objective of the rule is to ensure that Farm Credit System (FCS) lenders are able to meet their statutory mandate of serving the processing and marketing credit needs of agricultural producers. The rule is designed to allow the System to follow its customers as they integrate upward into processing and marketing activities, with eligibility criteria tailored more closely to the way producers actually want and need to structure their value-added businesses.

Agricultural Conditions: The FCA Board recognizes the importance of processing and marketing activities as agricultural and aquatic producers look for opportunities to increase farm income and diversify income sources. Producers are pursuing value-added activities to gain more direct access to markets and a greater share of the consumer's food dollar and are increasingly relying on vertical integration and coordination of production, processing, and marketing to deliver products that meet consumer needs. Eligible borrowers are frequently structuring processing or marketing operations to satisfy prudent legal liability, business and tax concerns — in addition to meeting substantial equity and debt capital needs — by using such ownership structures as limited liability companies and limited liability partnerships.

Existing Rule: Existing FCA regulation § 613.3010 provided that FCS institutions could meet the processing and marketing credit needs of eligible borrowers that are directly related to the eligible borrower's production operation by: (1) making loans directly to eligible borrowers; or (2) lending to a legal entity (that did not qualify for financing on its own) owned more than 50 percent by eligible borrowers who regularly provide some of the commodity processed or marketed ("throughput").

Changes to the Rule: FCA has revised its regulation to add the following three additional criteria for determining what legal entities — owned 50 percent or less by eligible borrowers — are eligible for financing as a processing or marketing credit need of an eligible borrower directly related to the eligible borrower's production operation:

- Where eligible borrowers regularly produce some throughput and exercise majority voting control over the legal entity or constitute a majority of the board of directors (or similar governing body) and exercise control over the operations of the entity.
- Where eligible borrowers evidence a strong level of commitment by owning a significant equity stake (at least 25 percent), providing a substantial amount of throughput (20 percent or more), and maintaining representation on the board of directors (or similar governing body).
- Where the legal entity is a direct extension or outgrowth of an eligible borrower's production operation (e.g., a family farming operation where there are different ownership structures, but strong interrelationships between the production and processing or marketing operations). Eligible borrowers must also meet additional criteria concerning the entity's creation, business needs, functional integration, and throughput requirements.

Oversight, Transparency and Accountability Requirements: Additionally, the new rule requires each FCS institution making processing or marketing loans to comply with new reporting requirements and to adopt specific new policies and procedures for processing or marketing lending.