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Part V

Department of Agriculture

Commodity Credit Corporation

**7 CFR Parts 1435 and 1436
2002 Farm Security and Rural Investment
Act of 2002 Sugar Programs and Farm
Facility Storage Loan Program; Final Rule**

DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation****7 CFR Parts 1435 and 1436**

RIN 0560-AG73

2002 Farm Security and Rural Investment Act of 2002 Sugar Programs and Farm Facility Storage Loan Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the provisions of Title I of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) relating to the various activities affecting sugar beet and sugar cane producers and processors and the marketing of sugar. Generally, these regulations are applicable through Fiscal Year (FY) 2007. Major provisions of the 2002 Act terminate marketing assessments; make in-process sugar eligible for loans; authorize the establishment of a payment-in-kind program; cap the minimum payment requirement for sugar beet growers; eliminate a loan forfeiture penalty; provide for storage facility loans; and establish flexible marketing allotments.

EFFECTIVE DATE: August 22, 2002.

FOR FURTHER INFORMATION CONTACT: Dan Colacicco, Economic and Policy Analysis Staff, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0540, 1400 Independence Ave, SW, Washington, DC 20250-0540. Phone: (202) 720-6733. E-mail: dcolacicco@wdc.fsa.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:**Notice and Comment**

Section 1601(c) of the 2002 Act requires that the regulations needed to implement Title I of the 2002 Act which includes the Sugar Program are to 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. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be economically significant under

Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment was completed and is summarized after the background section explaining the rule.

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 is Commodity Loans and Loan Deficiency Payments, 10.051.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this final 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 FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has completed a final environmental assessment and concluded that the proposed action will have no significant impacts upon the human environment as documented through the completion of a Finding of No Significant Impact (FONSI). A copy of the final environmental assessment and FONSI are available for review at <http://www.fsa.usda.gov/dafp/cepd/environmental/default.htm>.

Executive Order 12778

The final rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with it, however, this rule 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 the provisions of Executive Order 12372, which require 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 about this rule. Also, this rule contains no mandates as defined in sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. These regulations affect the planting and marketing decisions of a large number of agricultural producers. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

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 done 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 the Office of Management and Budget under the Paperwork Reduction Act.

Background*Sugar Program*

This rule completely replaces the existing Sugar Program regulations at 7 CFR part 1435. Implementation of the 2002 Act requires substantial modification or elimination of existing subparts and the addition of 2 new subparts.

Subpart A, General Provisions, is updated to reflect the new crop years (2002 through 2007), elimination of marketing assessments, and the addition of a sugar marketing allotment program and a processor Payment-In-Kind (PIK) program. Definitions are expanded to reflect new provisions such as sugar marketing allotments.

Subpart B, Sugar Loan Program, is expanded to include loans for in-process sugar, which are set at 80

percent of the raw cane sugar or beet sugar loan rate, as applicable. To be eligible for loans, sugar now must be stored in CCC-approved warehouses to ensure the quality of CCC's loan collateral or assets. CCC will use temporary approvals as required to ensure this requirement does not interrupt loan making. Loan settlement will be based on a schedule of premiums and discounts available in county offices. The previous 30-day notification of intent to forfeit sugar loan collateral is eliminated.

Loan maintenance provisions in the rule now require that sugar beet grower minimum payments not exceed the amount specified in the grower/processor contract. The 2002 Act eliminates the requirement that CCC add 1 percentage point to the interest rate as calculated by the procedure in place in 1996 but does not establish a sugar loan interest rate. CCC has decided to use the rates required for other commodity loans. The 2002 Act also eliminated the forfeiture penalty.

The loan settlement and foreclosure sections in the rule now address in-process sugars. Forfeiture of such sugars, pledged as collateral, will be accepted as payment in full of principal and interest if the processor converts them into raw cane sugar or refined beet sugar of acceptable grade and quality for sugar eligible for loans within 1 month after loan maturity. If forfeited in-process sugars are not converted into raw cane sugar or refined beet sugar of suitable quality and transferred to CCC within 1 month, CCC may charge liquidated damages. If the processor does not forfeit the collateral, but instead further processes the in-process sugar into raw cane sugar or refined beet sugar and repays the loan, the processor may obtain a loan at the higher rate for the raw cane sugar or refined beet sugar.

Loan collateral forfeited on September 30, the last day of the crop year, will become property of CCC on October 1 of the next crop year. Therefore, forfeitures made on the last day of the crop year will be considered as marketings made during the following crop year and count against the following year's marketing allotments, unless allotments are suspended.

Subpart C, Information Reporting and Recordkeeping Requirements, is expanded to include reporting of sugarcane production and imports. Sugarcane producers located in Louisiana must report sugarcane yields and planted acres. Importers of sugars, syrups, or molasses to be used for domestic human consumption or to be used for the extraction of sugar for domestic human consumption shall

report the quantities of products imported and the sugar content or equivalent of the products. The requirement does not apply to sugars, syrups, or molasses within tariff-rate quota quantities subject to the lower rate of duties.

Subpart D, Flexible Sugar Marketing Allotments, is added to part 1435 to clarify administration of the sugar marketing allotment program established by the 2002 Act. The 2002 Act restores and modifies the sugar marketing allotment program that was suspended by the Agricultural Market Transition Act (7 U.S.C. 7201 note). The new flexible sugar marketing allotments are always established before the crop year. Allotments and the processor allocations will be suspended if sugar imports for human consumption exceed 1,532,000 short tons, raw value, and CCC reduces the overall allotment quantity in response to the imports. The suspension is lifted if imports are reduced to a level at or below 1,532,000 tons. Thus, processors will always have an allocation, but at times the allocations may be suspended due to imports exceeding the trigger level and the overall allotment quantity being reduced.

Estimates of beginning stocks, production, imports, exports, and consumption used to administer the sugar marketing allotment program will come from the World Agricultural Supply and Demand Estimates published monthly by USDA's World Board. CCC will set the reasonable ending stocks estimate at a level expected to preclude sugar loan collateral forfeitures.

Several types of sugar marketings will not be counted against a processor's allocation. Sugar marketings for export and nonhuman consumption (*e.g.*, feed and ethanol uses) will not be counted against a processor's allocation. The 2002 Act also specifically excludes from the definition of prohibited sugar marketing activity a sale of sugar from a processor who has more sugar than allocation to a processor who has more allocation than sugar. CCC excluded sugar sales for nonhuman consumption from allotments because the law excludes sugar imports for nonhuman consumption from the import trigger level and excluding nonhuman uses should not encourage forfeitures since these uses do not generate revenue consistent with the loan forfeiture level.

The 2002 Act instructs CCC to periodically determine whether a processor has more allocation than sugar supply and then reassign the deficit according to a very specific hierarchy. Thus, CCC can limit these

sales by reducing the allocation of the processor buying over-allocation sugar. CCC will permit these transactions until May 1 of each crop year, which is expected to leave enough time in the crop year to permit CCC to reassign the unused allocation. CCC must be notified of sales from a processor with more sugar than allocation to a processor with more allocation than sugar within 5 days of the sale. These sales are not permitted between cane processors in different States because the 2002 Act specifically requires that only cane sugar produced in a State may be used to fulfill the State's cane sugar allotment.

The 2002 Act provides limited CCC discretion in establishing sugar beet processor allocations and has no provision for collecting industry comments through the hearing process. If a processor had an aggregate quality loss exceeding 20 percent, the loss threshold under CCC's Quality Loss Program, on stored sugar beets during the 1998 through 2000 crop years, CCC will apply the beet sugar production history by 1.25 percent as the 2002 Act mandates.

The 2002 Act provides wide discretion to CCC in establishing sugarcane State allotments and sugarcane processor allocations of those allotments. CCC will conduct a hearing in August of each year, if requested by interested sugarcane growers or processors by July 15, beginning with the 2003 crop. CCC will put the most weight, 50 percent, on the "ability to market the current crop" factor and weights of 25 percent each on the "past marketings" and "past processings" factors. The 2002 Act defines past marketings and past processings in terms of past sugar production history. CCC's experience with sugar marketing allotments in the mid-1990's resulted in CCC changing from equal weights to a 50/25/25 weighting system. CCC determined that the equal weighting system put a disproportionate share of the negative impacts of marketing allotments on a relatively few efficient processors.

Allotments will be suspended if (1) sugar imports for human consumption exceed 1,532,000 short tons, raw value, and (2) CCC reduces the overall allotment quantity in response to the imports.

CCC will require processors receiving allocations to provide assurances that they will divide their allocation fairly and equitably among producers they serve in a manner that adequately reflects the producers' production history.

The rule permits producers who delivered to a factory that later closed to apply to CCC to move the allocation commensurate with their sugar beet or sugarcane production to a factory willing to take their production. All allocation transfers stemming from the transfer of title of processing companies or their assets will be subject to the above conditions.

Subpart E, Processor Sugar Payment-In-Kind (PIK) Program, covers the requirements for sugar beet and sugarcane processors to participate in a PIK program and provisions for the implementation of a PIK program. Participating processors must act in conjunction with producers, that is, the acreage to be reduced must have been under contract with the processor during the applicable crop year and the land left fallow during the crop year the PIK program is implemented. CCC may permit processors to bid, in lieu of acreage, desugarizing capacity or other measures of sugar production as CCC may approve. Distribution of sugar from CCC inventory will occur as CCC determines appropriate. CCC will stop storage payments on sugar when title to the sugar is transferred to a participating processor or assignee.

Storage Facility Loans

Section 1402 of the 2002 Act provides that CCC shall amend its existing storage facility loan program to include loans for processors of sugar. Accordingly, the regulations of 7 CFR part 1436 are amended to include sugar processors as eligible borrowers. This rule also amends 7 CFR 1436.3 to change the definition of facility loan commodities to include dry peas, lentils, small chickpeas, and peanuts to provide a consistent CCC policy to make loans available for producers of all crops eligible for marketing assistance loans.

Cost/Benefit Assessment

An assessment of the sugar program's costs and benefits concluded that the 2002 Act changes, principally the establishment of sugar marketing allotments and the elimination of the loan forfeiture penalty, will increase farm income, increase consumer/user sugar expenditures, and slightly decrease federal expenditures. The elimination of the sugar loan forfeiture penalty increases the likelihood and cost of forfeitures because it increases the price, by about a cent per pound, a processor must achieve in the market to be deterred from forfeiting sugar loan collateral to CCC.

The cost/benefit analysis (CBA) assumes the current oversupply conditions will exist throughout the

next decade and be exacerbated by Mexican imports. The forecast of the economic impacts is very sensitive to the imposition of sugar marketing allotments. Sugar marketing allotments shift the burden of surplus sugar storage from CCC to the sugar beet and sugarcane processors and increases sugar prices. Marketing allotments are dependent on the level of Mexican sugar imports, and to a lesser degree, sugar (or products for the extraction of sugar) imports from other nations not under the sugar tariff rate quota (TRQ). Sugar marketing allotments are likely to be suspended if these imports exceed 276,000 short tons, raw value, because this is the difference between the required World Trade Organization minimum TRQ and the import level in the allotment suspension trigger. The cost/benefit assessment assumed that sugar marketing allotments would be suspended in five of the next 10 years.

The CBA concluded that the 2002 Act sugar program changes will result in a slight decrease in domestic sugar production. The sugar program changes are expected to decrease the annual average available stocks-to-use ratio by 26 percent, increase sugar prices about 9 percent, increase sugar loan collateral forfeitures by 15 percent, decrease average CCC sugar inventory by 67 percent, and slightly reduce, by \$13 million per year, CCC expenditures on the sugar program.

The Cost/Benefit Assessment of the sugar program and is available from Thomas Bickerton, Economic and Policy Analysis Staff, United States Department of Agriculture (USDA), Stop 0516, 1400 Independence Ave, SW., Washington, DC 20250-0540. Phone: (202) 720-6733. E-mail: Thomas.Bickerton2@usda.gov.

List of Subjects

7 CFR Part 1435

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

7 CFR Part 1436

Grains, Loan programs/agriculture, Oilseeds, Reporting and record keeping requirements, and Sugar.

For the reasons set out in the preamble, 7 CFR parts 1435 and 1436 are amended as set forth below.

PART 1435—SUGAR PROGRAM

1. 7 CFR part 1435 is revised to read as follows:

PART 1435—SUGAR PROGRAM

Subpart A—General Provisions

Sec.

- 1435.1 Applicability.
- 1435.2 Definitions.
- 1435.3 Maintenance and inspection of records.
- 1435.4 Administration.
- 1435.5 Other regulations.

Subpart B—Loan Program

- 1435.100 Applicability.
- 1435.101 Loan rates.
- 1435.102 Eligibility requirements.
- 1435.103 Availability, disbursement, and maturity of loans.
- 1435.104 Loan maintenance.
- 1435.105 Loan settlement and foreclosure.
- 1435.106 Miscellaneous provisions.

Subpart C—Information Reporting and Recordkeeping Requirements

- 1435.200 Information reporting.
- 1435.201 Civil penalties.

Subpart D—Flexible Marketing Allotments For Sugar

- 1435.300 Applicability.
- 1435.301 Annual estimates and quarterly re-estimates.
- 1435.302 Establishment and suspension of allotments.
- 1435.303 Overall allotment quantity.
- 1435.304 Adjustment of overall allotment quantity.
- 1435.305 Beet sugar and cane sugar allotments.
- 1435.306 State cane sugar allotment.
- 1435.307 Allocation of marketing allotments to processors.
- 1435.308 Transfer of allocations, new entrants.
- 1435.309 Reassignment of deficits.
- 1435.310 Sharing processors' allocations with producers.
- 1435.311 Proportionate shares for sugarcane producers.
- 1435.312 Establishment of acreage bases under proportionate shares.
- 1435.313 Permanent transfer of acreage base histories under proportionate shares.
- 1435.314 Temporary transfer of proportionate share due to disasters.
- 1435.315 Adjustments to proportionate shares.
- 1435.316 Acreage reports for purposes of proportionate shares.
- 1435.317 Revision of allocations and proportion shares.
- 1435.318 Penalties and assessments.
- 1435.319 Appeals and arbitration.

Subpart E—Processor Sugar Payment-In-Kind (PIK) Program

- 1435.400 General statement.
- 1435.401 Bid submission procedures.
- 1435.402 Bid selection procedures.
- 1435.403 In-kind payments.
- 1435.404 Timing of distribution of CCC-owned sugar.
- 1435.405 Miscellaneous provisions.

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

Subpart A—General Provisions

§ 1435.1 Applicability.

These regulations set forth the terms and conditions for the 2002–2007 crop years under which the Commodity Credit Corporation (CCC) will:

(a) Make loans and enter agreements with eligible processors,

(b) Collect data from sugarcane processors, sugar beet processors, cane refiners, and importers of sugar, syrup, and molasses,

(c) Administer sugar marketing allotments, and

(d) Administer an inventory disposition program to exchange CCC inventory for processor reductions in production.

§ 1435.2 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration. Terms defined in part 718 of this title are also applicable.

Ability to market means 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.

Allocation means the division of the beet sugar allotment among the sugar beet processors in the United States and the division of each State's cane sugar allotment among the State's sugarcane processors.

Beet sugar means sugar that is processed directly or indirectly from sugar beets or sugar beet molasses.

Beet sugar allotment means that portion of the overall allotment quantity allocated to sugar beet processors.

Cane sugar means sugar derived directly or indirectly from sugarcane produced in the United States, including sugar produced from sugarcane molasses.

Cane sugar allotment means that portion of the overall allotment quantity allocated to sugarcane processors.

Cane sugar refiner means a person who processes raw sugar into refined crystalline sugar or liquid sugar.

Carry-in stocks means inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and physically located in the United States at the beginning of the fiscal year.

Crop year means the period from October 1 through September 30, inclusive, and is identified by the year in which the crop year begins. For example, the 2002 crop year begins on October 1, 2002. The 2002 crop of sugar beets or sugar cane means domestically grown sugar beets or sugar cane

processed during the 2002 crop year. The 2002 crop of sugar means sugar processed from domestically-grown sugar beets or sugarcane during the 2002 crop year. Sugar from de-sugaring molasses is considered to be from the crop year the de-sugaring occurred.

Deputy Administrator means the Deputy Administrator, Farm Programs, FSA, or designee.

Deficit means the quantity of sugar covered by an allocation of an allotment that CCC estimates a sugar beet processor or sugarcane processor will be unable to market during the crop year in which marketing allotments are in effect.

Edible molasses means molasses that is not to be further refined or improved in quality and that is to be distributed for human consumption, either directly or in molasses-containing products.

Edible syrups means syrups that are not to be further refined or improved in quality and that are to be distributed for human consumption, either directly or in syrup-containing products.

Executive Vice President, CCC, means the Executive Vice President, CCC, or designee.

Farm means that entity as defined in § 718 of this title, except that when a State is subject to proportionate shares, producers will not be allowed to have farms reconstituted across State lines even if the farm land is adjoining.

Fiscal year means that year beginning October 1 and ending the following September 30.

FSA means Farm Service Agency.

Imports means sugar originating in foreign countries or areas and entered, or to be entered, into the United States customs territory.

In-process sugar means the intermediate sugar containing products, as CCC determines, produced in the processing of domestic sugar beets and sugarcane. It does not include raw sugar, liquid sugar, invert sugar, invert syrup, or other finished products that are otherwise eligible for a loan.

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. Marketings do not include sales for nondomestic or nonhuman consumption, or sales of sugar to enable another processor to fulfill an allocation established for such processor.

Nonrecourse loan means a loan for which eligible sugar offered as loan collateral may be forfeited to CCC, at

loan maturity, in satisfaction of loan indebtedness.

Overall allotment quantity means, on a national basis, the total quantity of sugar, raw value, processed from domestically produced sugarcane or domestically produced sugar from sugar beets, and the raw value equivalent of sugar in sugar products, that is permitted to be marketed by processors, during a crop year or other period in which marketing allotments are in effect.

Past marketings means, for purposes of determining State cane sugar allotments and sugarcane processor allocations for States other than Louisiana, the average of the 2 highest years of sugar production during the 1996 through 2000 crop years; for Louisiana sugarcane processor allocations, the average of the 2 highest years of sugar production during the 1997 through 2001 crop years.

Past processing means, for determining Hawaii and Puerto Rico's allotments, the 3-year average of the 1998 through 2000 crop years; and for determining the remaining cane State allotments, the 3 crop years with the greatest production (in the States collectively) during the 1991 through 2000 crop years. Past processing, for determining the sugarcane processor allocation for States other than Louisiana, means the average of the 3 highest years of production during the 1996 through 2000 crop years; and, for determining sugarcane processor allocations in Louisiana, the average of the 2 highest years of sugar production during the 1997 through 2001 crop years.

Per-acre yield goal means a State's yield level that is established at not less than the State's two highest average per-acre yield years from among the 1999 through 2001 crop years as CCC determines to ensure an adequate net return per pound to State producers.

Proportionate share means the total acreage from which a producer may harvest sugarcane for sugar or seed during any crop year or other period in which marketing allotments are in effect.

Raw sugar means any sugar that is to be further refined or improved in quality other than in-process sugar.

Raw value of any quantity of sugar means its equivalent in terms of raw sugar testing 96 sugar degrees, as determined by a polarimetric test performed under procedures recognized by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA). Direct-consumption sugar derived from sugar beets and testing 92 or more sugar degrees by the

polariscope shall be translated into terms of raw value by multiplying the actual number of pounds of such sugar by 1.07. Sugar derived from sugarcane and testing 92 sugar degrees or more by the polariscope shall be translated into terms of raw value in the following manner: raw value = {[actual degree of polarization - 92] × 0.0175} + 0.93 × actual weight. For sugar testing less than 92 sugar degrees by the polariscope, derive raw value by dividing the number of pounds of the "total sugar content" (*i.e.*, the sum of the sucrose and invert sugars) thereof by 0.972.

Reasonable carryover stocks means desirable inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and on hand in the United States at the end of the fiscal year, as CCC determines.

State means any of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

Sugar means any grade or type of saccharine product derived, directly or indirectly, from sugarcane or sugar beets and consisting of, or containing, sucrose or invert sugar, including raw sugar, refined crystalline sugar, liquid sugar, edible molasses, and edible cane syrup. For allotments, *sugar* means any grade or type of saccharine product processed, directly or indirectly, from sugarcane or sugar beets (including sugar produced from sugar beet or sugarcane molasses), produced for human consumption, and consisting of, or containing, sucrose or invert sugar, including raw sugar, refined crystalline sugar, edible molasses, edible cane syrup, and liquid sugar.

Sugar beet processor means a person who commercially produces sugar, directly or indirectly, from sugar beets (including sugar produced from sugar beet molasses), has a viable processing facility, and a supply of sugar beets for the applicable allotment year.

Sugar products means products for human consumption, other than sugar, that contain 50 percent or more of sucrose, on a dry weight basis, and that are marketed by a sugar beet processor or sugarcane processor. In determining sugar subject to marketing allocations, only the sugar content of such products will be counted against the allocation.

Sugarcane processor means a person who commercially produces sugar, directly or indirectly, from sugarcane, has a viable processing facility, and a supply of sugarcane for the applicable allotment year.

Ton means a short ton or 2,000 pounds.

United States means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

U.S. market value means, for sugarcane, the daily New York Board of Trade No. 14 contract price for raw sugar, or other price, as determined by CCC; for sugar beets, the Midwest refined beet sugar price published in Milling and Baking News, or other price, as determined by CCC.

USDA means the United States Department of Agriculture.

§ 1435.3 Maintenance and inspection of records.

(a) CCC, as well as any other U.S. Government agency, has the right of access to the premises of any sugar beet processor, sugarcane processor, cane sugar refiner, importer of sugars, syrups, and molasses, or of any other person having custody of records that the examining agency deems necessary to verify compliance with this part's requirements. The examining agency has the right to inspect, examine, and make copies of such books, records, accounts, and other written or electronic data as the examining agency deems relevant.

(b) Each sugar beet processor, sugarcane processor, importer of sugars, syrups and molasses, and cane sugar refiner or any person having custody of the records shall retain such books, records, accounts, and other written or electronic data for not less than 3 years from the date:

- (1) A loan is disbursed under subpart B;
- (2) Market data are reported to CCC under subpart C of this part; and
- (3) Marketings are conducted under marketing allotments under subpart D of this part.

§ 1435.4 Administration.

(a) This program shall be administered under the general supervision of the Executive Vice President, CCC, and may be carried out in the field by FSA State and county committees.

(b) State and county committees, and representatives and employees thereof, may not modify or waive any of the provisions of part 1435.

(c) The State committee shall take any action required by this part that the county committee has not taken. The State committee shall also:

- (1) Correct, or require a county committee to correct, a county committee action not under this part; or
- (2) Require a county committee to withhold taking any action not under this part.
- (d) No provision or delegation herein to a State or county committee shall

preclude the Executive Vice President, CCC, from determining any question arising under the program or from reversing or modifying any State or county committee determination.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such requirements do not adversely affect program operation.

(f) A CCC representative may execute loans and related documents only under the terms and conditions CCC determines and announces. Any such document not executed under such terms and conditions, including any purported execution before the CCC-authorized date, shall be null and void.

§ 1435.5 Other regulations

The following are applicable to this part:

(a) Part 707—Payments due persons who have died, disappeared, or have been declared incompetent.

(b) Part 718—Provisions applicable to multiple programs.

(c) Part 780—Appeal regulations.

(d) Part 1403—Debt settlement policies and procedures.

(e) Part 1405—Loans, purchases, and other operations.

Subpart B—Loan Program

§ 1435.100 Applicability.

(a) The regulations of this subpart set forth the terms and conditions under which CCC will make nonrecourse loans available to eligible processors. Additional terms and conditions are set forth in the loan application and note and security agreement that a processor must execute to receive a loan.

(b) Loan rates used in administering the loan program are available in FSA State and county offices.

(c) Loans shall not be available for sugar produced from imported sugar beets, sugarcane, molasses, syrups and in-process sugar.

§ 1435.101 Loan rates.

(a) The national average loan rate for raw cane sugar produced from domestically-grown sugarcane is 18 cents per pound.

(b) The national average loan rate for refined beet sugar from domestically-grown sugar beets is 22.90 cents per pound.

(c) Loan rates for eligible sugar are adjusted to reflect the processing location of the sugar offered as loan collateral.

(d) Loan rates for eligible in-process sugar shall equal 80 percent of the loan

rate applicable to raw cane sugar or beet sugar on the basis of the expected production of raw sugar or beet sugar from the in-process sugar or syrups.

§ 1435.102 Eligibility requirements.

(a) An eligible producer is the owner of a portion or all of the domestically-grown sugar beets or sugarcane, including share rent landowners, at both the time of harvest and the time of delivery to the processor, except those producers determined to be ineligible as a result of the regulations governing highly erodible land and wetland conservation found at 7 CFR part 12, regulations governing crop insurance at 7 CFR part 400, or regulations governing controlled substance violations at 7 CFR part 718.

(b) In addition to all other provisions of this part, a sugar beet or sugarcane processor is eligible for loans only if the processor has agreed to all the terms and conditions in the loan application, and has executed a note and security agreement, and storage agreement with CCC. No loan proceeds will be distributed by CCC before CCC's approval of the note and security agreement and the CCC storage agreement.

(c) Sugar pledged as collateral during the crop year:

(1) May not exceed the quantity derived from processing domestically-grown sugar beets or sugarcane from eligible producers during the applicable crop year;

(2) Must be processed and owned by the eligible processor and stored in a CCC-approved warehouse;

(3) May not have been processed from imported sugarcane, sugar beets, or molasses;

(4) Must have been processed in the United States; and

(5) Must have processor certification in the loan application that the sugar or in-process sugar syrups are eligible and available to be pledged as collateral.

(d) Sugar and in-process sugar must meet the following minimum quality requirements to be eligible to be pledged as loan collateral:

(1) Refined beet sugar to be pledged as loan collateral must be:

(i) Dry and free flowing;

(ii) Free of excessive sediment; and

(iii) Free of any objectionable color, flavor, odor, or other characteristic that would impair its merchantability or that would impair or prevent its use for normal commercial purposes.

(2) Raw cane sugar to be pledged as loan collateral must be:

(i) Of reasonable grain size; and

(ii) Free of objectionable color, flavor, odor, moisture or other characteristic

that would impair its merchantability or that would impair or prevent its use for normal refining and commercial purposes.

(3) Edible sugarcane syrup or edible molasses must be free from any objectionable color, flavor, odor, or other characteristic that would impair the merchantability of such syrup or molasses or would impair or prevent the use of such syrup or molasses for normal commercial purposes.

(4) In-process sugar must be of at least the minimum quality expected to commercially yield raw cane sugar or refined beet sugar, as determined by CCC.

(e) The loan collateral must be stored in a CCC-approved warehouse as described in 7 CFR part 1423.

§ 1435.103 Availability, disbursement, and maturity of loans.

(a) Before obtaining a loan, a processor must:

(1) File a loan application, as CCC prescribes, no earlier than October 1 and no later than September 30 of the applicable crop year, with the State committee of the State where such processor is headquartered, or with a county committee designated by the State committee.

(2) Execute a note and security agreement, and storage agreement with CCC;

(3) Provide quantity and quality information as prescribed by CCC of the commodity to be pledged as collateral;

(4) Pay CCC a loan service fee, as determined by CCC, for the disbursement of each loan.

(5) If there are any liens or encumbrances on sugar or in-process sugar pledged as loan collateral, obtain waivers that fully protect CCC's interest even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the sugar after loan approval; and

(6) Agree to reimburse CCC for any costs incurred as a result of the failure of the processor to obtain the waivers specified in subparagraph (5).

(b) No loan proceeds may be disbursed until the sugar and in-process sugar have actually been produced and are otherwise established as being eligible to be pledged as loan collateral.

(c)(1) A processor may, within the loan availability period, repledge as collateral sugar that previously served as loan collateral for a repaid loan. In making application for such a loan, the processor shall:

(i) Specify that the loan collateral should be treated as a quantity of eligible sugar that previously served as loan collateral for a repaid loan; and

(ii) Designate the loan to which the reoffered loan collateral was originally pledged.

(2) The subsequent loan shall have the same maturity date as the original loan.

(3) Loan collateral repledged that was previously redeemed from CCC is not included in determining the total quantity of sugar on which loans have been obtained for purposes of § 1435.102.

(d) Raw cane sugar loan disbursements shall be made without regard to the actual polarity or quality factors of the sugar pledged as loan collateral but shall be made on the assumption that the polarity of such sugar is 96 degrees by the polariscope.

(e)(1) Loans will mature at the earlier of:

(i) the end of the 9-month period beginning on the 1st day of the first month after the month in which the loan is made; or

(ii) September 30 following disbursement of the loan.

(2) CCC may accelerate loan maturity dates under § 1435.105(h).

(f) Processors receiving loans in July, August, or September may repledge the sugar as collateral for a supplemental loan. Such supplemental loan shall:

(1) Be requested by the processor during the following October;

(2) Be made at the loan rate in effect at the time the supplemental loan is made; and

(3) Mature in 9 months minus the number of whole months that the initial loan was in effect.

§ 1435.104 Loan maintenance.

(a) All processors receiving loans shall:

(1) Abide by the terms and conditions of the loan application, note and security agreement and storage agreement;

(2) Pay interest on the principal at a rate determined in part 1405 of this chapter.

(b) The security interests CCC obtains as a result of the execution of security agreements by sugarcane and sugar beet processors shall be superior to all statutory and common law liens on raw cane sugar, refined beet sugar, and in-process sugar for the producers of sugarcane and sugar beets and all prior recorded and unrecorded liens on the crops of sugarcane and sugar beets from which the sugar was derived.

(c) A processor receiving a loan under this part shall pay all eligible producers who have delivered or will deliver sugar beets or sugarcane to such processors for processing not less than the minimum payment levels CCC specifies for the applicable crop year.

(1) In the case of sugar beets, the minimum payment shall not exceed the rate of payment provided for under the applicable contract between a sugar beet producer and a sugar beet processor.

(2) CCC will not reject a loan application from a beet sugar processor from eligibility to obtain a loan under this section solely because of the failure of the processor to provide the appropriate minimum payment established under this subsection if the failure:

(i) Occurred during a crop year before the date of enactment of the Farm Security and Rural Investment Act of 2002; and

(ii) Was related, at least in part, to the effects of a natural disaster, including freeze damage.

(3) In the case of sugarcane, CCC will annually determine and announce the annual grower minimum payment.

(4) Processors are ineligible for loans for the crop year following their failure to meet the required minimum grower payment.

(d)(1) A processor shall maintain eligible sugar or in-process sugar of sufficient quality and quantity as collateral to satisfy the processor's loan indebtedness to CCC. CCC shall not assume any loss in quantity or quality of the loan collateral.

(2) The processor is responsible for storage costs through the loan maturity date or title transfer to CCC, whichever occurs later.

(3) Sugar and in-process sugar pledged as loan collateral need not be stored identically preserved.

(4) When the proceeds of the sale of loan collateral are needed to repay all or part of a sugar loan, the processor may request and obtain prior written approval from the loan making office by executing a loan collateral release request, as prescribed by CCC, to remove a specified quantity of the loan collateral from storage for the purpose of delivering it to a buyer before loan repayment. Any such approval shall be subject to the terms and conditions set forth in the applicable form. The loan making office shall not approve such a request unless the buyer of the sugar agrees to pay CCC an amount necessary to satisfy the processor's loan indebtedness regarding collateral being sold. Any such approval shall not:

(i) Constitute a release of CCC's security interest in the loan collateral; or

(ii) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.

§ 1435.105 Loan settlement and foreclosure.

(a) A processor may, any time before loan maturity, redeem all or any part of

the loan collateral by paying CCC the applicable principal and interest.

(b) Forfeiture of sugar loan collateral will be accepted as payment in full of the principal and interest due under a nonrecourse loan, applicable to the quality and quantity of sugar delivered, subject to applicable premiums and discounts.

(c)(1) Forfeiture of in-process sugar serving as loan collateral will be accepted as payment in full of principal and interest if the processor converts the in-process sugar into raw cane sugar or refined beet sugar of acceptable grade and quality for sugar eligible for loans within 1 month of loan maturity.

(2) The in-process sugar must be fully processed into raw cane sugar or refined beet sugar, the processor shall transfer the sugar to CCC.

(3) On transfer of the sugar, CCC shall make a payment to the processor in an amount equal to the amount obtained by multiplying the difference between the loan rate for raw cane sugar or refined beet sugar, as appropriate, and the in-process loan rate the processor received by the quantity of sugar transferred to CCC. The loan agreement shall specify the quantity of sugar that can be forfeited to CCC.

(d) If the processor does not forfeit the collateral, but instead further processes the in-process sugar into raw cane sugar or refined beet sugar and repays the loan on the in-process sugar;

(1) the processor may obtain a loan for the raw cane sugar or refined beet sugar, as appropriate, and

(2) the term of a loan made under this subsection for a quantity of in-process sugar, when combined with the term of a loan made for the raw cane sugar or refined beet sugar derived from the in-process sugar, may not exceed 9 months.

(e) CCC shall not accept delivery of sugar in settlement of a nonrecourse loan in excess of the quantity of sugar that is shown on the note and security agreement minus any quantity that was redeemed or released for removal under this section.

(f) If the processor does not redeem any of the nonrecourse loan collateral, title to the unredeemed nonrecourse loan collateral as described in the note and security agreement will, without further CCC or processor action transfer to CCC in-store at the CCC-approved warehouse at 12 a.m. the day following the maturity date of the loan. Title, all rights, and interest to such sugar shall immediately vest in CCC.

(g) The value of the settlement of loans shall be made by CCC according to the CCC schedule of premiums and discounts.

(h) CCC may, at any time, accelerate the date for loan repayment including interest. CCC will give the processor notice of such acceleration at least 15 days in advance of the accelerated loan maturity date.

(i) If a processor's nonrecourse loan indebtedness is not satisfied under the provisions of this section or if forfeited in-process sugar is not converted to raw or refined sugar within the prescribed time:

(1) Interest on the processor's indebtedness shall accrue as specified in part 1403 of this title and shall accrue until the debt is paid;

(2) CCC may, upon notice, with or without removing the collateral from storage, sell such collateral at either a public or private sale;

(3) The processor shall be liable for the deficiency if the net proceeds are less than the amount of principal, interest, and any other charges CCC incurs; and

(4) If the processor forfeits the in-process sugar loan collateral but does not transfer raw or refined sugar of suitable quality to CCC within 1 month, CCC will charge liquidated damages, as provided in the loan agreement.

§ 1435.106 Miscellaneous provisions.

(a) The regulations governing setoffs and withholding set forth at parts 3 and 1403 of this title are applicable to the program set forth in this subpart.

(b) A producer or processor may obtain reconsideration and review of determinations made under this subpart under the regulations at parts 11 and 780 of this title.

(c) Any false certification, including those made for the purpose of enabling a processor to obtain a loan to which it is not entitled, will subject the person making such certification to liability under applicable Federal civil and criminal statutes.

Subpart C—Information Reporting and Recordkeeping Requirements

§ 1435.200 Information reporting.

(a) Every sugar beet processor, sugarcane processor, cane sugar refiner, and importer of sugar, syrup, and molasses shall report, on a monthly basis on CCC required forms, its imports and receipts, processing inputs, production, distribution, stocks, and other information necessary to administer sugar programs.

(b) Any processor must, upon CCC's request, provide such information as CCC deems appropriate for determining regional loan rates.

(c) Any processor must, upon CCC's request, provide such information as

CCC deems appropriate for determining whether processors of sugarcane or sugar beets will be able to market their respective sugar allocations.

(d) Each sugarcane producer located in Louisiana shall report, in the manner CCC prescribes, sugarcane yields and sugarcane planted acres.

(e) Importers of sugars, syrups, or molasses to be used for domestic human consumption or to be used for the extraction of sugar for domestic human consumption shall report, in the manner CCC prescribes, the quantities of the products imported and the sugar content or equivalent of the products. This requirement shall not apply to sugars, syrups, or molasses within the quantities of tariff-rate quotas subject to the lower rate of duties.

(f) Based on the information received under this subsection, the Secretary shall publish on a monthly basis composite data on sugar production, imports, distribution, and stock levels.

(g) The sugar information reporting and recordkeeping requirements of this subpart are administered under the general supervision of the Executive Vice President, CCC.

§ 1435.201 Civil penalties.

(a) Any processor, refiner, or importer of sugar, syrup, and molasses who willfully fails or refuses to furnish the information, or who willfully furnishes false data required under § 1435.200, is subject to a civil penalty of no more than \$10,000 for each such violation.

(b) The Controller, CCC, shall assess civil penalties and interest.

(c) Affected processors, refiners, and importers of sugar, syrup, and molasses may request reconsideration of civil penalties by filing a request, within 30 days of receipt of certified written notification from the Controller, CCC, of such assessment of civil penalties, with the Executive Vice President, CCC, Stop 0501, 1400 Independence Ave. SW., Washington, DC 20250-0501.

(d) After reconsideration, affected processors, refiners, or importers of sugar, syrup, and molasses may appeal civil penalties by filing a notice of appeal, within 30 calendar days of receipt of certified written notification from the Executive Vice President, CCC, of an affirmation of the assessment of civil penalties, with the National Appeals Division under part 780 of this title.

Subpart D—Flexible Marketing Allotments For Sugar

§ 1435.300 Applicability.

(a) This subpart applies to the establishment and allocation of marketing allotments for:

(1) Processor marketings of sugar domestically processed from sugar beets,

(2) Processor marketings of sugar processed from domestically produced sugarcane,

(3) Distribution of a processor's allocation to producers in proportionate share States, and

(4) Harvesting sugarcane by producers subject to proportionate shares.

(b) This subpart does not apply to:

(1) Marketing sugar for nonhuman or nonhuman consumption,

(2) Marketing imported raw or refined sugar,

(3) Exportation of sugar from the United States customs territory.

(c) This subpart applies throughout the United States and Puerto Rico.

§ 1435.301 Annual estimates and quarterly re-estimates.

(a) Not later than August 1 before the beginning of the crop year, CCC will estimate, and make re-estimates as necessary but not later than the beginning of each quarter of such crop year, the:

(1) Quantity of sugar that will be consumed in the United States (other than sugar imported for the production of polyhydric alcohol or to be refined and re-exported in refined form or in sugar-containing products);

(2) Quantity of sugar that will provide for reasonable carryover stocks;

(3) Quantity of sugar that will be available for consumption from carry-in stocks;

(4) Quantity of sugar that will be available for consumption from domestic processing of sugarcane and sugar beets; and

(5) Quantity of sugars, syrups, and molasses that will be imported for human consumption or for the extraction of sugar for human consumption in the United States and Puerto Rico (other than sugar imported for the production of polyhydric alcohol or to be refined and re-exported in refined form or in sugar-containing products), whether such articles are included in a tariff-rate quota or not.

(b) Calculation of all allotments, allocations, estimates, and re-estimates in this subpart will use available USDA statistics and estimates of production, consumption, and stocks, taking into account, where appropriate, data supplied in reports submitted pursuant to the reporting requirements set forth in § 1435.200.

§ 1435.302 Establishment and suspension of allotments.

(a) By the beginning of the crop year, CCC will establish the overall allotment

quantity, beet sugar and cane sugar allotments, State cane sugar allotments, and allocations for processors marketing sugar domestically processed from sugar beets and domestically produced sugarcane at a level estimated to result in no sugar loan collateral forfeitures to CCC.

(b) Marketing allotments will be suspended whenever CCC determines that imports of sugars, syrups, and molasses for domestic human consumption or to be used for the extraction of sugar for domestic human consumption, whether under a tariff-rate quota or not, will exceed 1,532,000 short tons, raw value, excluding any imports attributable to a reassignment of allotments, and that the imports would lead to a reduction in the overall allotment quantity. The suspension of marketing allotments will be lifted if CCC subsequently determines that imports are estimated to be no higher than 1,532,000 short tons, raw value.

(c) Each determination under this section to establish or suspend marketing allotments will be published in the **Federal Register** and accompanied by a statement of the reasons for the determination.

§ 1435.303 Overall allotment quantity.

The overall allotment quantity for the crop year will be calculated by deducting from the sum of estimated sugar consumption and reasonable carryover stocks:

(a) 1,532,000 short tons, raw value; and

(b) Carry-in stocks.

§ 1435.304 Adjustment of the overall allotment quantity.

(a) The overall allotment quantity will be adjusted, as CCC determines appropriate,

(1) To avoid forfeiture of sugar loan collateral to CCC, and

(2) To reflect changes in estimated consumption, stocks, production, or imports based on re-estimates under § 1435.301.

(b) Each determination to adjust the overall allotment quantity will be published in the **Federal Register** and accompanied by a statement of the reasons for the determination.

(c) The beet sugar allotment, cane sugar allotment, State cane sugar allotments, proportionate shares, and allocations to each sugar beet processor and sugarcane processor will be increased or decreased, as appropriate, to reflect an overall allotment quantity adjustment.

(d) If the overall allotment quantity is reduced under paragraph (a) of this section and the quantity of sugar and

sugar products any individual processor marketed by the time of the reduction exceeds the processor's reduced allocation, the quantity of excess sugar or sugar products marketed will be deducted from the processor's allocation under an allotment next established.

§ 1435.305 Beet and cane sugar allotments.

(a) The allotment for beet sugar will be 54.35 percent of the overall allotment quantity.

(b) The allotment for cane sugar will be 45.65 percent of the overall allotment quantity.

(c) A sugar beet processor allocated a share of the beet sugar allotment may use only beet sugar to fill such allocation. A sugarcane processor allocated a share of the cane sugar allotment may use only cane sugar to fill such allocation.

§ 1435.306 State cane sugar allotments.

(a) Hawaii and Puerto Rico will be allotted a total of 325,000 short tons, raw value, of the cane sugar allotment.

(b) A new entrant cane State will receive an allotment to accommodate a new processor's allocation under 1435.308(f).

(c) Subject to paragraphs (a) and (b) of this section, the remaining cane States will be allotted, in aggregate, the remaining cane sugar allotment.

(d) The individual cane State allotments, other than a new entrant cane State, will be based on:

- (1) Past marketings of cane sugar,
- (2) Past processing of cane sugar, and
- (3) The ability to market the sugar covered under the allotment assigned to the State.

(e) Past marketings and past processings will each be weighted by 0.25 and the ability to market will be weighted by 0.50 in determining the States' respective cane sugar allotments. The weights may be adjusted, as CCC deems appropriate, for the crop year.

(f) Except when deficits are reassigned as provided in § 1435.309, a processor may fill an allocation of a cane sugar allotment only with sugar processed from sugarcane grown in the State for which the allotment was established.

§ 1435.307 Allocation of marketing allotments to processors.

(a) Each sugar beet processor's allocation of the beet allotment will be calculated as the beet processor's share times the beet sector allotment:

- (1) A beet processor's share is calculated as the beet processor's adjusted weighted average sugar production divided by the sum of all beet processors' adjusted weighted average sugar production.

(2) A beet processor's weighted average sugar production equals 0.25 times its 1998-crop sugar production plus 0.35 times its 1999-crop sugar production plus 0.40 times its 2000-crop sugar production, with the 2000 sugar PIK payments added to its 2000-crop sugar production.

(3) A beet processor's weighted average sugar production shall be adjusted by the following, as CCC determines:

(i) Increased 1.25 percent of the sum of all beet processors' weighted average sugar production for opening a sugar factory during the 1996 through 2000 crop years;

(ii) Decreased 1.25 percent of the sum of all beet processors' weighted average sugar production for closing a sugar factory during the 1998 through 2000 crops years;

(iii) Increased 0.25 percent of the sum of all beet processors' weighted average sugar production for opening a molasses desugarization facility during the 1998 through 2000 crop years; and

(iv) Increased 1.25 percent of the sum of all beet processors' weighted average sugar production for suffering a substantial quality loss on stored beets, as CCC determines, during the 1998 through 2000 crop years.

(b) Each sugarcane processors' allocation from a State cane sugar allotment will be calculated as the cane processor's share times the State cane sector allotment.

(1) Each cane processor's share, other than a new entrant, will be calculated as the processor's production base divided by the sum of the State's processor production bases.

(2) A processor's production base, other than a new entrants, is the sum of 0.50 times its ability to market plus 0.25 times its past processings plus 0.25 times its past marketings. These weights may be adjusted as CCC deems appropriate for the crop year.

(3) CCC will calculate an allocation for the Talisman processing facility, based on paragraph (b)(2) of this section and distribute the allocation among Florida processors according to the agreements between cane processors and the Secretary of the Interior dated March 25, and March 26, 1999.

(c) An informal hearing will be held in August of each year, if requested by affected sugarcane processors and growers by July 15th, to afford all interested persons the opportunity to comment on the next crop year's marketing allotments and allocations. After consideration of comments obtained at the hearing, a final determination on cane State allotments

and processor allocations will be announced.

(d) During any crop year in which marketing allotments are in effect and allocated to processors, the quantity of sugar and sugar products that a processor markets shall not exceed the quantity of the processor's allocation.

(e) Paragraph (d) of this section shall not apply to:

(1) Any sugar marketings to facilitate the export of sugar or sugar-containing products,

(2) Any sugar marketings for nonhuman consumption, and

(3) Any processor marketings of sugar to another processor made to enable the purchasing processor to fulfill its allocation if such sales:

- (i) Are made before May 1, and
- (ii) Reported to CCC within 5 days of the date of sale.

(f) CCC may charge liquidated damages as specified in a surplus allocation survey and agreement on such sales made after May 1 if the purchasing processor had surplus allocation after May 1 because the purchasing processor provided incomplete or erroneous information to CCC.

§ 1435.308 Transfer of allocation, new entrants

(a) If a sugar beet or sugarcane processing facility is closed and the growers that delivered their crops to the closed facility elect to deliver their crops to another processor, the growers may petition the Executive Vice President, CCC, to transfer the share of allocation commensurate with the growers' production history from the processor that closed the facility to their new processor. CCC may grant the request to transfer the allocation upon:

(1) Written approval of the processing company that will accept the additional deliveries, and

(2) Evidence satisfactory to CCC that the new processor has the capacity to accommodate the production of petitioning growers.

(3) Subject to paragraph (a) of this section, CCC will eliminate the allocation of the processor who has been dissolved or liquidated in a bankruptcy proceeding and the allocation will be distributed to all other processors on a pro-rata basis.

(4) If the purchasing processor is not a new entrant, then the purchased plants must operate for the initial season and the following crop year for the purchasing processor to permanently obtain the allocation. CCC shall reassign the allocation on a pro rata basis if the purchased plants do not operate for the required 2 crop years.

(5) If the purchasing processor is a new entrant, then CCC shall immediately transfer allocation commensurate with the purchased factories' production history with no requirement on operating the facility for 2 crop years.

(b) Allocations, equal to the number of acres of proportionate shares being transferred times the State's per-acre yield goal, will be transferred between mills in proportionate share States, if the transfers are based on:

(1) Written consent of the crop-share owners, or their representative representatives,

(2) Written consent of the processing company holding the allocation for the subject proportionate shares,

(3) Written consent of the processing company that will accept the additional sugarcane deliveries, and

(4) Evidence, satisfactory to CCC, that the additional sugarcane deliveries will not exceed the processing capacity of the receiving company.

(c) New entrants, not acquiring existing facilities, may apply to the Executive Vice President, CCC, for an allocation.

(1) Applicants must demonstrate their ability to process, produce, and market sugar for the applicable crop year.

(2) CCC will consider adverse effects of the allocation upon existing processors and producers.

(3) New entrant cane processors are limited to 50,000 short tons, raw value, the first crop year.

(4) New entrant cane processors will be provided, as determined by CCC,

(i) A share of their State's cane allotment if the processor is located in Hawaii, Puerto Rico, Florida, Louisiana, or Texas, or

(ii) A share of the overall cane allotment if the processor is located in any state not listed in paragraph (f)(4)(i) of this section.

(5) If a new entrant acquires and reopens a factory that previously produced beet sugar from sugar beets and sugar beet molasses, but the factory last operated during the 1997 crop year, CCC will:

(i) Assign an allocation to the new entrant not less than the greater of 1.67 percent of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years, as determined under § 1435.307, or 1,500,000 hundredweight.

(ii) Reduce all other beet processor allocations on a pro rata basis.

§ 1435.309 Reassignment of deficits.

(a) CCC will determine, by May 1, whether sugar beet or sugarcane

processors will be able to market their respective allocations.

(b) Sugarbeet and sugarcane processors will report to CCC, by April 15, current inventories, estimated production, expected marketings, and any other pertinent factors CCC deems appropriate to determine a processor's ability to market its allocation.

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

(1) First, be reassigned proportionately to allocations of other sugarcane processors within that State, depending on the capacity of each other processor to fill the portion of the deficit to be reassigned to it, and accounting for interests of associated producers;

(2) If the deficit cannot be eliminated after reassignment within the same State, be reassigned to the other cane States based on the ability of processors in such States to market the deficit to be reassigned to such States, with the reassigned quantity to each State being allocated among its processors in proportion to initial processor allocations;

(3) If the deficit cannot be eliminated by paragraphs (c)(1) and (c)(2) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(4) If any portion of the deficit remains after paragraphs (c)(1), (c)(2), and (c)(3) of this section have been implemented, be reassigned to imports.

(d) If CCC determines that a sugar beet processor is unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will:

(1) First, be reassigned proportionately to allocations of other sugar beet processors, depending on the capacity of other processors to fill the portion of the deficit to be reassigned to them, accounting for the interests of associated producers.

(2) If the deficit cannot be eliminated by paragraph (d)(1) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(3) If any portion of the deficit remains after paragraphs (d)(1) and (d)(2) of this section have been implemented, be reassigned to imports.

(e) The crop year allocation of each sugar beet or sugarcane processor who receives a reassignment will be increased accordingly for that year.

§ 1435.310 Sharing processors' allocations with producers.

(a) Every sugar beet and sugarcane processor must provide CCC a certification that:

(1) The processor intends to share its allocation among its producers fairly and equitably, and in a manner adequately reflecting each producer's production history, and

(2) The processor has, in the previous allotment year, shared its allocation among producers fairly and equitably, reflecting each producer's production history. If a processor is unable to provide such certification, CCC may reduce or eliminate its marketing allocation.

(b) Any producer or processor may request arbitration of a dispute regarding the sharing of the processor's allocation among the producers. Arbitration will be available on behalf of CCC at the State FSA office for the State in which the processor is located. Subsequent review of the arbitration decision is available at the discretion of the Executive Vice President, CCC. Any arbitration is subject to appeal to the Office of the Administrative Law Judge, USDA.

§ 1435.311 Proportionate shares for sugarcane producers.

(a) Proportionate shares and the provisions of this section and §§ 1435.312 through 1435.316 apply only to Louisiana sugarcane farms.

(b) CCC will determine whether Louisiana sugar production, in the absence of proportionate shares, will exceed the quantity needed to enable processors to fill the State cane sugar allotment and provide a normal carryover inventory. If the determination is made that the quantity of sugar produced in Louisiana, plus a normal carryover inventory, will exceed the State's allotment, CCC will establish for each sugarcane producing farm a proportionate share that limits the sugarcane acreage that may be harvested on the farm for sugar or seed.

(c) For purposes of determining proportionate shares CCC will:

(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 2 highest years from among the 1999 through 2001 crop years;

(2) Adjust the per-acre yield goal by the State average recovery rate;

(3) Convert the State cane sugar allotment into a State acreage allotment by dividing the State allotment by the adjusted per-acre yield goal;

(4) Establish a uniform reduction percentage for the crop by dividing the State acreage allotment by the sum of all

adjusted acreage bases in the State as determined under § 1435.312; and

(5) Apply the uniform reduction percentage to the acreage base established for each sugarcane producing farm in the State to determine the farm's proportionate share of sugarcane acreage that may be harvested for sugar or seed.

§ 1435.312 Establishment of acreage bases under proportionate shares.

(a) CCC will establish a sugarcane crop acreage base for each farm subject to proportionate shares as the simple average of the acreage planted and considered planted for harvest for sugar or seed on the farm in the 2 highest of the 1999 through 2001 crop years. Acreage considered planted shall be determined under § 1435.315.

(b) In establishing crop acreage bases, CCC will:

(1) Not consider acreage prevented from planting, and

(2) Consider acreage planted to sugarcane that fails.

(c) In establishing crop acreage bases, CCC will allow producers who have not previously reported their sugarcane acreage to do so by a date CCC determines and announces. Late-filed acreage reports will be accepted as the Deputy Administrator determines appropriate.

(d) The farm's crop acreage base shall be used to determine the farm's proportionate share.

(e) The regulations at part 718 of this title shall apply to this subpart, except reconstitution of farms with a sugar crop acreage base shall not be allowed across State lines.

§ 1435.313 Permanent transfer of acreage base histories under proportionate shares.

(a) A sugarcane producer on a farm may transfer all or a portion of the producer's acreage base history of land owned, operated, or controlled to any other farm in the State that the producer owns, operates, or controls under the Deputy Administrator-issued instructions. The transfer will reduce permanently the transferring farm's sugarcane acreage base history and increase the receiving farm's crop acreage base.

(b) All farm owners must agree in writing to the transfer.

(c) Producers may transfer sugarcane acreage base histories under this section by the date the State FSA committee establishes annually.

§ 1435.314 Temporary transfer of proportionate share due to disasters.

(a) If, for reasons beyond the control of a producer on a farm, such producer is unable to harvest sugarcane acreage

relative to all or a portion of the proportionate share established for the farm, the Secretary may preserve, on producer application and written consent of all owners of the farm, for a period of not more than 5 consecutive years, the acreage base history of the farm to the extent of the proportionate share involved.

(b) Such proportionate share may be transferred, with the written consent of all owners of the farm, for 1 crop year to other farm owners or operators subject to the following conditions:

(1) The acreage base history of the transferring farm will be preserved for a period from 1 to 5 years; and

(2) Acreage base history will not be increased on the receiving farm.

(c) Producers who transfer a proportionate share under this section will be required to:

(1) Initiate the transfer in the county FSA office where the proportionate shares are established; and

(2) Obtain approval from the transferring county FSA committee.

(d) All transfers made under this section must be completed by the date the State FSA committee establishes.

§ 1435.315 Adjustments to proportionate shares.

Whenever CCC determines that, because of a natural disaster or other condition beyond the control of producers adversely affecting a sugarcane crop, the amount of sugarcane produced by producers subject to proportionate shares will not be sufficient to enable state processors to produce sufficient sugar to meet the State's cane sugar allotment and provide a normal carryover of sugar, CCC may uniformly allow producers to harvest sugarcane in excess of their proportionate shares, or suspend proportionate shares entirely.

§ 1435.316 Acreage reports for purposes of proportionate shares.

(a) A report of planted and failed acreage shall be required on farms that produce sugarcane for sugar or seed. Such report shall also specify the total acreage intended for harvest for sugar and seed.

(b) The reports required under paragraph (a) of this section shall be on forms prescribed by CCC and shall be filed annually with the county FSA committee by the applicable final reporting date CCC establishes. The farm operator or farm owner shall file such reports.

(c) Acreage reports will be used to determine compliance with proportionate shares and acreage bases for future proportionate shares.

(d) An acreage report may be accepted after the established date for reporting if physical evidence is still available for inspection that may be used to make a determination relative to:

(1) Existence of the crop;

(2) Use made of the crop;

(3) Lack of crop; or

(4) Disaster condition affecting the crop.

(e) The farm operator shall pay the cost of a farm visit by an authorized FSA employee unless the county FSA committee has determined that failure to report in a timely manner was beyond the producer's control.

(f) The farm operator may revise an acreage report. Revised reports shall be filed in accordance with CCC instructions and shall be accepted at any time if:

(1) Evidence exists for inspection and determination of:

(i) Existence of the crop;

(ii) Use made of the crop;

(iii) Lack of crop; or

(iv) Disaster condition affecting the crops.

(2) The farm has not already been inspected and the acreage already determined or harvesting of sugarcane already begun.

(g) Provisions of part 718 of this chapter will apply for field inspections, tolerance, and variance. Assessments for false acreage reporting will be applied under § 1435.318.

§ 1435.317 Revisions of allocations and proportionate shares.

The Executive Vice President, CCC, may modify any processor's allocation or any producer's proportionate share on the same basis as the initial allocation or proportionate share was required to be established.

§ 1435.318 Penalties and assessments.

(a) Under § 359b(c)(3) of the Agricultural Adjustment Act of 1938, as amended, any sugar beet or sugarcane processor who knowingly markets sugar or sugar products in excess of the processor's allocation in violation of § 1435.307 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) Under § 359f(c)(5) of the Agricultural Adjustment Act of 1938, as amended, any producer of sugarcane whose farm has a proportionate share, and who knowingly harvests or allows to be harvested an acreage of sugarcane for sugar or seed in excess of the farm's proportionate share shall pay to CCC a civil penalty in an amount equal to 1.5

times the U.S. market value of the quantity of sugar that is marketed by the processor of such sugarcane in excess of the allocation of such processor, for the year in which the violation was committed. However, civil penalties will not be assessed when the producer harvests acreage for sugar or seed in excess of the farm's proportionate share, if the excess sugarcane harvested is:

- (1) Processed by a sugarcane processor that does not exceed its marketing allocation; or
- (2) Diverted to a use other than sugar or seed if:
 - (i) The sugarcane producer requests and pays for a CCC field inspection, and
 - (ii) CCC verifies the disposition of the excess harvest is not for sugar or seed.
- (c) Any penalty assessed under paragraph (b) of this section shall be prorated among the producers of all sugarcane acquired by the processor from excess acres.

(d) Any person filing a false acreage report that exceeds tolerance will be subject to an assessment not to exceed \$10,000. Whenever the failure of a producer to comply fully with the terms and conditions applicable to proportionate shares would result in an assessment, the Deputy Administrator may authorize the waiver or reduction of the assessment in such amounts as determined to be equitable about the seriousness of the failure, the producer's good-faith effort to comply fully with such terms and conditions, and the producer's substantial performance.

(e) Any person who knowingly violates any provision of this subpart other than paragraph (d) of this section is subject to the assessment of a civil penalty by CCC of not more than \$5,000 for each violation.

§ 1435.319 Appeals and arbitration.

(a) A person adversely affected by any determination made under this subpart may request reconsideration of such determination by filing a written request with the Executive Vice President, CCC, detailing the basis of the request within 10 days of such determination. Such a request must be submitted at: Executive Vice President, CCC, Stop 0501, 1400 Independence Ave., SW, Washington, DC 20250-0501.

(b) For issues arising under §§ 359d, 359f(b) and (c), and 359(i) of the Agricultural Adjustment Act of 1938, as amended, after completion of the process provided in paragraph (a) of this section, a person adversely affected by a reconsidered determination may appeal such determination by filing a written notice of appeal within 20 days of the issuance of the reconsidered determination with the Hearing Clerk,

USDA. The notice of appeal must be submitted at: Hearing Clerk, USDA, Room 1081, South Building, 1400 Independence Ave., SW., Washington, DC, 20250-9200. Any hearing conducted under this paragraph shall be by the Judicial Officer.

(c) For issues arising under §§ 359a-359c, 359e, and 359g of the Agricultural Adjustment Act of 1938, as amended, after completion of the process provided in paragraph (a) of this section, a person adversely affected by the reconsidered determination may appeal such determination by filing a written notice of appeal with the Director, National Appeals Division, USDA, as provided in part 11 of this title.

For issues arising under § 359f(a) of the Agricultural Adjustment Act of 1938, as amended, such disputes shall be resolved through arbitration under the direction of the Executive Vice President, CCC. A request for arbitration must be filed in writing at the address specified in paragraph (a) of this section.

Subpart E—Processor Sugar Payment-In-Kind (PIK) Program

§ 1435.400 General statement.

This subpart shall be applicable to sugar beet and sugarcane processors throughout the United States who, acting in conjunction with the producers of the sugarcane or sugar beets processed by the processors, reduce sugar production in return for a payment of sugar from CCC when CCC determines that such action will reduce forfeitures of sugar pledged as collateral for a CCC loan.

§ 1435.401 Bid submission procedures.

(a) After announcement by CCC that a program authorized by this subpart is in effect, processors who desire to participate in the program must submit a bid to CCC, on a form prescribed by CCC, that specifies:

(1) For a program involving acreage diversion, the amount of acreage to be reduced by producers who have contracts for delivery of sugar beets or sugar cane to the processor and contains the information CCC determines necessary to conduct the program and includes but is not limited to:

- (i) The number of acres that the processor, acting in conjunction with the producers, will divert;
- (ii) The previous consecutive 3-year simple average sugar beet or sugarcane yield on that acreage while under contract (years with no production contracted with a producer will not be considered (for first-time producers, however, the previous consecutive 3-

year simple average sugar beet or sugarcane yield for all the producers under contract who delivered to the applicable factory will be used);

(iii) The previous 3-year simple average sugar content of the producer's beets or sugarcane (for first-time producers, the previous 3-year simple average sugar content for all beets or cane delivered to that factory will be used);

(iv) The processor's previous 3-year simple average recovery rate (for processors that have not been fully operational during the last 3 years, the simple average for those years that they were fully operational);

(v) The value of CCC sugar to be received as payment; and

(vi) Other information CCC deems necessary for program administration; or

(2) The sugar production capacity to be removed from production by the processor.

(b) The following acreage is ineligible for enrollment in the PIK program:

(1) If planted, acreage not currently under contract for delivery of sugar beets to a sugar beet processor or sugarcane to a sugarcane processor for sugar production.

(2) If planted, acreage that is not harvestable,

(3) Acreage devoted to roads or other non-producing areas, or

(4) If planted, acreage on which a crop insurance indemnity or replant payment was received for the current crop or for which a claim has been, or will be, filed to receive a crop insurance indemnity or replant payment for the current crop, except for replant payments for acreage actually replanted before the end of the normal planting period.

(c) If planted, the diverted acres cannot be grazed until after the sugar beets or sugarcane are destroyed by disking, plowing, or other means of mechanical destruction. In addition, the sugar beets or sugarcane on the diverted acres may not be used for any commercial purpose.

(d) The acreage offered must meet the following requirements:

(1) If less than or equal to 15 acres, then the acreage bid must consist of one of the following:

- (i) One contiguous area of land,
- (ii) One or more entire permanent fields, or
- (iii) One or more entire permanent fields and one contiguous area of land to complete the balance;

(2) If more than 15 acres, then the acreage bid must consist of one of the following:

- (i) One or more areas of land of at least 15 contiguous acres each with one remaining area of land of less than 15

contiguous acres to complete the balance.

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one area of contiguous land to complete the balance.

(3) Contiguous areas of land must have a minimum width of 3 chains (198 feet).

(e) For a program involving desugaring capacity, or other measures of sugar production, not involving acreage diversion, the bid must contain the information CCC determine necessary to conduct the program.

§ 1435.402 Bid selection procedures.

(a) For bids in which the processor offers to remove acreage of sugar beets or sugarcane from production, CCC will rank bids on the basis of the bid amount as a percentage of the expected sugar produced from the retired acreage. Bids with the lowest of such percentages will be selected first. In the case of identical bids, selection may be based on random selection or pro rata shares, as CCC deems appropriate.

(b) CCC will reject bids for which the bid amounts exceed the expected sugar produced from the retired acreage.

(c) For bids in which the processor offers to remove sugar production capacity from production, CCC will rank the bids on the basis of the capacity to be removed from production.

(d) All acceptable bids specified in paragraphs (a) and (c) of this section will be further reviewed by CCC and ranked in order of the greatest reduction in sugar program that can be achieved at the lowest cost to CCC.

§ 1435.403 In-kind payments.

(a) CCC will, through such methods as CCC deems appropriate, make payments in the form of sugar held in CCC inventory.

(b) To the maximum extent practicable, CCC will use its inventory in making an in-kind payment based on the following priority:

(1) CCC-owned sugar held in storage by the processor;

(2) CCC-owned sugar held in storage by any other processor in the same region as the producer;

(3) CCC-owned sugar held in storage by any other processor that is not in the same region as the producer; and

(4) CCC-owned sugar held in storage anywhere in the United States, if CCC determines that such sugar is eligible to be used for in-kind payments.

(c) The value of CCC-owned inventory is dependent upon the storage location of the sugar and the type of sugar (raw or refined). CCC will announce the

value of its inventory before bid solicitation. Accordingly, the quantity of sugar CCC will provide in terms of an in-kind payment to a processor will be determined by dividing:

(1) The total of the processor's bid amount that CCC accepts, by

(2) The value of CCC's inventory at the storage location at which title will transfer from CCC to the processor.

§ 1435.404 Timing of distribution of CCC-owned sugar.

Distribution of sugar from CCC inventory will occur in such manner as CCC determines appropriate.

§ 1435.405 Miscellaneous provisions.

(a) CCC may permit processors to bid, in lieu of acreage, desugaring capacity or other measures of sugar production as CCC determines.

(b) The contract shall provide for the payment of liquidated damages if a processor fails to comply with the obligations specified in the CCC production diversion contract.

(c) CCC will transfer title of the sugar to the processor by notifying the processor or assignee that the sugar is available. CCC will stop storage payments on this sugar on the date of transfer.

PART 1436—FARM STORAGE FACILITY LOAN PROGRAM

2. The authority citation for part 1436 is revised to read as follows:

Authority: 7 U.S.C. 7971; 15 U.S.C. 714 *et seq.*

3. Section 1436.3 is amended by revising the definitions of "facility loan commodity" and "storage need requirement" to read as follows:

§ 1436.3 Definitions.

* * * * *

Facility loan commodity means wheat, rice, raw or refined sugar, soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, other oilseeds as determined and announced by CCC, dry peas, lentils, small chickpeas, harvested as whole grain and including peanuts, except that corn, grain sorghum, oats, wheat, or barley shall be included whether harvested as whole grain or other than whole grain.

* * * * *

Storage need requirement means:

(1) The average of the most recent 3 years available, the applicant's share of the acres farmed for each facility loan commodity requiring storage at the proposed facility multiplied by a yield determined reasonable by the county committee, multiplied by two, less existing storage capacity. If acreage data

is not available, including prevented planted acres, or the data is not applicable to the storage need, a reasonable acreage projection may be made for newly acquired farms, changes in cropping operations, or for facility loan commodity crops being grown for the first time.

(2) For sugar-related loans, a projection from the processor of the processing volume, available storage capacity, volume not to be marketed due to marketing allotments, and other factors affecting the processor's storage need, as appropriate. CCC shall determine if the storage need is reasonable using data such as past processing volume and marketing allotments.

* * * * *

4. Section 1436.4 is amended by removing the term "Producers" where it appears in paragraph (b) and adding in its place "Borrowers", and by adding a new paragraph (c) to read as follows:

§ 1436.4 Availability of loans.

* * * * *

(c) For sugar-related loans, a loan application shall be submitted to the county FSA office that maintains the applicant's records. If no such records exist, loan applications shall be submitted to the county office serving the headquarters' location of the sugar processor.

5. Section 1436.5 is amended by revising the introductory text of paragraph (a) and adding a paragraph (b) to read as follows:

§ 1436.5 Eligible borrowers.

(a) "Borrower" means a person who, as landowner, landlord, operator, producer, tenant, leaseholder, sharecropper, or processor of domestically produced sugarcane or sugar beets:

* * * * *

(b) For sugar related facility loans:

(1) Paragraphs (a)(4), (6), and (7) of this section do not apply.

(2) Sugar processors must be approved by CCC to store sugar owned by CCC or pledged as security to CCC for non-recourse loans.

6. Section 1436.6 is amended by adding a new paragraph (f) to read as follows:

§ 1436.6 Eligible storage or handling equipment.

* * * * *

(f)(1) Paragraphs (a) and (b) of this section shall not apply to sugar-related loans made under this part.

(2) For sugar-related loans, the loan amount may include costs associated with the purchase, installation,

building, improving, remodeling or renovating an eligible storage or handling facility. Eligible facilities include the following:

(i) New conventional-type bins or silos designed for and used to store raw or refined sugar, having a useful life of at least 15 years;

(ii) New flat-type storage structures including a permanent concrete floor, designed for and used to store raw or refined sugar, having a useful life of at least 15 years;

(iii) New storage structures designed for and used to store in-process sugar, having a useful life of at least 15 years.

(iv) Permanently affixed sugar handling equipment determined by the CCC to be needed and essential to the proper functioning of the sugar storage system;

(v) Safety equipment CCC requires such as lighting, and inside and outside ladders;

(vi) Equipment to improve, maintain, or monitor the quality of stored sugar, such as moisture testers, and heat detectors;

(vii) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of the sugar storage and handling equipment; and

(viii) Concrete foundations, aprons, pits, and pads (including site preparation, labor and materials) essential to the proper operation of the sugar storage and handling equipment.

(3) For sugar-related loans, storage and handling equipment that is not eligible for loans, includes:

(i) Portable handling equipment and portable augers;

(ii) Structures of a temporary nature that require the weight or bulk of the stored commodity to maintain its shape (such as fences or bags);

(iii) Used or pre-owned structures or handling equipment;

(iv) Structures that are not suitable for storing raw or refined sugar;

(v) Weigh scales.

(4) For sugar-related loans, loans may be approved for financing additions to or modifications of an existing storage facility with an expected useful life of at least 15 years if CCC determines there is a need for the capacity of the structure.

7. Section 1436.7 is revised to read as follows:

§ 1436.7 Loan term.

The maximum term of the loan shall be 7 years from the date a promissory note and security agreement are executed, except in the case of a sugar-related loan in which case CCC, at its discretion, may authorize a loan of 15 years. The minimum term of a sugar-related loan is 7 years. No extensions of the loan term will be granted. The loan balance and all related costs are due 7 years from the date of the execution of the promissory note and security agreement, except in the case of a sugar-related loan, in which case such balance and costs are due 15 years from the date of the promissory note and security agreement are executed.

8. Amend § 1436.8 by adding paragraphs (h) and (i) to read as follows:

§ 1436.8 Security for loan.

* * * * *

(h) For sugar-related facility loans, in addition to the above requirements, additional security, including real estate, chattels, crops in storage, and other assets owned by the applicant, is required if necessary to adequately secure the loan. A sugar-related loan will be considered to be adequately secured when the CCC determined value of security for the loan is at least equal to 125 percent of the loan amount.

(i) For sugar-related facility loans, paragraph (g) is not applicable. The borrower shall pay all loan making fees and closing costs. This includes, but is not limited to, attorney fees for loan closings, environmental assessments and studies, chattel and real estate appraisals, title opinions, title insurance, title searches, filing and recording all real estate liens, fixture filings, subordinations, credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

9. Amend § 1436.9 by revising paragraph (h) and adding paragraphs (j) and (k) to read as follows:

§ 1436.9 Loan amount and loan application approvals.

* * * * *

(h) Farm storage facility loan approvals will expire in 4 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee. Sugar storage facility loan approvals will expire in 8 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee.

(j) For sugar-related facility loans, paragraphs (c) and (d) and (g) do not apply.

(k) For sugar-related facility loans, the Agency approval officials may only approve loans, subject to available funds.

10. Amend § 1436.12 by adding paragraph (d) to read as follows:

§ 1436.12 Interest and fees.

* * * * *

(d) For sugar-related facility loans, paragraph (c) does not apply.

11. Amend § 1436.15 by adding a paragraph (f) to read as follows:

§ 1436.15 Maintenance, liability, insurance and inspections.

* * * * *

(f) For sugar-related loans, in addition to the requirements of paragraph (d) of this section, sugar processors shall also insure the contents of storage structures used as collateral for a sugar-related facility loan against all perils.

13. Section 1436.19 is added to read as follows:

§ 1436.37 Equal Opportunity and Non-discrimination requirements.

(a) No recipient of a Storage Facility loan shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, religion, color, national origin, gender, or other prohibited basis. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters.

(b) With respect to any aspect of a credit transaction, CCC will not discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status, or age, provided the applicant can execute a legal contract. Nor will CCC discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith, exercises any rights under the Consumer Protection Act.

Signed in Washington, DC, on August 7, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

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