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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560–AH08

Flexible Marketing Allotments for Sugar

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the sugar marketing allotment regulations with respect to processors' marketings of sugar, the permanent termination of processor operations, processors purchasing assets of another processor, processors sharing allocations among producers, appeals, and other related matters.

EFFECTIVE DATE: June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso, Dairy and Sweeteners Analysis, Economic and Policy Analysis Staff, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0516, 1400 Independence Ave., SW., Washington, DC 20250–0516. Phone: (202) 720–4146. E-mail: *barbara.fecso@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 Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, 116 Stat 183) (the 2002 Act) requires that the regulations implementing 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.

Discussion of Changes

Section 1403 of the 2002 Act amended the Agricultural Adjustment Act of 1938 (7 U.S.C. 359aa *et seq.*) (the 1938 Act) to establish flexible sugar marketing allotments. A final rule implementing the regulations was published August 26, 2002 (67 FR 54926), and a correction was published October 28, 2002 (67 FR 65690). In administering the program, the Commodity Credit Corporation (CCC) has determined that a few regulatory provisions require clarification.

The regulations at 7 CFR 1435.307(a)(3)(i) and (ii) describe adjustments CCC makes to a sugar beet processor's weighted average sugar production history for opening or closing a ''sugar factory'' during the base period. This rule clarifies that the provisions refer to the opening or closing of a ''sugar beet processing factory,'' as provided by sections 359d(b)(2)(D)(ii)(I) and (II) of the 1938 Act.

The regulations at 7 CFR 1435.307(d) provide that during any crop year in which marketing allotments are in effect and allocated to processors, the quantity of sugar and sugar products a processor markets shall not exceed the quantity of the processor's allocation. Section 1435.307(e) contains exceptions to that requirement. This rule adds section 1435.307(e)(4) to clarify that the provision does not apply to the sale of purchased sugar because the sugar would already have been counted as part of the original processor's marketing.

The regulation at 1435.307(e)(3)(ii) permits a processor's marketings to exceed its allocation if the marketing enables the purchasing processor to fulfill its allocation and the marketing is reported to CCC within 5 days of the date of sale. This rule extends the time period to report the sale to 51 days because CCC is revising its monthly survey forms to include these sales and eliminate the need for separate reporting forms. Given the current schedule for submitting the monthly forms, the sale of overallocation sugar may take place up to 51 days before CCC receives the company monthly reports.

The regulations at 7 CFR 1435.307(f) provided that CCC may charge liquidated damages on surplus allocation after sales made after May 1 of the crop year if the purchasing processor had surplus allocation after May 1 because the purchasing processor provided incomplete or erroneous information provided to CCC. This rule revises the section to provide simply that CCC may charge liquidated damages on surplus allocations after the end of the crop year, if a processor provides incomplete or erroneous data that results in surplus allocation.

The regulations at 7 CFR 1435.308 are revised to add a new provision with respect to the elimination of a processor's allocation when there is a permanent termination of operations. Previously, § 1435.308(b) provided that CCC will eliminate the allocation of a processor that has been dissolved or liquidated in a bankruptcy proceeding and will distribute the allocation to all other processors on a pro rata basis. In addition to being dissolved or liquidated in bankruptcy proceeding, another condition that will eliminate a processor's allocation, ''permanently terminated operations,'' is added. CCC will consider a processor to have permanently terminated operations if it has ceased processing for 2 complete years or notifies CCC that it has permanently terminated operations.

This rule clarifies that only processors that are not purchasing all the assets of the selling processor must continue operation of the purchased plants for the remainder of the initial season and the following crop year. Purchasing processors that are purchasing all the assets of the selling processor and new entrants are not required to operate the acquired facilities for the required time period.

Section 1435.308(c) provided that if a processor purchasing factories is not a new entrant, the purchased plants must operate for the remainder of the initial season and the following crop year for the purchasing processor to permanently obtain the allocation. It also provided that CCC would reassign the allocation on a pro rata basis if the purchased plants failed to operate for the required time period. This section has been renumbered as § 1435.308(d).

Section 1435.308(d) provided that if the purchasing processor is a new entrant or a processor purchasing all the assets of the selling processor, CCC shall immediately transfer allocation commensurate with the purchased factories' production history with no requirement on operating the facility for the required time period. This section has been renumbered as § 1435.308(c).

Section 1435.308(f) provides that new entrants not acquiring existing facilities may apply to the Executive Vice President, CCC, for an allocation. That provision is clarified to provide that new entrants that are not acquiring existing facilities with production history in the base period may apply for an allocation. Section 1435.308(f)(5) is added to provide for a hearing in accordance with the statutory requirement that a hearing be held on a new can sugar entrant's application, if requested by interested parties.

Section 1435.310 is expanded to clarify the 1938 Act's requirement in section 359f so that a processor's ''allocation will be shared among producers served by the processor in a fair and equitable manner that adequately reflects producers' production histories.'' CCC has determined that cooperatively owned processors, not in a proportionate share state, have met this requirement if they share their allocation with their growers according to their cooperative agreement. CCC has determined that, for a State subject to proportionate shares, a processor will be in compliance with this requirement if it establishes a priority system for payment that pays growers first for production on proportionate share acreage, then for production on base acreage other than the proportionate share acreage, then for production on non-base acreage. Production from a grower with no production history at a mill will be considered the same as production from non-base acreage, unless the grower had an allocation release from a predecessor mill or was designated by the mill as replacing sugarcane lost to the mill after the 2001 crop year. In determining the payment priority in Louisiana, processors may aggregate the acreage of an operator (producer making the crop production decisions) across all the operator's farms delivering cane to the processor. Growers should note that there is no change to the requirements of § 1435.318 that provide penalties for farms exceeding their proportionate shares if proportionate shares are in effect and a processor exceeds its allocation.

Clarifying this provision of the regulation will reduce uncertainty about the effect the marketing allotment program has on the relationship between growers and processors. This clarification should also reduce arbitrations under the provision in the statute and regulation that permits a grower to request Departmental arbitration of disputes with processors.

Section 1435.319(b) concerns the appeal of issues arising under sections 359d, 359f(b) and (c), and 359(i) of the 1938 Act and provides that after reconsideration of an adverse decision by the Executive Vice President, CCC, an adversely affected person may appeal the determination and that any hearings with respect to the matter shall be conducted by USDA's Judicial Officer. This section is revised to clarify that appeals of decisions of the Executive Vice President, CCC under section 359d are limited to the establishment of the allocations of marketing allotments. This is in accordance with the limited jurisdiction set forth in section 359i(a) of the 1938 Act. The language in the regulation was never intended to provide broader appeal rights than what was required under the statute and therefore is amended to clarify this.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

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

Regulatory Flexibility Act

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

Environmental Assessment

The environmental impacts of this rule were considered for the sugar program final rule published in the **Federal Register** August 26, 2002 (67 FR 54926). This rule does not make changes that will affect the Finding of No Significant Impact.

Executive Order 12778

This 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. Nonetheless, 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. 533. 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 forego 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.

List of Subjects in 7 CFR Part 1435

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

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

PART 1435—SUGAR PROGRAM

■ 1. The authority citation continues to read as follows:

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

■ 2. In § 1435.307, revise paragraphs (a)(3)(i) and (a)(3)(ii), (e) and (f), and add paragraph (g) to read as follows:

§ 1435.307 Allocation of marketing allotments to processors.

(a) * * *

(3) * * *

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

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

* * * * *

(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 51 days of the date of sale.

(f) Paragraph (d) of this section also shall not apply to marketings of purchased sugar marketed in the crop year of the purchase, but does apply to marketings of sugar purchased as part of a transaction pursuant to paragraph (e)(3) of this section.

(g) CCC may charge liquidated damages, as specified in a surplus allocation survey and agreement, on surplus allocation after the end of a crop year if the processor had surplus allocation because the processor provided incomplete or erroneous information to CCC.

■ 3. Revise § 1435.308 to read as follows:

§ 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.

(b) After a transfer of allocation described in paragraph (a) of this section is completed, CCC will permanently eliminate the processor's remaining allocation and distribute it to all other processors on a pro-rata basis when the processor:

(1) Has been dissolved,

(2) Has been liquidated in a bankruptcy proceeding, or

(3) Has permanently terminated operations by:

(i) Not processing sugarcane or sugar beets for 2 consecutive years, or

(ii) Notifying CCC that the processor has permanently terminated operations.

(c) If a purchaser purchasing the assets of another processor is a new entrant or is a processor purchasing all the assets of the selling processor, then CCC shall immediately transfer allocation commensurate with the purchased factories' production history.

(d) If a processor does not purchase all of the assets of another processor, then the purchased factories must operate for the remainder of the initial season and the following crop year for the purchasing processor to permanently obtain the allocation. If the purchased factories do not operate for this required time period, CCC shall reassign the allocation to the other processors on a pro rata basis.

(e) 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 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.

(f) New entrants, not acquiring existing facilities with production history in the base period, 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) CCC will conduct a hearing on a new entrant application if an interested processor or grower requests a hearing.

(6) 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.

■ 4. In § 1435.310, redesignate paragraph (b) as paragraph (e) and add new paragraphs (b), (c) and (d) to read as follows:

§ 1435.310 Sharing processors' allocations with producers.

* * * * *

(b) CCC will determine that a processor in a proportionate share state has met the conditions of paragraph (a) of this section if the processor establishes a grower payment plan that incorporates the following provisions:

(1) Pays growers for sugar from their delivered sugarcane in the following priority:

(i) Sugar production from proportionate share acreage; as established under § 1435.311, for producers determined by CCC, who;

(A) Delivered to the mill in at least one of the crop years 1999, 2000, or 2001,

(B) Obtained an allocation transfer from a predecessor mill, or

(C) Have been designated by the mill to supply sugarcane replacing sugarcane lost to the mill since the 2001 crop year,

(ii) Sugar production from base acreage, as established under § 1435.312, but exclusive of the acreage described in paragraph (b)(1)(i) of this section, for producers who meet the requirements of paragraph (b)(1)(i) of this section, then

(iii) All other sugar production.

(2) If a mill cancels a producer's contract, the mill must permit the producer to move an allocation commensurate with the producer's production history to a mill of the producer's choice.

(3) In determining the payment priority, a processor may aggregate the acreage of an operator (producer making the crop production decisions) across all the operator's farms delivering cane to the processor.

(c) CCC will determine that a processor not in a proportionate share state, which is cooperatively owned by producers, has met the conditions of paragraph (a) of this section if the processor shares its allocation with its producers according to its cooperative membership agreement.

(d) CCC will disclose farm base and reported acres data in a proportionate share state to processors upon their request for growers delivering to their mill. In the case of multiple producers on a farm or growers delivering to more than one mill, subject mills will be responsible for coordinating proportionate share data.

* * * * *

■ 5. In § 1435.319, revise paragraph (b) to read as follows:

§ 1435.319 Appeals and arbitration.

* * * * *

(b) For issues arising under section 359d establishing allocations for marketing allotments, and sections 359f(b) and (c), and section 359i 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, Room 1081, South Building, 1400 Independence Ave., SW., Washington, DC 20250–9200. Any hearing conducted under this paragraph shall be in accordance with instructions issued by USDA's Judicial Officer.

* * * * *

Signed in Washington, DC, on June 25, 2004.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 04–14900 Filed 6–30–04; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 214, and 299

[ICE No. 2297–03]

RIN 1653–AA23

Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104–208; SEVIS

AGENCY: Bureau of Immigration and Customs Enforcement, DHS.

ACTION: Final rule.

SUMMARY: On October 26, 2003, the Department of Homeland Security (DHS) published a proposed rule in the **Federal Register**, to implement section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), requiring the collection of information relating to nonimmigrant foreign students and exchange visitors, and providing for the collection of the required fee to defray the costs.

This rule amends the DHS regulations to provide for the collection of a fee to be paid by certain aliens who are seeking status as F–1, F–3, M–1, or M–3 nonimmigrant students or as J–1 nonimmigrant exchange visitors. Generally, the rule levies a fee of $100, although applicants for certain J–1 exchange visitor programs will pay a reduced fee of $35, and certain other aliens will be exempt from the fee altogether. This final rule explains which aliens will be required to pay the fee, describes the consequences that an alien seeking F–1, F–3, M–1, M–3, or J–1 nonimmigrant status faces upon failure to pay the fee, and specifies which aliens are exempt from the fee. This fee is being levied on aliens seeking F–1, F–3, M–1, M–3, or J–1 nonimmigrant status to cover the costs of administering and maintaining the Student and Exchange Visitor Information System (SEVIS), which includes ensuring compliance with the system's requirements by individuals, schools, and exchange visitor program sponsors. The fee will also pay for the continued operation of the Student and Exchange Visitor Program (SEVP) and offset the resources to ensure compliance with SEVIS requirements, including funds to hire and train SEVIS Liaison Officers and other Bureau of Immigration and Customs Enforcement (ICE) officers.

The rule will be effective on September 1, 2004, and will apply to potential nonimmigrants who are initially issued a Form I–20 or Form DS–2019 on or after that date. Potential nonimmigrants, for purposes of this rule, are those aliens who will apply to the Department of State (DOS) or DHS for initial attendance as an F, M, or J nonimmigrant, certain nonimmigrants in the United States that will apply for a change of status to an F, M, or J classification, and current J–1 nonimmigrants that will apply for a J–1 category change on or after that date. If a Form I–20 or Form DS–2019 for initial status in a new program is issued on or after the effective date, the nonimmigrant traveling on that document will be required to pay the fee. Applicants, schools, and exchange visitor program sponsors should refer to the fee pay table contained in this rule for more detailed information concerning when a fee is required.

DATES: This final rule is effective September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jill Drury, Director'Student and Exchange Visitor Program (SEVP), Bureau of Immigration and Customs Enforcement, Department of Homeland Security, 800 K Street, NW., Room 1000, Washington, DC 20536, telephone (202) 305–2346.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2003, the former Immigration and Naturalization Service (Service) transferred from the Department of Justice to DHS pursuant to the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135 (November 25, 2002). The Service's adjudication functions transferred to the Bureau of Citizenship and Immigration Services (CIS), and the Service's SEVIS function transferred to the Bureau of Border Security, now the Bureau of Immigration and Customs Enforcement (ICE). For the sake of simplicity, any reference to the Service has been changed to DHS, even when referencing events that preceded March 1, 2003.

What Are SEVP, SEVIS, and the SEVIS Fee?

Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law No. 104–208, 110 Stat. 3546 (September 30, 1996), codified at 8 U.S.C. 1372, required the creation of a program to collect