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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1435

RIN 0560-AH21

#### Sugar Program Definitions

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Sugar Program regulations of the Commodity Credit Corporation (CCC). Specifically, the definitions of “ability to market”, “market” and “sugar” are revised. Also, the regulation is modified to describe the procedure used to reassign allocation deficits. These changes are intended to reduce the uncertainty and burden of sugar production forecasting.

**DATES:** Effective Date: This rule is effective September 13, 2004.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

#### Discussion of Changes

CCC published regulations on August 26, 2002 (67 FR 54928), to implement the Sugar Program provisions of Title I of the Farm Security and Rural Investment Act of 2002 (the 2002 Act). That rule governed various activities affecting sugar beet and sugar cane producers and processors and the domestic market for sugar. In this rule, CCC is making two changes to Sugar

Program regulations as a result of definitions that have had an unintended affect on program administration. The changes are as follows:

The definition of “ability to market” is being changed to discourage excess sugarcane acreage and reduce the uncertainty and burden of sugar production forecasting. “Ability to market” is used in conjunction with two other factors to determine each cane sugar state’s marketing allotment and each sugarcane processor’s allocation within a state. “Ability to market” was measured as the quantity of raw sugar produced during the applicable crop year. This definition disregards beginning stocks, which is part of a processor’s ability to fulfill its allocation. This exclusion discourages cane processors from filling their allocation from stocks and encourages continued planting to maintain their allocation.

The accrual of large stocks that must be carried over into the next year due to the imposition of marketing allotments is increasing the likelihood of problems with the current definition of “ability to market”. The problem created by excluding beginning stocks would be aggravated in cane disasters. A substantial loss in forecast cane sugar production would result in a considerable reduction in a processor’s sugar marketing allocation, regardless of the processor’s stock level.

The current definition of “ability to market” requires CCC to estimate crop year production for each state and processor using periodic processor surveys. State allotments and processor allocations are adjusted as these estimates change throughout the year. This process creates uncertainty for the sugarcane processors and a significant administrative burden for CCC and processors.

Hawaii and Puerto Rico already have a fixed allotment and their state allotment and processor definition of “ability to market” will not be changed. For the mainland states, the new definition for “ability to market” will be based on the states’ and processors’ 1999 through 2003 crop year production history. The mainland states’ “ability to market” will be measured as the production from the highest production year for each state in the base period. This same measure of “ability to market” will be used to divide the

Florida cane sugar marketing allotment among the state’s processors. CCC will divide the Louisiana cane sugar marketing allotment among the state’s processors using an average of (1) an Olympic average over the base period and (2) the 2003 crop. CCC will use the 2003-crop estimate of production that it used to develop the July World Agricultural Supply and Demand Estimates.

Since the other two factors are based on historical production, the cane states’ allotments and processor allocations will now be based completely on historical data. Since allotments and allocations are not dependent on current production, the data collection burden on CCC and the processors, and the incentive to maintain sugarcane acreage is reduced. Allocations will balance with available sugar as processors sell over-allocation sugar to processors that need it, in accordance with the regulations, and as CCC reassigns unused allocation between processors and unused allotment between states.

The “ability to market” definition does not affect the reassignment process. The 2002 Act requires CCC to determine, from time to time, if a processor is unable (and conversely, able) to market its allocation. Consistent with the 2002 Act, CCC uses the best available data to make its determination and specifically lists then-current inventories of sugar, the estimated production of sugar and expected marketings, and other pertinent factors. CCC determines if a processor is unable to market its allocation by comparing a processor’s sugar supply (with some exceptions) with its allocation. Specifically, CCC calculates a processor’s available crop-year supply as its beginning stocks, plus production and purchased over-allocation sugar, less sales of over-allocation sugar, and desired ending stocks (generally zero). CCC recognizes that it should reduce supply by nonhuman use sales and exports but has not done so to date. Early reassignments require CCC to use estimates subject to error and allocation cannot be returned to a processor because too much was taken away. Thus, CCC will be more conservative in reducing a processor’s allocation earlier in the year than later. At this time, CCC has no measure of its early conservatism but will work with the processors losing allocation to permit them a margin of

error beyond the formula results. This process worked satisfactorily in FY 2003.

The second change CCC is making is to clarify the definitions of market and marketing to include sales for non-domestic consumption, nonhuman consumption, and sales to another processor to enable that processor to fulfill its marketing allocation. The current definition for market and marketing excludes these sales. However, 7 CFR 1435.307 describes these types of sales as "marketings," but exempts them from being subject to the restriction of a processor's marketing allocations. CCC is developing procedures to ensure that sales for non-domestic consumption and nonhuman consumption, which also are not counted against a processor's sugar marketing allocation, are bona fide sales that do not affect the domestic food use market.

The new definition provides that the sale of sugar for non-domestic consumption, nonhuman consumption, or to another processor will be a sugar "marketing" regulated by 7 CFR 1435. This result is accomplished by deleting the sentence that excludes these sales from the "marketing" definition. The regulation retains the exemption for sales made before May 1, reported to CCC within 51 days.

The third change CCC is making is to clarify the definition of sugar to include in-process sugar, such as thick juice, in the current 7 CFR part 1435 definition, but implied elsewhere in the regulation language.

CCC modifies the reassignment provisions in § 1435.309 to explain more fully CCC's reassignment procedures. This rule also replaces the "by May 1" in section 1435.309(a) with language of the 2002 Act, "from time to time". May 1 is not an appropriate time to make reassignment determinations for all processors because CCC permits processors to buy or sell over-allocation sugar until May 1. The deadline "by April 15" is eliminated in section 1435.309(b) for the same reason.

#### **Notice and Comment**

These changes will not be published with a request for public comment, and will be implemented with a final rule. Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (2002 Act) provides that the regulations needed to administer Title I of the 2002 Act, including those involved here, may be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to

notices of proposed rulemaking and public participation in rulemaking. The rule will be effective upon publication in order to provide its benefit to producers as soon as possible.

#### **Executive Order 12866**

This interim rule has been designated as "Not significant" under Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

#### **Federal Assistance Programs**

This final rule applies to the following Federal assistance programs, as found in the Catalog of Federal Domestic Assistance: 10.051—Commodity Loans and Loan Deficiency Payments.

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or other law to publish a notice of proposed rulemaking for the subject of this rule.

#### **Environmental Assessment**

The environmental impacts of this rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An environmental evaluation was completed and the proposed action has been determined not to have the potential to significantly impact the quality of the human environment and no environmental assessment or environmental impact statement is necessary. A copy of the environmental evaluation is available for inspection and review upon request.

#### **Executive Order 12778**

This rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with it and is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

#### **Executive Order 12372**

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

#### **Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

#### **Paperwork Reduction Act**

Section 1601(c) of the 2002 Act provides that these regulations may be promulgated and the programs administered without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the provisions authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

#### **Government Paperwork Elimination Act**

CCC is committed to compliance with the Government Paperwork Elimination Act, which requires Federal Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. However, the information collections required by 7 CFR part 1435 rule are not yet fully implemented for the public to conduct business with FSA electronically. CCC Sugar Program forms are available on the agency's Internet web site. Forms may be completed and saved on a computer, but must be printed, signed and submitted to FSA in paper form.

#### **List of Subjects in 7 CFR Part 1435**

Loan programs—agriculture, Price support programs, Reporting and record keeping requirements, and Sugar.

■ For the reasons set out in the preamble, 7 CFR part 1435 is amended as set forth below.

#### **PART 1435—SUGAR PROGRAM**

■ 1. The authority for 7 CFR part 1435 continues to read as follows:

**Authority:** 7 U.S.C. 1359aa–1359jj and 7272 *et seq.*; 15 U.S.C. 714b and 714c.

#### **Subpart A—General Provisions**

■ 2. In § 1435.2, revise the definitions of "ability to market," "market or marketing", and "sugar" to read as follows:

#### **§ 1435.2 Definitions.**

\* \* \* \* \*

*Ability to market* means, for purposes of determining the State cane sugar allotments and sugarcane processor allocations for Hawaii and Puerto Rico, the estimated quantity of sugar, raw value, as CCC determines, that will be produced in the cane State or by the sugarcane processor, as appropriate, during the applicable crop year; for determining the remaining State cane sugar allotments, the highest single year of sugar production for the State during the 1999 through 2003 crop years; for determining the sugarcane processor allocations for mainland cane States other than Louisiana, the highest single year of sugar production for the processor during the 1999 through 2003 crop years; and, for determining the sugarcane processor allocations for Louisiana, the simple average of two amounts for each processor, including:

(1) The production of sugar for the processor, stated in short tons, raw value, during Crop Year 2003, as determined by CCC; and

(2) The simple average of 3 years of the processor's production of sugar, stated in short tons, raw value, from among the 1999 through 2003 crop years, excluding the year in which the production was the highest and the year in which the production was the lowest. With respect to the 2003 crop year, each processor's production shall be the same as determined under paragraph (1).

\* \* \* \* \*

*Market or marketing* means the transfer of title associated with the sale or other disposition of sugar in United States commerce, including the forfeiture of sugar loan collateral under Subpart B, and for any integrated processor and refiner, the movement of raw cane sugar into the refining process.

\* \* \* \* \*

*Sugar* means any grade or type of saccharine product derived, directly or indirectly, from sugarcane, sugar beets, sugarcane molasses or sugar beet molasses and consisting of, or containing, sucrose or invert sugar, including raw sugar, refined crystalline sugar, edible molasses, edible cane syrup, liquid sugar, and in-process sugar.

\* \* \* \* \*

#### **Subpart D—Flexible Marketing Allotments for Sugar**

■ 3. In § 1435.309 revise paragraphs (a), (b), and (c) to read as follows:

##### **§ 1435.309 Reassignment of deficits.**

(a) CCC will determine, from time to time, whether sugar beet or sugarcane processors will be unable to market their allocations.

(b) Sugar beet and sugar cane processors will report to CCC current inventories, estimated production, expected marketings, and any other pertinent factors CCC deems appropriate to determine a processor's ability to market their allocation.

(c) If CCC determines a sugarcane processor will be unable to market its fall allocation for the crop year in which an allotment is in effect, the deficit will be reassigned by June 1:

(1) First, to allocations of other sugarcane processors within that State based on each processor's initial allocation share of the State's allotment, but no processor may receive reassigned allocation such that its allocation exceeds its estimated total sugar supply.

(2) If the deficit cannot be eliminated after reassignment within the same State, be reassigned to the other cane States based on each State's initial share of the cane sugar allotment, but no State may receive reassigned State allotment

such that its allocation exceeds its estimated total sugar supply, with the reassigned quantity to each State being allocated according to paragraph (c)(1) of this section.

\* \* \* \* \*

Signed in Washington, DC, on September 1, 2004.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

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BILLING CODE 3410-05-P

## **FEDERAL TRADE COMMISSION**

### **16 CFR Part 305**

#### **Sample Labels**

##### *CFR Correction*

In Title 16 of the Code of Federal Regulations, parts 0 to 999, revised as of January 1, 2004, part 305 is corrected by:

1. Replacing Sample Label 3 on page 311 with Sample Label 3 on page 306, and adding the following Prototype Label 3 in place of Sample Label 3 on page 306, and

2. Replacing Sample Label 4 on page 312 with Sample Label 4 on page 307, and adding the following Prototype Label 4 on page 307.

#### **PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")**

##### **APPENDIX I—SAMPLE LABELS**

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