

# Proposed Rules

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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

### Commodity Credit Corporation

#### 7 CFR Part 1405

RIN 0560-AH35

#### Collection of State Commodity Assessments

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule, if adopted, would provide that the Commodity Credit Corporation (CCC) will deduct from marketing assistance loan proceeds an amount equal to any assessment required under State or Federal law to be paid by a producer who markets the commodity, or by the first purchaser of the commodity. This discretionary action is authorized by Public Law 108-470.

**DATES:** Comments on this rule must be received on or before July 7, 2005 in order to be assured of consideration. Comments received after that date may be considered to the extent practicable.

**ADDRESSES:** The Commodity Credit Corporation (CCC) invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *E-Mail:* Send comments to [Kimberly\\_Graham@wdc.usda.gov](mailto:Kimberly_Graham@wdc.usda.gov).
- *Fax:* Submit comments by facsimile transmission to (202) 690-3307.
- *Mail:* Send comments to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, Room 4095-S, 1400 Independence Avenue, SW., Washington, DC 20250-0512.
- *Hand Delivery or Courier:* Deliver comments to the above address.
- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, PSD, FSA, USDA,

Room 4095-S, 1400 Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available on the PSD home page at <http://www.fsa.usda.gov/dafp/psd>. All comments will become a matter of public record, including the name, mailing address, and e-mail address of the commenting party.

#### FOR FURTHER INFORMATION CONTACT:

Kimberly Graham, 202-720-9154, email: [Kimberly.Graham@wdc.usda.gov](mailto:Kimberly.Graham@wdc.usda.gov). Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

#### SUPPLEMENTARY INFORMATION:

##### Background

Many States have enacted statutes that provide for the levy of assessments with respect to marketings of agricultural commodities. The assessments, generally, are paid by the producer of the commodity or by the first purchaser of the commodity. Similarly, there are a limited number of assessments collected pursuant to Federal statutes. Both the State and Federal assessments are used to increase domestic and international demand of the commodity through a variety of activities including product promotion; consumer information; and research related to product improvement, safety, health and production technology. In most instances, the collection of the assessment occurs at the point of the first marketing of the commodity.

When the first State assessments were authorized, CCC commodity loans were non-recourse loans that could be satisfied through either of two ways: the payment of the principal amount of the loan plus accrued interest; or through the forfeiture to CCC of the commodity which had been pledged as collateral for the loan. Accordingly, if the market price of the commodity exceeded the amount necessary to repay the loan, it was to the producer's advantage to redeem the loan collateral. Conversely, when market prices were below the loan rate, it would be more advantageous for the producer to forfeit the loan collateral to CCC. In those instances when there were prolonged periods of low prices, CCC would acquire substantial quantities of commodities as opposed to the commodity being marketed in the

marketplace by the producer. This resulted in a situation where there were reduced collections of commodity assessments since the commodity was not marketed. In order to alleviate some of these concerns, CCC agreed in many instances to collect these assessments when CCC price support loans were disbursed, and in order to assure that the producer received the Congressionally-mandated level of price support obtained through the nonrecourse loan, the State was required to agree to refund the assessment to the producer if requested.

Beginning with changes by Congress in the late 1980's, the repayment mechanism for most CCC commodity loans was changed in order to eliminate the acquisition of large stocks of commodities by CCC. This change, generally, allowed producers to repay loans at the lesser of the normal redemption price (loan principal plus interest) or the market price as determined by CCC. These types of loans are referred to as "marketing assistance loans." As a result of these changes, CCC now obtains minimal quantities of commodities as forfeitures. Thus, CCC determined that it was no longer prudent to enter into agreements to collect assessments at loan making since the commodities were being marketed, thus assessments were being collected when the commodity entered the market. In reviewing whether the assessment collection activities of CCC were still needed, it also became clear to CCC that there was no clear statutory authority for the reduction in the loan rate that occurred as a result of the collection activity. Accordingly, CCC ceased to enter into new agreements to collect such assessments. Recently, as a part of a wider examination of its loan-making actions, CCC found that in crop year 2003 only 112 of 37,246 farm-stored loans with a principal amount of \$25,000 or less were satisfied by forfeiture to CCC (0.30 percent).

In order to remove any questions regarding the authority of CCC to engage in the collection of commodity program assessments, Public Law 108-470 was enacted, which provides:

(a) Collection From Marketing Assistance Loans.—The Secretary of Agriculture may collect commodity assessments from the proceeds of a marketing assistance loan for a producer if the assessment is required to be paid by the producer or the first purchaser of a commodity pursuant to a State law or

pursuant to an authority administered by the Secretary. This collection authority does not extend to a State tax or other revenue collection activity by a State.

(b) Collection Pursuant to Agreement.—The collection of an assessment under the subsection (a) shall be made as specified in an agreement between the Secretary of Agriculture and the State requesting the collection.

In proposing to implement Public Law 108–470, CCC considered its past experience in collecting such assessments and the magnitude of commodity forfeitures to CCC.

Accordingly, the provisions of the proposed rule are substantially similar to the process used in the past by CCC.

With respect to the collection of State assessments, the major provisions of the proposed rule are: (1) A request for CCC to engage in the collection activity must initially be submitted by the Governor of the State; (2) such request must identify the entity that the Governor has designated to enter into the collection agreement with CCC; (3) a statement from the Attorney General, at any time prior to final execution of the agreement, that the agreement is in compliance with applicable State laws and the provisions of section 1(a) of Public Law 108–470; (4) collection of the assessment, as requested by the Governor, may be at either the time the marketing assistance loan is disbursed to the producer or at the time of forfeiture of the commodity to CCC, but not both; and (5) the State agrees to indemnify CCC for any costs incurred in collecting the assessment, including costs relating to resolution of disputes arising from the requested collection of the assessment.

With respect to assessments collected under Federal statutes, the proposed rule provides that collections will be made as provided in such manner as may be agreed upon by CCC and the entity to whom the Secretary has delegated responsibility to otherwise engage in collection activities.

#### **Executive Order 12866**

This proposed rule is issued in conformance with Executive Order 12866, was determined to be not significant, and has not been reviewed by the Office of Management Budget.

#### **Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is applicable to this proposed rule.

#### **Environmental Assessment**

The environmental impacts of this proposed rule have been considered consistent with the provisions of 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 the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA concluded that the rule requires no further environmental review because it is categorically excluded. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

#### **Executive Order 12988**

This proposed rule has been reviewed in accordance with Executive Order 12988. If a final rule is published for the subject of this proposed rule, that rule will preempt State laws that are inconsistent with the final rule. Before any legal action may be brought regarding a determination under this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

#### **Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

#### **Unfunded Mandates Reform Act of 1995**

The rule contains no Federal mandates under the regulatory provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, Local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **Paperwork Reduction Act**

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of title I of the 2002 Act shall be made 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 program authorized by these regulations are not subject to review by OMB under the Paperwork Reduction Act.

#### **Executive Order 12612**

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have substantial direct effect on States or their political subdivisions or

on the distribution of power and responsibilities among the various levels of government.

#### **Federal Assistance Programs**

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies are Commodity Loans and Loan Deficiency Payments, 10.051.

#### **List of Subjects in 7 CFR Part 1405**

Agricultural commodities, Feed grains, Grains, Loan programs—agriculture, Oilseeds, Price support programs, Reporting and record keeping requirements.

For the reasons set out in the preamble, 7 CFR part 1405 is proposed to be amended as follows:

#### **PART 1405—LOANS, PURCHASES, AND OTHER OPERATIONS**

1. The authority citation continues to read as follows:

**Authority:** 7 U.S.C. 1515; 7 U.S.C. 7991(e); 15 U.S.C. 714b and 714c.

2. Amend part 1405 by adding § 1405.9 to read as follows:

##### **§ 1405.9 Commodity assessments.**

(a) CCC will deduct from the proceeds of a marketing assistance loan an amount equal to the amount of an assessment otherwise required to be remitted to a State agency under a State statute by the producer of the commodity pledged as collateral for such loan or by the first purchaser of such commodity subject to the requirements of paragraph (b) of this section.

(1) The assessment will be collected in one of the following ways, as requested by the State, but not both:

(i) When the proceeds of the loan are disbursed, or;

(ii) When the commodity pledged as collateral for the loan is forfeited to CCC, in which case CCC will collect from the producer the amount of the assessment submitted by CCC to the State.

(2) CCC will deduct from the proceeds of a marketing assistance loan an amount equal to the amount of an assessment otherwise authorized to be remitted to a Federally authorized entity under a Federal statute by the producer of the commodity pledged as collateral for such loan or the first purchaser of such commodity in the manner agreed to by CCC and the entity to whom the Secretary of Agriculture has authorized to collect such assessments.

(b) CCC will collect commodity assessments authorized under a State statute when:

(1) The Governor of the State has:

(i) Requested that the assessment be collected;

(ii) Identified whether the assessment is to be collected at the time the loan proceeds are disbursed or at the time the commodity is forfeited to CCC; and

(iii) Identified the person who may enter into an agreement with CCC that sets forth the obligations of the State and CCC with respect to the collection of the assessment;

(2) The Attorney General of the State, or a person authorized to act on behalf of the Attorney General, has provided to CCC an opinion that the collection activity is authorized by State law and otherwise complies with the provisions of section 1(a) of Public Law 108-470;

(3) The agreement described in paragraph (c) of this section has been executed by the appropriate State official and CCC.

(c) CCC will enter into an agreement with an authorized State official to collect commodity assessments when the actions set forth in paragraphs (b)(1) and (2) of this section have been completed. Such agreement will contain the obligations and responsibilities of the State and CCC. All such agreements will include provisions that provide:

(1) The State will indemnify CCC for any costs incurred in the collection of the assessment including costs incurred with respect to resolution of disputes arising from the requested collection of the assessment;

(2) A producer may request from the State a refund of the assessment collected from the producer's marketing assistance loan;

(3) The agreement may be terminated by either party upon 30 days notice.

Signed in Washington, DC, on May 25, 2005.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 05-11199 Filed 6-6-05; 8:45 am]

**BILLING CODE 3410-05-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001-NM-152-AD]

RIN 2120-AA64

**Airworthiness Directives; McDonnell Douglas Model DC-8-11, DC-8-12, DC-8-21, DC-8-31, DC-8-32, DC-8-33, DC-8-41, DC-8-42, and DC-8-43 Airplanes; DC-8-50 Series Airplanes; DC-8-61 Airplanes; DC-8-61F Airplanes; DC-8-71 Airplanes; and DC-8-71F Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This action withdraws a notice of proposed rulemaking (NPRM) that proposed revision of an existing airworthiness directive (AD). The existing AD applies to certain McDonnell Douglas airplanes. That NPRM would have extended the compliance time for the follow-on inspection after accomplishment of the modification required by the existing AD. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has approved an alternative method of compliance for the existing AD using a new version of the service bulletin that provides an acceptable level of safety. Accordingly, the proposed rule is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Jon Mowery, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5322; fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to revise an existing airworthiness directive (AD), applicable to certain McDonnell Douglas transport category airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on January 30, 2003 (68 FR 4727). The NPRM proposed to revise AD 2001-06-02, amendment 39-12149, to extend the compliance time from "within 32,000 flight hours" to "within 32,000 landings" for the follow-on inspection after accomplishment of the terminating modification required by AD 2001-06-02. That action was prompted by data indicating that extending the compliance time for the follow-on inspection would provide an acceptable level of safety.

### Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, we have approved McDonnell Douglas Service Bulletin DC8-57-090, Revision 6, dated April 9, 2002, as an alternative method of compliance with AD 2001-06-02. Revision 6 provides data indicating that extending the compliance time for the follow-on inspection required by AD 2001-06-02 to "within 32,000 landings" provides an acceptable level of safety.

### FAA's Conclusions

Since we approved Revision 6 as an alternative method of compliance with AD 2001-06-02, we have determined that it is unnecessary to revise AD 2001-06-02 to extend the compliance time of the follow-on inspection to the terminating action. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

### Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2001-NM-152-AD, published in the **Federal Register** on January 30, 2003 (68 FR 4727), is withdrawn.

Issued in Renton, Washington, on May 27, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05-11257 Filed 6-6-05; 8:45 am]

**BILLING CODE 4910-13-P**