Rules and Regulations

Federal Register
Vol. 60, No. 27
Thursday, February 9, 1995

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560–AC14

Sugar and Crystalline Fructose Marketing Allotment Regulations for Fiscal Years 1992 Through 1998

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to adopt as final, with certain changes, the interim rule published in the **Federal Register** on July 6, 1993 (58 FR 36120) and to adopt as final, without any changes, the interim rule published in the **Federal Register** on August 6, 1993 (58 FR 41995). This final rule sets forth regulations to implement the provisions of sections 359 b-j of the Agricultural Adjustment Act of 1938 (the 1938 Act), as amended, regarding marketing allotments for sugar processed from domestically produced sugarcane and sugar beets and crystalline fructose (CF) manufactured from corn, including appeal procedures, for the fiscal years 1992 through 1998.

EFFECTIVE DATE: February 8, 1995.

FOR FURTHER INFORMATION CONTACT: Robert D. Barry, Director, Sweeteners Analysis Division, Consolidated Farm Service Agency (CFSA), United States Department of Agriculture (USDA), telephone: 202–720–3391.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by the USDA, it has been determined that this final rule:

(1) Could have an annual effect on the economy of more than $100 million;

(2) Could adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

A Final Regulatory Impact Analysis determined that marketing allotments would reduce the quantity of domestically produced sugar that could be marketed in the United States but overall raise revenues of beet and cane producers, processors, and refiners through higher prices to users. Marketing allotments would cause supply disruptions and affect sugar-producing sectors, States, and local communities in different ways depending on their particular balance of sugar supply relating to allotments and allocations.

Other than the above impacts, this rule:

(1) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(2) Would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(3) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is applicable to this final rule. The Final Regulatory Impact Analysis determined that this regulation has no significant impact on a substantial number of small entities because the particular marketing allotment options considered do not affect the paperwork, reporting, or compliance burdens of the small entities in the program. The Commodity Credit Corporation (CCC) thus certifies that the rule will have no significant economic impact on a substantial number of small entities. The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of the implementation of each option is available on request from the above-named individual.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this final rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loans and Purchases—10.051.

Paperwork Reduction Act

The information collection requirements for sugar beet and sugarcane processors and raw cane sugar refiners have been approved by the Office of Management and Budget (OMB) through March 31, 1996, and assigned OMB no. 0560–0138.

The public reporting burden for the approved collections of information is estimated to average 90 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and computing and reviewing the collection of information.

Development of information collection requirements for sugarcane growers subject to proportionate shares has not been finalized. These information requirements will be submitted to OMB for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35).

Executive Order 12372 and Executive Order 12778

The program covered by this final rule is not subject to the provisions of 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).

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule preempt State law to the extent such laws are inconsistent with the provisions of this final rule. This final rule is not retroactive. Before any action may be brought regarding the provisions of this final rule, the administrative appeal rights set forth at 7 CFR part 780 must be exhausted.

Background

Title IX of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), which was enacted on November 28, 1990, amended the 1938 Act to provide for the establishment, under certain circumstances, of marketing allotments for sugar and CF for fiscal years 1992 through 1996. Section 111 of the Food, Agriculture, Conservation, and Trade Amendments Act of 1991, which was enacted on December 13, 1991, amended several portions of the 1938 Act's marketing allotment provisions. Pub. L. 102–535, Certain Producers of Sugarcane, Provision for Equitable Treatment, which was enacted on October 27, 1992, further amended provisions pertaining to penalties for producers in Louisiana who harvest acreage in excess of proportionate shares. The Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), which was enacted on August 10, 1993, amended section 359b of the 1938 Act by:

(1) Extending the marketing allotment provisions through fiscal year 1998,

(2) Allowing a processor of sugar beets or sugarcane to market sugar in excess of allocation in order to facilitate the exportation of such sugar,

(3) No longer counting sugar under loan as sugar marketed, and

(4) Imposing a civil penalty only if a processor knowingly violates its marketing allocation limit.

Summary of Comments

An interim rule to implement the 1938 Act's provisions for sugar marketing allotments was published July 6, 1993 (58 FR 36120) and an interim rule to implement the appeal regulations was published August 6, 1993 (58 FR 41995). Fifteen comments were received from interested persons regarding the interim regulations: four from cane industry trade associations, one from an independent sugarcane grower, three from sugar beet processing companies, two from farm bureaus, one from a sugar beet grower organization, one from a beet sugar trade association, one from a corn refining company, one signed by three members of Congress, and one from a State Commissioner of Agriculture.

Discussion of Comments

1. There were 10 comments addressing the 3-factor criteria used to establish the percentage factors for splitting the overall marketing allotment between the cane and beet sectors.

Eight comments dealt with the weights assigned each of the criteria. Four commenters wanted past marketings to be the predominant or only criterion used to establish the percentage factors. Their recommendations for weighting past marketings ranged from 66 1/3 percent to 100 percent. Three commenters endorsed CCC's use of equal weights for all three criteria. One commenter called for flexibility in setting weights.

One commenter suggested that, when establishing the percentage factors, the Secretary not use the past marketing histories of defunct processors.

One commenter urged flexibility in the definition of ''processing capacity'' in times of drought. It was suggested that processing capacity be defined as the greater of:

(1) The maximum production during the 1985–1989 crop year period, or

(2) The maximum production during the immediately preceding five crop years.

The 1938 Act requires the use of the three-factor criteria for determining the percentage factors for overall beet and cane sugar allotments (7 CFR 1435.511), State cane sugar allotments (7 CFR 1435.512), and beet and cane processor marketing allotment allocations (7 CFR 1435.513). In each of these CFR sections, the regulations state: ''Each of the three criteria * * * will be weighted equally, or as deemed appropriate by CCC for each year allotments are in effect.

CCC reaffirms its position that equal weighting for the three factors is generally appropriate for purposes of the marketing allotment statute, unless a different weighting is determined to be more appropriate for a particular fiscal year in light of the circumstances existing at such time. Equal weights were assigned to each of the three factors when allotments were instituted in FY 1993. An evaluation of the comments made and the effects of the FY 1993 allotments, and the experience gained during the administration of the allotments, confirms that such flexibility is necessary in order to avoid imposing disproportionate negative effects on a few processors, while having no effect on other processors that have also expanded production since the base period, or resulting in increased prices considerably more than necessary to achieve the objectives of the no cost price support program for sugar beets and sugarcane. CCC must carefully evaluate the weighting of the three factors in order to achieve the statutory goals of fairness, efficiency and equity in allocating market shares and to avoid causing excessive prices for consumers and industrial users of sugar. Moreover, in the abstract, it cannot be determined that differing weights would be appropriate under the conditions existing in each year in which the allotments might be imposed.

CCC also believes the definition of ''processing capacity'' should be retained. Qualifying the definition for drought opens up arguments for other crop problems, such as premature freezes, hurricane damage, flooding, disease problems, and so forth, and would require complicated determinations of relative degree of damage. Finally, the 1938 Act explicitly states that the percentage factors for establishing the overall beet and cane sugar allotments shall consider marketings of sugar during the 1985 through 1989 time period. Therefore, past marketings of recently defunct processors must be included in the calculations. Thus, the 3-factor criteria specified in the interim rule are adopted without change.

2. Nine comments were received concerning the treatment of sugar pledged for price-support loans when allotments were in effect.

The commenters were critical of defining marketing to include the pledging and repledging of sugar. These concerns were addressed by the Omnibus Budget Reconciliation Act of 1993, which amended the previous statute so that only loan forfeitures and sales may count against allocations.

Thus, §§ 1435.510, 1435.513, and 1435.528 are revised accordingly. Also, § 1435.513 is revised to require that a sale between processors to enable the purchasing processor to fulfill its allocation be reported to CCC within a week of the date of such sale. The interim rule had required that such sale be reported within 2 days. This earlier requirement resulted in an undue paperwork burden.

3. There were seven comments concerning allocations of the marketing allotments. Three comments concerned the reassignment of deficits. One commenter suggested that CCC set a specific timetable for assessing the need to reassign deficits and make the timetable known to the industry in advance. One commenter recommended reassignment of deficits after 20 days, and another after 30 days.

CCC acknowledges the need for prompt reassignment of deficits relative to marketing allocations, so as not to short the market. However, it is also important to allow deficit companies reasonable time to purchase sugar and fill the deficit. When allotments were announced during fiscal year 1993, the first reassignments were made 26 days later and related only to the cane sector. The next reassignments, which related to both the cane and beet sectors,

occurred 56 days later. The timing of the second reassignment was partially impacted by delays in some processors' monthly reporting. Because the most recent data available are crucial for determining reassignments, and CCC cannot always be assured of timely receipt of processor data, CCC can only ensure that reassignments will be made as soon and as frequently as practicable.

Thus, § 1435.514 is revised accordingly.

Two commenters called for allowances for new processors. CCC once again notes that the sugar marketing allotment provisions of the 1938 Act do not provide for special treatment for new entrants. Such processors will be unable to acquire a past marketings status but may acquire processing capacity and the ability to market sugar.

Thus, CCC rejects the recommendation.

One commenter recommended that CCC be required to publish sugar marketing allotments at least 2 months before the beginning of the fiscal year, and if readjustments are needed, they should be announced in advance of each quarter. However, the statute requires that, before the beginning of each quarter, the CCC establish, adjust, or suspend marketing allotments depending on its assessment of appropriate factors. Therefore, CCC cannot impose allotments at the beginning of each fiscal year to be subsequently adjusted or suspended as needed. Furthermore, CCC requires flexibility in the time for announcing allotments and readjustments, balancing the need for up-to-date information and analysis with the need of companies for as much advance notice as possible.

Therefore, CCC rejects the recommendation.

One commenter recommended that the allocation of a facility closing or curtailing operations be transferred along with each grower's production history to other processors in the same State, and if that State cannot fulfill the allocation, to beet processors outside the State.

CCC reiterates that under the provisions of the 1938 Act, allocations are not made on a facility basis, but rather on a processor basis. At the processor level, a plant closing would have no effect on past marketings and would reduce processing capacity after five years, if the former production by the closed facility were not offset by increased production at other facilities owned by the processor. Once a facility is shut down, CCC would have to assess whether the processor's ability to market would be affected, and if the processor were placed in a ''deficit'' due to the closure of a facility, CCC would reassign the deficit.

Thus, CCC rejects the recommendation.

4. Three commenters questioned CCC's definition of sugar in its various forms. Two commenters wanted liquid fructose derived from sucrose to be excluded from the definition of sugar. CCC continues to maintain that, based on well established definitions of sugar and sucrose, fructose from sucrose is sugar, rather than a sugar product. Sugar products which are not subject to allotment would consist of products, other than sugar, whose majority content is not sucrose or which are not suitable for human consumption. Permitting liquid fructose derived from sucrose to be exempt from marketing allotments would be a circumvention of the purposes of the statute.

Thus, the definition of sugar as provided in the interim rule is adopted without change.

One commenter alleged inconsistency regarding to CCC's definitions for molasses, cane syrup, liquid sugar, and edible molasses, and referred to the need to conform with U.S. Customs definitions. CCC in the interim rule adopted the Customs definition of liquid sugar but also indicated the need to distinguish among liquid sugar, cane syrup, and sugar syrup. Regarding molasses, the Customs definition refers only to high-test or invert molasses which is not molasses but actually a sugar. CCC has found no universally accepted industry definition of molasses in terms of precise content of sucrose or sucrose-equivalent of invert sugars. Edible molasses is considered a sugar, with a sucrose-solids content of approximately over 60 percent. Sugar syrup has a higher sucrose content but its precise demarcation from edible molasses is not given. Both sugars are defined by CCC, for program purposes, in terms of sucrose-solids content. However, CCC does agree that the definition of sugar syrup, as contained in the interim rule, may be further clarified by stating that it is not principally of crystalline structure.

Thus, § 1435.502 is revised accordingly.

5. Two commenters urged USDA to reconsider imposing penalties on processors who had already exceeded their allocation prior to the announcement of allotments/allocations. The Omnibus Reconciliation Act of 1993 has amended the 1938 Act to exempt processors from penalties unless they ''knowingly'' marketed sugar in excess of allocation.

Thus, § 1435.528 is revised accordingly.

6. There were four comments concerning proportionate shares to producers. One commenter wanted clarification of the circumstances under which more than the average per acre yield for the preceding five years would be utilized in determining the State's per acre yield goal. The interim rule states in § 1435.521 that the State's per-acre yield goal will be at a level not less than the State average per-acre yield for the preceding 5 years, adjusted by the State average recovery rate. However, section 359f(b)(3)(A) of the 1938 Act actually states that the State's average per-acre yield goal shall be at a level (not less than the State average per-acre yield for the preceding 5 years, as determined by the Secretary) that will ensure an adequate net return per pound to producers, taking into consideration any available production research data that the Secretary deems relevant. Section 359f(b)(3)(B) of the 1938 Act also states that the Secretary shall adjust the per acre yield goal by the average recovery rate.

Thus, § 1435.521 is revised accordingly.

Another commenter wanted CCC to require Louisiana farmers to complete acreage reporting by July 1 and inform producers by August 15 of the acreage that may be planted to meet their proportionate shares for the following crop year. However, CCC is not able to determine whether allotments will be implemented that far in advance.

Thus, CCC rejects this recommendation.

The third comment concerned a recommendation that sugarcane acreage certified with ASCS by July be immediately figured into a farm base history for marketing allotment calculations for the following fiscal year when the crop is harvested. However, the 1938 Act specifically states that the acreage base for any farm is equal to the average of the acreage planted or considered planted for harvest for sugar or seed in each of the 5 crop years preceding the fiscal years that proportionate shares will be in effect. The acreage certified in July is considered the current crop year for the fiscal year that starts on the following October 1. Thus, the 1938 Act does not permit CCC to use the July data in determining proportionate shares.

The last comment concerned a request that any reduction in acreage eligibility as a result of proportionate shares not result in any reductions in future farm base levels. Under current policy, the acreage certified in July is used for calculating a farm's acreage base,

regardless of whether allotments (and proportionate shares) are subsequently instituted.

7. There were two comments concerning reasonable ending stocks in the trigger formula for marketing allotments. One commenter said USDA should choose a method to define reasonable stocks in order to give credibility to the process by which allotments are imposed. The other commenter supported flexibility in determining reasonable carry-over stocks, but suggested USDA use a range of stocks-to-use ratios in order to remain consistent.

CCC has consistently rejected a mechanical formula for determining reasonable ending stocks, and instead depends on a comprehensive analysis of the market situation, outlook, and prices. A purely statistical ratio cannot capture the full complexity of the sugar market.

Thus, CCC rejects the recommendation.

8. Two commenters recommended that CCC allow swaps between beet and quota or domestically produced sugar to facilitate exportation of surplus sugar. The current regulations do not address this issue of ''swapping.'' Rather, this issue will have to be addressed in terms of further rulemaking i.e., a new proposed rule, followed by a comment period and final rule.

9. One commenter urged USDA to use the required monthly data submitted by the industry under section 359a of the 1938 Act for calculating all phases of allotments and allocations because these are the best data available. CCC agrees with the need to use the best available data for determining allotments and allocations. However, the rule is not changed for this comment because the data published by the World Outlook and Situation Board and the National Agricultural Statistics Service are deemed as ''official'' USDA estimates.

10. One commenter wanted the term ''U.S. Market Value'' for sugarcane to be defined as ''the daily New York No. 14 contract settlement price for the nearest month less prevailing discounts for raw sugar.''

CCC does not agree with this proposal because discounts to the No. 14 contract price vary continually over time and among the different refiners.

11. One commenter reiterated a previous contention that CF is a premium product to sugar, does not compete with sugar, and has value based on qualities lacking in sugar. The commenter wanted the calculation of CF equivalence to be revised to give CF credit for qualities that sugar does not possess. CCC maintains that if CF is a premium product to sugar, then less (not more) of CF would be equivalent to the sugar quantity of 200,000 tons. Furthermore, the price premium of CF depends not just on the inherent quality of CF relative to sugar but on transient market conditions, including variable competitive relationships among alternative sweeteners.

Thus, CCC rejects the recommendation.

12. The following comments are considered to be outside the limits of this rulemaking, or are clearly contrary to the provisions of the 1938 Act:

(1) Proportionate shares should be established for Florida independent growers,

(2) Imports of sugar from Canada should be reduced to traditional levels, and

(3) Allotments and allocations cannot be justified for fiscal 1994.

Thus, CCC does not address these matters.

13. No comments were received regarding appeal regulations published August 6, 1993 (58 FR 41995).

Thus, 7 CFR 1435.530 is adopted as provided in the interim rule.

Additional Changes

14. Two additional sections of the interim rule are revised to include the specific wording of the 1938 Act.

First, § 1435.507(a) is revised to say that CCC will make quarterly re-estimates ''no later than the beginning'' of each of the second through fourth quarters of the fiscal year, rather than ''before the beginning of each quarter''. This will bring the regulations into conformance with section 359b(2) of the 1938 Act.

Second, § 1435.520(b) is revised to say that a processor's allocation will be shared among producers in ''a fair and equitable manner which adequately reflects'' each producer's production history, rather than in ''a fair and adequate manner''. This will bring the regulations into conformance with section 359f(a) of the 1938 Act.

List of Subjects in 7 CFR Part 1435

Administrative practice and procedures, Appeals, Loan programs/agriculture, Marketing allotments, Price support programs, Reporting and recordkeeping requirements, Sugar.

Accordingly, the interim rule amending 7 CFR part 1435, which was published on August 6, 1993, (58 FR 41995) is adopted as final without any changes, and the interim rule amending 7 CFR part 1435 which was published on July 6, 1993, (58 FR 36120) is adopted as final with the following changes:

PART 1435—SUGAR

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

Authority: 7 U.S.C. 1359aa–1359jj, 1421, 1423, 1446g; 15 U.S.C. 714b and 714c.

2. In § 1435.500, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 1435.500 Applicability.

(a) * * *

(1) The marketing by processors, during fiscal years 1992 through 1998, of sugar processed from domestically produced sugarcane and sugar beets;

(2) The marketing by manufacturers, during fiscal years 1992 through 1998, of crystalline fructose manufactured from corn;

* * * * *

3. In § 1435.502, the definition of ''sugar syrup'' is revised to read as follows:

§ 1435.502 Definitions.

* * * * *

Sugar syrup means a direct-consumption sugar, which is not principally of crystalline structure, that has a sucrose or sucrose-equivalent invert sugar content of less than 94 percent of the total soluble solids.

* * * * *

4. In § 1435.507, paragraph (a) introductory text is revised to read as follows:

§ 1435.507 Annual estimates and quarterly re-estimates.

(a) Before the beginning of each of the fiscal years 1993 through 1998, CCC will estimate, and no later than the beginning of each of the second through fourth quarters of such fiscal years, CCC will re-estimate, for such fiscal year:

* * * * *

5. In § 1435.510, paragraph (d) is revised to read as follows:

§ 1435.510 Adjustment of overall allotment quantity.

* * * * *

(d) If the overall allotment quantity is reduced under paragraph (a)(1) of this section and the quantity of sugar and sugar products marketed, at the time of the reduction, exceeds the processors' reduced allocation, the quantity of excess sugar or sugar products marketed will be deducted from the processor's next allocation of an allotment, if any. The exceptions provided for in § 1435.513 shall be applicable in determining whether a processor has exceeded a reduced allocation.

* * * * *

6. In § 1435.513:

A. Paragraph (f) is revised,

B. Paragraph (g) is removed, and

C. Paragraph (h) is redesignated as paragraph (g) and redesignated paragraph (g) is revised to read as follows:

§ 1435.513 Allocation of marketing allotments to processors.

* * * * *

(f) During any fiscal year in which marketing allotments are in effect and allocated to processors, the total of the quantity of sugar and sugar products marketed by a processor shall not exceed the quantity of the allocation of the allotment made to the processor.

(g) Paragraph (f) of this section shall not apply to any sale of sugar by a processor to another processor that is made to enable the purchasing processor to fulfill the purchasing processor's allocation of an allotment. Such sales shall be reported to CCC within a week of the date of any such sale.

7. In § 1435.514, paragraph (a) is revised to read as follows:

§ 1435.514 Reassignment of deficits.

(a) From time to time in each fiscal year that marketing allotments are in effect, CCC will determine whether processors of sugar beets or sugarcane will be able to market sugar covered by the portions of the allotments allocated to them. These determinations will be made giving due consideration to current inventories of sugar, estimated production of sugar, expected marketings, and any other pertinent factors. These determinations will be made as soon and as frequently as practicable.

* * * * *

8. In § 1435.520, paragraph (b) is revised to read as follows:

§ 1435.520 Sharing processors' allocations with producers.

* * * * *

(b) Whenever allocations of a marketing allotment are established or adjusted, every sugar beet processor and sugarcane processor must provide to CCC such adequate assurances as are required to ensure that the processor's allocation will be shared among producers served by the processor in a fair and equitable manner which adequately reflects each producer's production history.

* * * * *

9. In § 1435.521, paragraph (c) (1) is revised to read as follows:

§ 1435.521 Proportionate shares for producers of sugarcane.

* * * * *

(c) * * *

(1) Establish the State's per-acre yield goal at a level (not less than the average per-acre yield in the State for the preceding 5 years) that will ensure an adequate net return per pound to producers in the State, taking into consideration any available production research data considered relevant;

* * * * *

10. In § 1435.528, paragraphs (a) and (b) are revised to read as follows:

§ 1435.528 Penalties and assessments.

(a) In accordance with section 359b(d)(3) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359bb(d)(3)), any sugar beet processor or sugarcane processor who knowingly markets sugar or sugar products in excess of the processor's allocation in violation of § 1435.513 shall be liable to CCC for a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of sugar involved in the violation.

(b) In accordance with section 359b(d)(3) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359bb(d)(3)), any manufacturer of CF who knowingly markets CF in excess of the manufacturer's marketing allotment shall pay to CCC a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of CF involved in the violation.

* * * * *

Signed at Washington, DC, on February 2, 1995.

Grant Buntrock,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–3288 Filed 2–8–95; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AB28

Deposit Insurance Coverage

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its deposit insurance regulations to require that: Upon request, an insured depository institution disclose in writing to depositors of employee benefit plan funds, its current Prompt Corrective Action (PCA) capital category, its capital ratios, and whether employee benefit plan deposits would be eligible for ''pass-through'' insurance coverage; upon opening an account comprised of employee benefit plan funds, an insured depository institution disclose in writing its PCA capital category, a description of the requirements for ''pass-through'' insurance coverage and whether, in the institution's judgment, the deposits are eligible for ''pass-through'' deposit insurance; and when employee benefit plan deposits placed with an insured depository institution would no longer qualify for ''pass-through'' insurance coverage, the institution disclose in writing to all existing employee benefit plan depositors within 10 business days the institution's PCA capital category and that new, rolled-over or renewed employee benefit plan deposits will not be eligible for ''pass-through'' deposit insurance coverage.

The FDIC is also making a number of technical amendments to its insurance regulations concerning commingled accounts of bankruptcy trustees, joint accounts, accounts for which an insured depository institution is acting in a fiduciary capacity, and accounts for which an insured depository institution is acting as the trustee of an irrevocable trust.

The intended effect of the final rule is to provide employee benefit plan depositors important information, not otherwise available, on ''pass-through'' deposit insurance which may be needed to prudently manage their funds. The technical amendments clarify the insurance rules involving commingled accounts of bankruptcy trustees, joint accounts, accounts for which an insured depository institution is acting in a fiduciary capacity, and accounts for which an insured depository institution is acting as the trustee of an irrevocable trust.

EFFECTIVE DATES: The amendments to 12 CFR 330.12 are effective on July 1, 1995. The amendments to 12 CFR 330.6, 330.7, 330.10 and 330.11 are effective on March 13, 1995.

FOR FURTHER INFORMATION CONTACT: Daniel M. Gautsch, Examination Specialist, Division of Supervision (202/898–6912) or Joseph A. DiNuzzo, Counsel, Legal Division (202/898–7349), Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

In May 1993, the FDIC Board of Directors (Board) revised § 330.12 of the FDIC's regulations (12 CFR 330.12) (58 FR 29952 (May 25, 1993)) to reflect the new limitations imposed by section 311 of the Federal Deposit Insurance Corporation Improvement Act of 1991