

Proposed Rules

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Friday, June 4, 2004

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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket Nos. AO-341-A6; FV02-929-1]

Cranberries Grown in the States of Massachusetts, et.al.; Exceptions to Recommended Decision to Proposed Amendment of Marketing Agreement and Order No. 929

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; reopening comment period.

SUMMARY: The Agricultural Marketing Service is reopening and extending the comment period for filing written exceptions to the recommended decision on proposed amendments to the marketing agreement and order for cranberries grown in the States of Massachusetts, *et.al.*

DATES: Comments must be received by June 30, 2004.

ADDRESSES: Interested persons are invited to submit written exceptions concerning the recommended decision. Comments should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081-S, Washington, DC 20250-9200, FAX number (202) 720-9776. Four copies of all written exceptions should be submitted and they should reference the docket numbers and the date and page number of this issue of the **Federal Register**, or you may send your comments by the electronic process available at Federal eRulemaking portal at <http://www.regulations.gov>. Comments can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW. STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, or Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on April 23, 2002, and published in the May 1, 2002, issue of the **Federal Register** (67 FR 21854); Secretary's Decision on partial amendments issued on December 4, 2003, and published in the December 12 issue of the **Federal Register** (68 FR 69343); and Recommended Decision and Opportunity to File Written Exceptions issued on April 21, 2004, and published in the April 28, 2004 issue of the **Federal Register** (69 FR 23330).

The recommended decision published on April 28, 2004, was issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The deadline for the submission of written exceptions to the recommended decision was May 28, 2004.

The Department of Agriculture (USDA) has received a request to provide more time for interested persons to analyze the recommended decision and file exceptions.

Extending the period in which written exceptions may be filed will provide interested persons more time to review the recommended decision and submit written exceptions thereto. Accordingly, the period in which to file written exceptions is extended until June 30, 2004.

This notice is issued pursuant to the Act and the applicable rules of practice governing the formulation of marketing agreements and orders (7 CFR part 900).

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Dated: June 2, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-12785 Filed 6-3-04; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 2 and 3

[Docket No. 98-106-4]

RIN 0579-AB69

Animal Welfare; Regulations and Standards for Birds, Rats, and Mice

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The Farm Security and Rural Investment Act of 2002 amended the definition of *animal* in the Animal Welfare Act (AWA) by specifically excluding birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research. In a separate document published in the Rules and Regulations section of today's **Federal Register**, we are amending the definition of *animal* in our regulations to be consistent with the definition of *animal* in the AWA. At this time, we are also considering several changes to the regulations to help promote the humane handling, care, treatment, and transportation of birds, rats, and mice not specifically excluded from coverage under the AWA. Specifically, we intend to extend enforcement of the AWA to birds other than birds bred for use in research. However, before we can do so, we believe it is necessary to consider what regulations and standards are appropriate for them. Therefore, we are soliciting comments from the public to help determine how we should regulate the care and use of those animals. In addition, we are considering if we should continue to regulate the handling, care, treatment, and transportation of rats and mice covered by the Act under the general standards in the regulations or if we should establish specific standards for them. To aid in that determination, we are soliciting comments from the public

concerning the regulation of those animals. Finally, we are requesting data and information from the public regarding the potential economic effects on entities that may be affected if we were to establish specific standards for birds, rats, and mice not specifically excluded from coverage under the AWA.

DATES: We will consider all comments that we receive on or before August 3, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- **Webform:** The preferred method is to use the webform located at <http://comments.aphis.usda.gov>. This webform is designed to allow commenters to associate each of their comments with the issues identified in the advance notice, and to allow APHIS to more easily analyze the comments received regarding each issue.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 98–106–4, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–106–4.

- **E-mail:** Address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and “Docket No. 98–106–4” on the subject line.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7586.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. Within the U.S. Department of Agriculture (USDA), responsibility for administering the AWA has been delegated to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care. Regulations established under the AWA are contained in the Code of Federal Regulations (CFR) in 9 CFR parts 1, 2, and 3. Part 1 contains definitions for terms used in parts 2 and 3; part 2 provides administrative requirements and sets forth institutional responsibilities for regulated parties; and part 3 contains specifications for the humane handling, care, treatment, and transportation of animals covered by the AWA. Currently, part 3 consists of subparts A through E, which contain specific standards for dogs and cats, guinea pigs and hamsters, rabbits, nonhuman primates, and marine mammals, respectively, and subpart F, which sets forth general standards for warmblooded animals not otherwise specified in that part.

Definition of Animal

The Federal Laboratory Animal Welfare Act (Pub. L. 89–544), commonly referred to as the Animal Welfare Act, was enacted in 1966 to protect owners from pet theft, prevent use of stolen pets, and ensure the humane treatment of research animals. Under that Act, an *animal* was defined as live dogs, cats, monkeys (nonhuman primate mammals), guinea pigs, hamsters, or rabbits. The Animal Welfare Act of 1970 (Pub. L. 91–597) expanded the list of covered animals to include all warmblooded animals determined by the Secretary of Agriculture as being used, or intended for use, in research, testing, experimentation, or exhibition, or as a pet, and specifically excluded horses not used for research purposes and other farm animals when used for agricultural purposes.

In 1971, USDA amended the definition of *animal* in § 1.1 of the regulations to incorporate the 1970 amendments to the Act and to specifically exclude birds, rats, and

mice for enforcement purposes. In 1989, USDA further amended that definition by, among other things, narrowing the exclusion for rats and mice to only those rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research. The AWA’s definition of *animal* has excluded the types of rats and mice commonly bred and used in research and all birds from coverage for over 30 years. Other types of rats and mice, such as wild rats and mice, are covered by the regulations and standards in part 2 and subpart F of part 3. (The regulations can be viewed on Animal Care’s Internet site at <http://www.aphis.usda.gov/ac/> by selecting “Publications”; the regulations are listed under the heading *Animal Welfare Act, Regulations, and Standards*, subheading *Animal Care Regulations*.)

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, signed into law on May 13, 2002), included provisions that amended the definition of *animal* in the AWA (7 U.S.C. 2132(g)) by specifically excluding birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research. While the definition of *animal* in the regulations has excluded rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, that definition has also excluded all birds (*i.e.*, not just those birds bred for use in research). Therefore, in a separate document published in the Rules and Regulations section of today’s **Federal Register**, we are amending the definition of *animal* in the regulations to be consistent with the definition of *animal* in the AWA by narrowing the scope of the exclusion for birds to only those birds bred for use in research. Our final rule is intended only to make the definition of *animal* in the regulations consistent with the definition of *animal* in AWA.

Advance Notice of Proposed Rulemaking

At this time, we are considering several changes to the regulations to help promote the humane handling, care, treatment, and transportation of birds, rats, and mice not specifically excluded from coverage under the AWA. Specifically, we are notifying the public that we intend to extend enforcement of the AWA to birds not bred for use in research that are sold as pets at the wholesale level, or transported in commerce, or used for exhibition, research, teaching, testing, or experimentation purposes. However, before we can begin enforcing the AWA with respect to such birds, we believe it is necessary to consider what regulations and standards are

appropriate for them. Therefore, in this document, we are soliciting comments from the public to help determine how we should regulate the care and use of those animals. In addition, we are considering if we should continue to regulate the handling, care, treatment, and transportation of rats and mice covered by the AWA under the general standards in subpart F of part 3 or if we should establish specific standards for those animals. To aid in that determination, we are soliciting comments from the public concerning the regulation of rats and mice, except for rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, that are sold as pets at the wholesale level, or transported in commerce, or used for exhibition, research, teaching, testing, or experimentation purposes. Finally, we are requesting data and information from the public regarding the potential economic effects on entities that may be affected if we were to establish specific standards for all covered rats and mice and for birds other than birds specifically bred for use in research.

This advance notice of proposed rulemaking is intended to help promote the humane handling, care, treatment, and transportation of birds, rats, and mice covered by the AWA. This action follows a notice published in the **Federal Register** on January 28, 1999 (64 FR 4356–4367, Docket No. 98–106–1) that informed the public of our receipt of a petition for rulemaking concerning the regulation of birds, rats, and mice, and that solicited comments from the public on that petition.

Request for Comments: Birds

Birds belong to a diverse class (Aves) of warmblooded vertebrates characterized by having a body covered with feathers and forelimbs modified as wings. There are approximately 9,000 species of birds belonging to about 30 orders. Although all birds share a common origin, birds today live in all the major biogeographic regions of the world and are highly diverse morphologically and behaviorally, exhibiting variation in, among other things, body and wing size and structure, modes of locomotion, and dietary requirements. As a result of this diversity, birds maintained in captivity often require unique husbandry and care. For this reason, we do not believe that the general standards in subpart F of part 3 would be appropriate or adequate to provide for the humane handling, care, treatment, and transportation of birds. Therefore, we are soliciting comments from the public to aid in the development of appropriate

standards for birds not specifically excluded from coverage under the AWA. In addition, we are also reviewing the regulations in parts 1 and 2 to determine if any changes are necessary before we can regulate the care and use of birds not specifically bred for use in research. Therefore, we are also soliciting comment on certain provisions in part 2 as they pertain to birds.

When we determine how to regulate the handling, care, treatment, and transportation of birds other than birds bred for use in research, we will publish a proposed rule for public comment in the **Federal Register**. Any changes to our Animal Care program and regulations that may result from such a proposal will be addressed in that document.

In particular, we invite responses to the questions listed below. Although the following questions solicit comments concerning the regulation of all birds not specifically excluded from coverage under the AWA, we welcome responses that pertain to a specific type of bird. Please make it explicit in your response if your comment addresses a specific type of bird or if your response pertains to birds in general.

1. As mentioned above, part 3 of the regulations contains specifications for the humane handling, care, treatment, and transportation of animals covered by the AWA. Among other things, the standards in part 3 address the following considerations:

- *Facilities and operations* (including space, structure and construction, waste disposal, heating, ventilation, lighting, and interior surface requirements for indoor and outdoor primary enclosures and housing facilities);
- *Animal health and husbandry* (including requirements for sanitation and feeding, watering, and separation and classification of animals); and
- *Transportation* (including specifications for primary enclosures, primary conveyances, terminal facilities and the feeding, watering, care, and handling of animals in transit).

Please describe minimum standards that would be appropriate for birds other than birds bred for use in research, including requirements for facilities and operations, animal health and husbandry, and transportation. Please submit specific data to support any suggested standards.

2. We are aware of several published programs of humane care and use for birds. Should the standards we develop for birds, except for birds bred for use in research, be consistent with any published program(s) for the care and use of birds? If so, please submit a copy

of any suggested programs and specific data to support those standards.

3. Sections 2.1 and 2.25 of the regulations provide licensing and registration requirements for dealers, exhibitors, operators of auction sales, and carriers and intermediate handlers. In § 2.1, paragraph (a)(3) provides exemptions from licensing requirements for certain entities, such as retail pet stores that sell non-dangerous, pet-type animals, including birds, at retail only. Should we revise or add exemptions for certain dealers, exhibitors, operators of auction sales, and carriers and intermediate handlers of birds not bred for use in research? If so, what should those exemptions be? Please provide supporting data. (For example, we are aware that there are many entities who breed small numbers of birds; if we should exempt those entities, what criteria should we use to determine which entities should be exempt?)

4. Currently, § 2.130 provides minimum age requirements for the commercial transportation of dogs and cats. Should we establish minimum age requirements for the transportation of birds other than birds bred for use in research? If so, what factors should we consider when determining those requirements? (For example, if the animals are weaned, the species of bird under consideration, etc.) Please provide specific supporting data.

5. When conducting an inspection, USDA inspectors follow a given facility's biosafety procedures or use recommended protective clothing and equipment, such as coveralls, disposable gloves, and disposable or sanitizable boots. We invite comments on what procedures, equipment, and supplies should inspectors use in order to protect birds from transmitted diseases. Should additional procedures, equipment, or supplies be employed to inspect nesting birds? Please explain.

6. Comments are also invited concerning the number and size of entities that may be affected if we were to regulate birds other than birds bred for use in research. (Such entities may include dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers of birds not specifically bred for use in research that are sold as pets at the wholesale level, transported in commerce, or used for exhibition, research, teaching, testing, or experimentation purposes.)

7. What is the number of each species of birds, except for birds bred for use in research, that are currently sold as pets at the wholesale level, transported in commerce, or used for exhibition,

research, teaching, testing, or experimentation purposes?

8. Comments are invited regarding the current physical structures, equipment, staffing, licensing, and paperwork used in the handling, care, treatment, and transportation of birds other than birds bred for use in research and how those operations may be affected if we were to extend enforcement of the AWA to those animals. In addition, if you are submitting suggested standards for birds in response to questions 1 or 2, please address how those standards would affect facility operations.

9. What are the potential economic effects, in terms of time and/or money, on entities that may be affected if we were to regulate birds other than birds bred for use in research?

10. Do you have any other specific concerns or recommendations pertaining to the regulation of birds other than birds bred for use in research?

Request for Comments: Rats and Mice

In addition to the protections afforded by the standards and regulations in parts 2 and 3 of the regulations, the vast majority of animals used in biomedical research, including birds, rats, and mice, are provided oversight by Public Health Service (PHS) of the U.S. Department of Health and Human Services, through voluntary accreditation by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC), or both. Most biomedical research in the United States is performed in laboratories funded at least in part by PHS. The PHS *Policy on Humane Care and Use of Laboratory Animals* covers live vertebrate animals that are involved in activities supported by PHS. The PHS policy requires an Animal Welfare Assurance, which is a document that commits the research institution to a program of animal care and use that is consistent with the *Guide for the Care and Use of Laboratory Animals* (referred to below as the *Guide*), a publication produced by the National Research Council to assist institutions in caring for and using animals in ways judged to be scientifically, technically, and humanely appropriate.¹

In addition to PHS oversight, many U.S. research facilities are accredited by AAALAC. This private organization, through inspections and reviews, accredits laboratories that meet or exceed the animal care standards in the

Guide. Research facilities seek AAALAC accreditation for assistance with public relations and in receiving grants.

While the AWA and the regulations address a broader range of activities than does the *Guide*, we believe that many of the minimum standards for the care and use of animals contained in the *Guide* are applicable in research and non-research environments alike. As a result, we have made, whenever possible, the standards in part 3 consistent with the *Guide* in order to eliminate confusion and to simplify compliance for entities that must comply with both the regulations and the *Guide*. In those cases where the regulations are consistent with the *Guide*, it is because we have reviewed the *Guide* and determined that its program for animal care and use is appropriate and adequate to provide for the humane handling, care, treatment, and transportation of the animals in question.

We are soliciting comments to help us determine whether we should continue to regulate rats and mice other than rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research under the general standards in subpart F of part 3, or if we should adopt specific standards for those animals. While the *Guide* does not provide husbandry specifications for the care and use of birds, as they are not commonly used in biomedical research, it does provide specifications for the care and use of rats and mice. Therefore, we also request comment on the adequacy of the specifications in the *Guide* as they pertain to the humane handling, care, treatment, and transportation of rats and mice. If we determine that specific standards should be established for rats and mice covered by the AWA, we will publish a proposed rule for public comment in the **Federal Register**. Any changes to our Animal Care program and regulations that may result from such a proposal will be addressed in that document.

In particular, we invite responses to the questions listed below. Although the following questions solicit comments concerning the regulation of all rats and mice covered by the AWA, we welcome responses that pertain to only rats or to mice, or to a specific type of rat or mouse. Please make it explicit in your response if your comment addresses a specific type of animal or if your response pertains to rats and mice in general.

11. Should rats and/or mice other than rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research continue to be regulated under the general standards in subpart F of

part 3? If so, please submit any data available to support the continued regulation of those animals under that subpart.

12. As mentioned above, part 3 contains specifications for the humane handling, care, treatment, and transportation of animals covered by the AWA. Among other things, the standards in part 3 address the following considerations:

- *Facilities and operations* (including space, structure and construction, waste disposal, heating, ventilation, lighting, and interior surface requirements for indoor and outdoor primary enclosures and housing facilities);
- *Animal health and husbandry* (including requirements for sanitation and feeding, watering, and separation and classification of animals); and
- *Transportation* (including specifications for primary enclosures, primary conveyances, terminal facilities and the feeding, watering, care, and handling of animals in transit).

Should specific standards be developed for rats and/or mice other than rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research? If so, what minimum standards would be appropriate for those animals, including requirements for facilities and operations, animal health and husbandry, and transportation? Please submit specific data to support any suggested standards.

13. As noted above, research institutions funded at least in part by the Public Health Service of the U.S. Department of Health and Human Services are required to follow a program of animal care and use that is consistent with the National Research Council's *Guide for the Care and Use of Laboratory Animals*. To eliminate confusion and simplify compliance for entities that must comply with the regulations and the *Guide*, we have, whenever possible, made the standards in part 3 of the regulations consistent with the program of animal care and use in the *Guide*. If specific standards should be developed for rats and mice other than rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, are the specifications for the care and use of rats and mice contained in the *Guide* appropriate and adequate to provide for the humane care, handling, treatment, and transportation of those animals? If so, please submit specific data to support the adoption of the *Guide's* specifications for rats and mice.

14. Comments are invited concerning the number and size of entities that use rats and mice, except for rats of the genus *Rattus* and mice of the genus *Mus*

¹ The *Guide* can be viewed on the National Academies Press' Internet site at <http://www.nap.edu/readingroom/books/labrats/>.

bred for use in research, for purposes covered by the AWA. (Such entities may include dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers of rats and mice covered by the AWA that are sold as pets at the wholesale level, transported in commerce, used in exhibits, or used for research, teaching, testing, or experimentation purposes.)

15. What is the number of each species of rats and mice, except for rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, that are currently sold as pets at the wholesale level, transported in commerce, used in exhibits, or used for research, teaching, testing, or experimentation purposes?

16. Comments are invited concerning the current physical structures, equipment, staffing, licensing, and paperwork used in the handling, care, treatment, and transportation of rats and mice, except for rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, for purposes covered by the AWA. If you are submitting suggested standards for rats and mice in response to question 12 or believe that we should establish specific standards for covered rats and mice that are consistent with the *Guide* (see question 13, above), please address how those standards would affect facility operations.

17. What are the potential economic effects, in terms of time and/or money, on entities that may be affected if we were to establish specific standards for rats and mice covered by the AWA? (Such entities may include dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers of rats and mice covered by the AWA that are sold as pets at the wholesale level, transported in commerce, used in exhibits, or used for research, teaching, testing, experimentation, or exhibition purposes.)

18. Do you have any other specific concerns or recommendations pertaining to the regulation of rats and mice other than rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research?

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 1st day of June 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04–12692 Filed 6–3–04; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 614, 615, and 620

RIN 3052–AC21

Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Disclosure to Shareholders; Preferred Stock

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA or agency) proposes to change its regulatory capital treatment for preferred stock issued by Farm Credit System (FCS or System) banks, associations, and service corporations and place certain restrictions on the retirement of preferred stock. Additionally, this proposal would require greater board involvement and oversight in the retirement of preferred stock, enhance the current standards of conduct regulations to specifically address insider preferred stock transactions, and require disclosure of senior officer and director preferred stock transactions. We also propose to modify and streamline our process for reviewing and clearing disclosure for certain issuances of FCS equities. Lastly, we propose to add a new provision to control investments by FCS banks, associations, and service corporations in preferred stock of other FCS institutions, including the Federal Agricultural Mortgage Corporation (Farmer Mac).

DATES: Please send your comments to us by August 3, 2004.

ADDRESSES: You may send comments by electronic mail to reg-comm@fca.gov, through the Pending Regulations section of FCA's Web site, www.fca.gov, or through the Governmentwide www.regulations.gov portal. You may also send comments to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by fax to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479; TTY (703) 883–4434;

or

Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit

Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

Through this rulemaking we strive to:

- Ensure the stability and quality of capital at FCS institutions by establishing safety and soundness parameters on the issuance of preferred stock;
- Place restrictions on preferred stock issued by FCS institutions that can be continually redeemed and has limited attributes of equity;
- Ensure fair and equitable treatment of all shareholders of FCS preferred stock and minimize the potential for insider abuse;
- Modify and streamline our review and clearance process for issuances of nonborrower equities; and
- Require disclosure of senior officer and director preferred stock purchases and retirements.

The agency believes additional regulatory guidance and requirements will help ensure consistent treatment for all FCS institutions seeking to issue preferred stock.

II. Background

A. Informational Memorandum

FCA recently experienced an increase in requests from FCS institutions to review new preferred stock issuances. In reviewing submissions where associations sought to offer preferred stock to borrowers, we identified a number of policy and safety and soundness issues that led to a review of our capital adequacy regulations. In the fall of 2003, we outlined our concerns in an informational memorandum to all FCS institutions, which indicated that the FCA Board planned to consider modifications to FCA regulations to address these policy and safety and soundness issues.¹

We noted that questions exist about the stability (“permanency”) and quality of preferred stock that an institution plans to redeem routinely with few limitations or without direct involvement or consideration by the institution’s board of directors. In particular, we highlighted our concerns about the risk associated with the capital and earnings volatility that may result from fluctuations in purchases and retirements that may occur daily. Preferred stock programs may be an especially volatile source of capital under adverse credit or interest rate

¹ See Informational Memorandum, Roland E. Smith, Issuance of Preferred Stock, September 9, 2003.