million or less in assets) depository institutions.

By order of the Board of Directors.

Dated at Washington, DC, this 11th day of October, 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 06–8728 Filed 10–13–06; 8:45 am]

BILLING CODE 6714–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 613

RIN 3052–AC33

Eligibility and Scope of Financing; Processing and Marketing

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA or Agency) proposes to amend its regulation governing financing of processing and marketing operations by Farm Credit System (Farm Credit, FCS, or System) institutions under titles I and II of the Farm Credit Act of 1971, as amended (Act). Specifically, this proposal would revise the criteria used to determine eligibility of legal entities for financing as processing and marketing operations. FCA further proposes a non-substantive technical correction to its regulation defining the term ''person.''

DATES: Comments should be received on or before December 15, 2006.

ADDRESSES: We offer a variety of methods to receive your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the Agency's Web site or the Federal eRulemaking Portal. As faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, please consider another means to submit your comment if possible. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- E-mail: Send us an e-mail at *reg-comm@fca.gov.* Agency Web site: *http://www.fca.gov.* Select ''Legal Info,'' then ''Pending Regulations and Notices.''
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.
- Fax: (703) 883–4477. Posting and processing of faxes may be delayed. Please consider another means to comment, if possible.

You may review copies of comments we received at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Legal Info,'' and then select ''Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Barry Mardock, Associate Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA, (703) 883–4456, TTY (703) 883–4434;

or

Michael A. Anderson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, Denver, CO, (303) 696–9737, TTY (303) 696–9259;

or

Howard I. Rubin, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4029, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1.11(a)(1) and 2.4(a)(1) of the Act authorize Farm Credit Banks and associations to finance the processing and marketing operations of bona fide farmers, ranchers, and aquatic producers or harvesters that are ''directly related'' to the operations of the borrower, provided that the operations of the borrower supply some portion of the raw materials used in the processing or marketing operation (throughput).[1] Current § 613.3010(a)(1) provides that a borrower is eligible for financing for a processing or marketing operation only if the borrower is eligible to borrow from the System or is a legal entity in which eligible borrowers own more than 50 percent of the voting stock or equity.

We believe that our current rule, focusing solely on the percentage of eligible borrower ownership in a legal entity, is unnecessarily narrow. Therefore, FCA proposes to add additional specific criteria for determining what legal entities are eligible for financing for processing and marketing operations in accordance with the provisions in §§ 1.11(a) and 2.4(a) of the Act. While potentially expanding the pool of eligible legal entities, we believe that the additional criteria properly ensure that there is a sufficiently strong economic link—or identity of interests—between eligible borrowers and the processing or marketing entity so that the financing can be considered made and ''directly related'' to eligible borrowers and their operations.

II. Need for Proposed Rule

FCA believes its amendment to § 613.3010 will permit System associations to more effectively meet the credit needs of eligible borrowers in the face of changing agricultural and economic conditions while remaining consistent with the Act. We recognize the increasing importance of value-added agriculture and aquaculture and the changing ownership structures in processing and marketing operations. As part of these changing agricultural and economic conditions, FCA seeks to ensure that affordable and dependable credit for businesses that add value to farm and aquatic products and commodities remains available for the benefit of agricultural and aquacultural producers (and the rural communities in which they operate).

As farmers, ranchers, and producers or harvesters of aquatic products look for opportunities to increase farm and aquaculture income and diversify income sources, the importance of value-added agriculture and aquaculture 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 consumers' 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. These opportunities have stemmed from increased consumer demands regarding health, nutrition, and convenience; efforts by food processors to improve their productivity; and technological advances that enable producers to produce what consumers and processors desire. With the continuous shifting to a global economy, the international market for value-added products is growing.

Ownership structures within processing and marketing operations are changing as substantial capital investments cannot be fully raised

[1] 12 U.S.C. 2019(a)(1), 2075(a)(1). Each Farm Credit Bank has transferred its title I authority to make long-term real estate mortgage loans to Federal land bank associations pursuant to section 7.6 of the Act (12 U.S.C. 2279b).

through traditional methods. The farmer-owned sole proprietorships or closely held entities prevalent in the past are often no longer economically viable. Therefore, new forms of cooperatives, limited liability corporations, limited liability partnerships, and other ownership structures—requiring outside investment—are being used to address equity and debt capital needs. For example, many of the new ethanol plants are only partially owned by farmers; however, these plants are usually directly related to the farmer-owners' operations and provide significant benefits to the rural communities in which they are located.

Moreover, even where sole proprietorships or closely held entities are economically viable, they are often not advisable from a legal liability, tax, or estate planning perspective. In fact, structuring a processing or marketing operation with prudent legal liability considerations protects borrowers' financial interests and is an acceptable safety and soundness practice. We believe that our rules shouldn't create a circumstance that forces eligible borrowers to reject prudent legal, business and tax advice if they wish to continue borrowing from their FCS lender.

Processing and marketing agricultural businesses are projected to continue to evolve and grow within rural America. The entrepreneurial spirit of farmers, ranchers, and producers of aquatic products will require a reliable and flexible source of credit and financial services. As value-added agriculture continues to grow, agricultural producers are challenged by the need to attract substantial capital in order to improve income for their benefit and the benefit of rural America.

FCA recognizes the importance of these value-added enterprises to producers and rural America and believes this proposed regulation will help ensure dependable credit for businesses that add value to farm and aquatic products and commodities, as well as the communities in which they operate. We believe that revisions to this regulation will provide the FCS with the additional flexibility to meet the existing and future credit needs of processing and marketing entities upon which farmers, ranchers, and producers or harvesters of aquatic products are increasingly dependent for economic survival.

III. Section-by-Section Analysis

The two criteria contained in existing § 613.3010(a)(1) and (a)(2) are retained in paragraphs (a)(1) and (a)(2), with paragraph (a)(2) making clear that it only applies to a legal entity that does not qualify for financing under paragraph (a)(1) as a bona fide farmer, rancher, or producer or harvester of aquatic products. However, as discussed above, we believe that a limitation based solely on the percentage of voting stock held by eligible borrowers—representing pure numerical voting ''control'' of the entity—is an unnecessarily narrow way of looking through a legal entity to determine whether a loan can be viewed as made to an eligible borrower or ''directly related to'' an eligible borrower's operation. Therefore, the proposal would add new paragraph (a)(3) to provide alternative ways of determining actual eligible borrower ''control'' over a legal entity where the eligible borrower owns 50 percent or less of the voting stock or equity, new paragraph (a)(4) to provide eligibility for legal entities where eligible borrowers have a significant equity stake and provide a substantial amount of the throughput, and new paragraph (a)(5) to provide financing for legal entities that are a direct extension or outgrowth of an eligible borrower's production operation, regardless of the amount of eligible borrower ownership of the legal entity. A legal entity will need to meet one of these criteria in order to borrow from an FCS association.

A. Section 613.3010(a)(3)—Majority Voting, Management, or Actual Control

Under proposed § 613.3010(a)(3), if eligible borrowers own 50 percent or less of the voting stock or equity and one or more of those eligible borrowers/owners regularly produce some portion of the throughput used in the processing or marketing operation, then one of the following criteria must be met:

1. Majority Voting Control

Proposed § 613.3010(a)(3)(i) provides that a legal entity is eligible for financing under this paragraph if eligible borrowers under § 613.3000(b) own 50 percent or less of the voting stock or equity, regularly produce some portion of the throughput used in the processing or marketing operation and ''exercise majority voting control over the entity.'' An example of this is a corporation with separate classes of voting stock, where the eligible farmer-owned class of stock exercises actual majority voting control regardless of their overall percentage ownership of stock. Another example would be where holders of a majority of voting stock agree, by contract or otherwise, to allow eligible farmer-owners to exercise voting control. This provision would also encompass a legal entity in which eligible borrowers have the voting power to elect at least 40 percent of the entity's board of directors (or general partners of a limited partnership, or managing members of a limited liability company) and non-eligible investors can elect no more than 40 percent, with the remainder to be elected through mutual agreement.

2. Management Control

Proposed § 613.3010(a)(3)(ii) would authorize financing for a legal entity in which eligible borrowers under § 613.3000(b) own 50 percent or less of the voting stock or equity, regularly produce some portion of the throughput used in the processing or marketing operation and ''exercise control over management of the legal entity.'' Eligible borrowers could exercise control over management by ''constituting a majority of the directors of a corporation, general partners of a limited partnership, or managing members of a limited liability company.'' In these circumstances, eligible borrowers are exercising actual management direction and control over the entity, even though they may not own a majority of the voting stock or equity.

3. Actual Control

Proposed § 613.3010(a)(3)(iii) would authorize financing for a legal entity in which eligible borrowers under § 613.3000(b) own 50 percent or less of the voting stock or equity, regularly produce some portion of the throughput used in the processing or marketing operation and ''exercise the documented power and authority to directly determine and implement the policies, business practices, management, and decision-making process of the legal entity.'' This is intended to cover unusual circumstances where the borrower does not meet the specific criteria of paragraphs (a)(3)(i) or (a)(3)(ii) but where, through contractual agreement or otherwise, eligible borrowers have ''documented power and authority'' over the legal entity.

B. Section 613.3010(a)(4)—Substantial Ownership Interest and Supply of Throughput

Proposed § 613.3010(a)(4) would authorize financing for a legal entity ''in which eligible borrowers under § 613.3000(b) own at least 25 percent of the voting stock or equity and supply 20 percent or more of the throughput used in the processing or marketing operation.'' Under this provision, eligible borrower-owners do not need to exercise voting control over the entity

because the substantial ownership requirement coupled with the 20-percent throughput requirement ensures that eligible borrowers have both a significant investment in the entity and the operation is ''directly related to'' eligible borrowers' operations.

C. Section 613.3010(a)(5)—Extension or Outgrowth of Production Operations

Proposed § 613.3010(a)(5) would authorize financing for a legal entity that regularly processes or markets some portion of an eligible borrower's throughput and whose operations are a direct extension or outgrowth of that eligible borrower's operation. This is intended to cover entities—regardless of ownership—in which an eligible borrower has significant involvement, that fulfill the eligible borrower's business needs, and that are functionally integrated with the eligible borrower's production operation. Under paragraph (a)(5), the legal entity's financial condition is necessarily dependent upon the continued involvement of the eligible borrower. This mutual interdependency in financial performance is further indicia that the processing and marketing operation is part, or an ''extension or outgrowth,'' of the eligible borrower's production operation.

As discussed above, many farming operations are evolving to include value-added processing and marketing operations. In many instances, value-added processing and marketing operations are formed by, and for the direct benefit of, eligible borrowers, their families, or other individuals with direct ties to an eligible borrower's production activities. In these instances, the processing or marketing operation is truly part of—or a ''direct extension or outgrowth'' of—the production operation. However, the ownership structures of these value-added operations are typically crafted to meet tax and liability concerns—rather than FCS requirements—and consequently may not satisfy the requirements of our current rule. Moreover, family members owning and operating value-added businesses may not themselves qualify for financing as ''bona fide farmers.'' However, the economic reality is that these value-added operations are integrated with and inextricably linked to an eligible borrower's production activities.

Under the Act and our rules, the processing or marketing financing must be a credit need of the eligible borrower. Therefore, paragraph (a)(5) provides that the eligible borrower must establish the necessary link between the processing and marketing entity and the eligible borrower's operation.

The first specific element that an eligible borrower must demonstrate under paragraph (a)(5) is that ''the legal entity was created and operates with the active support and involvement of the eligible borrower.'' An example of this is the eligible borrower who assists a family member or friend in a start-up processing or marketing company in which the eligible borrower does not have any legal ownership; however, the start-up company provides an opportunity for the eligible borrower to manage production risk through product control for the benefit of that eligible borrower. The eligible borrower's ''active'' involvement (meaning more than a token investment of money, time, resources, or throughput) in the creation of the legal entity and continued active involvement in the operation of the legal entity is evidence that the operation is truly an ''extension or outgrowth'' of the eligible borrower's production operation. Where the financing is for a start-up venture, the eligible borrower should be able to demonstrate, through a business plan or otherwise, the eligible borrower's intent to remain actively involved in the processing and marketing operation.

The second specific element that an eligible borrower must demonstrate under paragraph (a)(5) is that ''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.'' Regardless of direct ownership by an eligible borrower, a processing or marketing operation may be so integral to the eligible borrower's operation and economic well-being that without it, the eligible borrower would not receive the same economic benefit. This processing or marketing operation may support the eligible borrower's business needs through product branding, product customization to meet specific contract requirements, or any other value-added activity that meets the needs of the user or consumer and benefits the economic well-being of the eligible borrower.

The third criterion an eligible borrower must demonstrate is that ''the legal entity and the eligible borrower coordinate to operate in a functionally integrated manner.'' This coordination may be evidenced by shared resources (such as management expertise, employees, or assets) or other indicia of integration. We believe that Congress intended for the System to provide financing to assist eligible borrowers in the upward vertical integration of their operations.

The fourth requirement implements the statutory mandate that the eligible borrower must provide some throughput to the processing or marketing operation.

IV. Technical Correction

We are also proposing to correct an omission that inadvertently occurred during the January 30, 1997, regulatory amendments [2] by adding the words ''a legal entity or'' to the § 613.3000(a)(3) definition of ''[p]erson''. This does not provide any additional authority and is in accord with our stated intent published in the 1997 **Federal Register** final rule preamble.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 613

Agriculture, Banks, banking, Credit, Rural areas.

For the reasons stated in the preamble, part 613 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for part 613 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

Subpart A—Financing Under Titles I and II of the Farm Credit Act

§ 613.3000 [Amended]

2. Amend § 613.3000(a)(3) by adding the words ''a legal entity or'' before the words ''an individual''.

3. Revise § 613.3010(a) to read as follows:

[2] *See* 62 FR 4441 (Jan. 30, 1997).

§ 613.3010 Financing for processing or marketing operations.

(a) *Eligible borrowers.* A borrower is eligible for financing for a processing or marketing operation under titles I and II of the Act only if the borrower:

(1) Is a bona fide farmer, rancher, or producer or harvester of aquatic products who regularly produces some portion of the throughput used in the processing or marketing operation; or

(2) Is a legal entity not eligible under paragraph (a)(1) of this section in which eligible borrowers under § 613.3000(b) own more than 50 percent of the voting stock or equity and regularly produce some portion of the throughput used in the processing or marketing operation; or

(3) Is a legal entity not eligible under paragraph (a)(1) of this section in which eligible borrowers under § 613.3000(b) own 50 percent or less of the voting stock or equity, regularly produce some portion of the throughput used in the processing or marketing operation and:

(i) Exercise majority voting control over the legal entity; or

(ii) Exercise control over management of the legal entity, such as constituting a majority of the directors of a corporation, general partners of a limited partnership, or managing members of a limited liability company; or

(iii) Exercise the documented power and authority to directly determine and implement the policies, business practices, management, and decision-making process of the legal entity; or

(4) Is a legal entity not eligible under paragraph (a)(1) of this section in which eligible borrowers under § 613.3000(b) own at least 25 percent of the voting stock or equity and supply 20 percent or more of the throughput used in the processing or marketing operation; or

(5) Is a legal entity not eligible under paragraph (a)(1) of this section that is a direct extension or outgrowth of an eligible borrower's operation. To obtain financing for a legal entity under this paragraph, the eligible borrower must establish that:

(i) The legal entity was created and operates with the eligible borrower's active support and involvement,

(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, and

(iv) The legal entity regularly processes or markets some portion of the eligible borrower's throughput.

* * * * *

Dated: October 11, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E6–17170 Filed 10–13–06; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 624

[Docket No. FTA–2006–24708]

RIN 2132–AA91

Clean Fuels Grant Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 3010 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), amended section 5308 of title 49 United States Code, commonly referred to as the Clean Fuels Grant Program. SAFETEA–LU changes the program from a formula-based to a discretionary grant program. The Federal Transit Administration (FTA) proposes to amend its clean fuels grant program regulations to comport with the provisions of SAFETEA–LU.

DATES: Comments must be received on or before December 15, 2006. Late filed comments will be considered to the extent practicable.

ADDRESSES: Written comments: Submit written comments to the Docket Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You may submit comments identified by the docket number (FTA–2006–24708) by any of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Web Site*: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Mail:* Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* 1–202–493–2478.
- *Hand Delivery:* To the Docket Management System, Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name (Federal Transit Administration) and Docket number (FTA–2006–24708) or Regulatory Identification Number (RIN) (2132–AA91) for this notice. Note that all comments received will be posted, without change, to *http://dms.dot.gov* including any personal identifying information. You may review DOT's complete Privacy Act Statement in the **Federal Register** notice published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For program issues, Kimberly Sledge, Office of Program Management, (202) 366–2053 (telephone); (202) 366–7951 (fax); or *Kimberly.Sledge@dot.gov* (e-mail). For legal issues, Scheryl Portee, Office of the Chief Counsel, (202) 366–4011 (telephone); (202) 366–3809 (fax); or *Scheryl.Portee@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Section 3008 of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, June 9, 1998, established the Clean Fuels Formula Grant Program (the program) with a two-fold purpose. First, the program was developed to assist nonattainment and maintenance areas in achieving or maintaining the National Ambient Air Quality Standards for ozone and carbon monoxide (CO). Second, the program supported emerging clean fuel and advanced propulsion technologies for transit buses and markets for those technologies.

We promulgated the formula program as a final rule at 49 CFR part 624. (See 67 FR 40100, June 11, 2002 and 67 FR 41579, June 18, 2002). From its inception the program was authorized as a formula program. However, Congress did not fund the program.

II. Overview and General Discussion of the Proposed Rule

A. Why is FTA amending the Clean Fuels Grant Program?

Section 3010 of SAFETEA–LU, Pub. L. 109–59, 119 Stat. 1144, 1572 (2005), changed the grant program from a formula-based to a discretionary grant program; however, the program retains its two-fold purpose as noted above. We propose to revise 49 CFR part 624 to reflect the amendments made by SAFETEA–LU.

With TEA–21, Congress authorized funding levels for the program at $100 million. Although funding was