

# Proposed Rules

Federal Register

Vol. 70, No. 172

Wednesday, September 7, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1435

RIN 0560-AH37

#### Transfer of Sugar Program Marketing Allocations

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

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Credit Corporation (CCC) proposes several changes to the sugar program regulations. First, CCC proposes to amend the regulations for transferring sugar marketing allocation when a mill closes and growers request to move their allocation.

Second, CCC proposes imposing a regulatory deadline for the program's information reporting requirements. The required monthly information would be due on the 20th of each month.

Third, CCC proposes to amend the requirements for the maintenance and inspection of records to require each cane processor, cane refiner and beet processor to provide an annual report by a Certified Public Accountant (CPA) that verifies the company's data submitted to CCC.

**DATES:** Comments on this rule must be submitted by November 7, 2005 to be assured consideration.

**ADDRESSES:** The Farm Service Agency (FSA) invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

E-mail: Send comments to [sugar@wdc.usda.gov](mailto:sugar@wdc.usda.gov).

Mail: Submit comments to: Director, Dairy and Sweeteners Analysis Group (DSAG), FSA, United States Department of Agriculture (USDA), STOP 0516, 1400 Independence Avenue, SW., Washington, DC 20250-0516.

Fax: Submit comments by facsimile transmission to (202) 690-1480.

Hand Delivery or Courier: Deliver comments to the above address.

Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, DSAG, FSA, USDA, Room 3752-S South Building, Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. A copy of this proposed rule is available on the DSAG Web site at <http://www.fsa.usda.gov/ao/epas/dsa.htm>.

**FOR FURTHER INFORMATION CONTACT:**

Barbara Fecso at (202) 720-4146, or via e-mail at [barbara.fecso@wdc.usda.gov](mailto:barbara.fecso@wdc.usda.gov). Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

**Background**

Annually, CCC establishes sugar marketing allotments at a level estimated to prevent sugar loan collateral forfeitures to CCC. CCC establishes the overall allotment quantity, beet sugar and cane sugar allotments, State cane sugar allotments, and marketing allocations for processors marketing sugar domestically processed from sugar beets and domestically-produced sugarcane. If a processing mill closes, growers who delivered sugar beets or sugarcane to that mill may request a transfer of a portion of the closed mill's marketing allocation to another mill that reflects their production history at the closed mill.

CCC proposes to amend the regulations at 7 CFR 1435.308 to provide for an orderly and transparent method of distributing allocation to successor mills after growers have petitioned the Executive Vice President, CCC, to transfer allocation when their mill closes. CCC is proposing to use a formula to distribute the closed mill's allocation that will calculate grower shares based on the grower's contribution to the mill's allocation. Since the formula that determines a mill's allocation is different in the beet sector and among the cane states, the formula CCC will use to transfer allocation of closed mills will reflect these differences.

Since the enactment of the Farm Security and Rural Investment Act of 2002 (2002 Act), (Pub. L. 107-171), the

only processing facilities to have closed have been cane processing facilities in Louisiana. The procedure used then to transfer allocations, while not explicit in the sugar program regulations, reflected the two main components of the cane marketing allocation formula, (1) past production history, which is a fixed value, and (2) current year production, known as the "ability to market," a value that changed from year to year. CCC published an amendment to the regulations on September 13, 2004 (69 FR 35061), which fixed the "ability to market" factor in the allocation formula for each mainland cane State and cane processor until the program expires in 2008, under the 2002 Act. The other components of the mainland cane marketing allocation formulas were already fixed on the basis of historical production.

When two Louisiana mills announced they would not reopen for the 2005 crop, issues arose such as whether to allow growers with production history at the closed mill to petition if they had not delivered cane to the mill in the preceding year. There was also debate over which years to consider in the transfer formula, given that the "ability to market" change to the regulation had added more crop years in the allocation formula. In the end, CCC and successor mills were able to negotiate transfer shares that satisfied all parties. CCC considered allowing successor mills the opportunity to negotiate a distribution of allocation from the closed mill in the proposed rule. However, no mill can be expected to take less than it would under a formula, so CCC did not propose that option under this proposed rule. While the closure of cane mills precipitated this proposed rule, it applies to all beet and cane processors.

The second change CCC proposes is to include a due date in the information reporting provisions in 7 CFR 1435.200. This section requires every sugar beet processor, sugarcane processor, cane sugar refiner, and importer of sugar, syrup, and molasses to report to CCC, on a monthly basis, information necessary to administer the sugar programs. CCC established an informal reporting due date of the 20th of each month in 1991, which would be incorporated in the regulations. The chronic lateness of some reporters in recent times has delayed processing and analysis of all data, which is detrimental to the sound

administration of the Sugar Program. The civil penalties provisions in section 156h(4) of the Federal Agriculture Improvement and Reform Act of 1996, as amended (7 U.S.C. 7272(h)(4)) and 7 CFR 1435.201 allow CCC to assess a civil penalty of no more than \$10,000 to reporters who willfully fail or refuse to furnish the information, or who willfully furnish false data. CCC will consider a reporter to have willfully failed to provide the information and subject to penalty, if CCC does not receive the data by the 20th of the month.

The final proposal would require each reporting entity to have an independent third party verify each company's data submitted to CCC. CCC will require an Agreed-upon Procedures engagement, conducted by an independent Certified Public Accountant (CPA), to analyze the company data annually. The provisions of 7 CFR 1435.3, *Maintenance and inspection of records* give CCC, as well as any other U.S. Government agency, 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. Since this information is necessary to determine whether a processor is in compliance with sugar marketing allotment program requirements, CCC proposes to require that an independent CPA conduct a yearly agreed-upon procedures engagement of each reporter to validate their materials balance. CCC will provide the procedures to be followed by each independent CPA.

#### **Executive Order 12866**

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

#### **Regulatory Flexibility Act**

The requirements of the Regulatory Flexibility Act (5 U.S.C. 601–602) do not apply to this rule because CCC is not required to publish a notice of proposed rulemaking for the subject of this rule. Nonetheless, CCC has determined that this rule will not have a significant economic impact on a substantial number of small entities and a Regulatory Flexibility Analysis was not performed.

#### **Environmental Assessment**

The environmental impacts of this rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the

regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An environmental evaluation was completed and the proposed action has been determined not to have the potential to significantly impact the quality of the human environment and no environmental assessment or environmental impact statement is necessary. A copy of the environmental evaluation is available for inspection and review upon request.

#### **Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before seeking judicial review.

#### **Executive Order 12372**

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

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

This rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### **Executive Order 13132**

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### **Paperwork Reduction Act**

Under 7 U.S.C 7991(c)(2)(A) these regulations may be promulgated and the program administered without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act).

Accordingly, these regulations and the forms and other information collection activities needed to administer the provisions authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

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

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and the FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Because of the nature of the forms and other information collection activities required for this program, they are not fully implemented in a way that would allow the public to conduct business with CCC electronically. Accordingly, at this time, all forms and information required to be submitted under this rule may be submitted to CCC by mail or FAX.

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

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

Accordingly, 7 CFR part 1435 is proposed to be amended as follows:

#### **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 § 1435.200 revise paragraph (a), redesignate paragraph (g) as paragraph (h), and add new paragraph (g) to read as follows:

#### **§ 1435.200 Information reporting.**

(a) Every sugar beet processor, sugarcane processor, cane sugar refiner, and importer of sugar, syrup, and molasses shall report, by the 20th of each month, on CCC-required forms, its imports and receipts, processing inputs, production, distribution, stocks and other information necessary to administer the sugar programs. If the 20th of the month falls on a weekend or a Federal holiday, the report shall be made by the next business day.

\* \* \* \* \*

(g) By November 20 of each year, each sugar beet processor, sugarcane processor, sugarcane refiner, and importer of sugars, syrups, and molasses will submit to CCC a report, as specified by CCC, from an independent Certified Public Accountant that reviews its

information submitted to CCC during the previous October 1 through September 30 period.

\* \* \* \* \*

3. Revise § 1435.308(a) 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 their share of the allocation from the processor that closed the facility to their new processor. If CCC determines to transfer the allocations, it will distribute the closed mill's allocation based on the contribution of the growers' production history to the closed mill's allocation. CCC may grant the allocation transfer upon:

(1) Written request by a grower to transfer allocation,

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

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

\* \* \* \* \*

Signed in Washington, DC, on August 18, 2005.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 05-17684 Filed 9-6-05; 8:45 am]

BILLING CODE 3410-05-P

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of Federal Housing Enterprise Oversight**

**12 CFR Chap. XVII**

**Notice of Regulatory Review**

**AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Request for comments.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing notice of a regulatory review that will be conducted in accordance with the process set forth in OFHEO Policy Guidance titled, "Regulatory Review," which was issued on April 2, 2001 (Doc. #: PG-01-001) (Policy Guidance). OFHEO will review its regulations to consider whether existing regulations have become inefficient or create

unwarranted burden, and will identify possible revisions where such conditions are found. OFHEO is seeking public comment on its regulations for consideration in the regulatory review.

**DATES:** Written comments on this Notice must be received no later than November 7, 2005. For additional information, see **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** You may submit your comments to this Notice by any of the following methods:

- U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service: The mailing address for comments is: David A. Felt, Acting General Counsel, Attention: Comments/Notice of Regulatory Review, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- Hand Delivery/Courier: The hand delivery address is: David A. Felt, Acting General Counsel, Attention: Comments/Notice of Regulatory Review, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, between 9 a.m. and 5 p.m. on business days.

- E-mail: Comments to David A. Felt, Acting General Counsel, may be sent by e-mail at [RegComments@OFHEO.gov](mailto:RegComments@OFHEO.gov). Please include the title, Notice of Regulatory Review, in the subject line of the message.

**Instructions:** OFHEO requests that comments to this Notice include a reference to the title, Notice of Regulatory Review. OFHEO further requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft(®) Word or in portable document format (PDF) on 3.5" disk. Please see the section, **SUPPLEMENTARY INFORMATION**, below, for additional information on the posting and viewing of comments.

**FOR FURTHER INFORMATION CONTACT:**

David A. Felt, Acting General Counsel, telephone (202) 414-3750 (not a toll-free number); or Tina Dion, Associate General Counsel, telephone (202) 414-3838 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Federal Housing Enterprises Safety and Soundness Act of 1992, Title XIII of Pub. L. 102-550, empowers the Director of OFHEO to undertake

rulemaking and such other actions as the Director determines to be appropriate to oversee the activities and operations of Freddie Mac and Fannie Mae (the Enterprises). In the course of exercising such authority, the Director has promulgated regulations and issued guidelines and supervisory policies.

*OFHEO's Policy Guidance*

<http://www.ofheo.gov/News.asp?formmode=Regulations> creates a process for routine review and, where appropriate, revision of regulations by OFHEO. Such a process provides for planned reviews of the regulatory infrastructure and for considering information under uniform criteria that assists in determinations of whether an unnecessary burden exists. Once a review is completed, the Director will determine what steps may be necessary to relieve any unnecessary burden, including amendment to or repeal of existing regulations or issuance of less formal guidance.

The General Counsel, as the OFHEO Regulatory Policy Officer, is charged with undertaking the regulatory review and reporting findings and recommendations to the Director. The review process will be conducted by the Office of General Counsel, under the direction of the General Counsel, and will include internal consultation with other OFHEO offices and staff, guidance provided by the Director, as well as consideration of public comments. A review and report of findings and recommendations will be provided to the Director on a timely basis. The report of findings and recommendations will be privileged and confidential. Notably, the regulatory review to be conducted by the Office of the General Counsel under the Policy Guidance is not a formal or informal rulemaking proceeding under the Administrative Procedure Act and creates no right of action against OFHEO. Moreover, the determination of OFHEO to conduct or not to conduct a review of a regulation and any determination, finding, or recommendation resulting from any review under the Policy Guidance are not final agency actions and, as such, are not subject to judicial review.

*Regulations Under Review; Criteria*

The regulations of OFHEO that are subject to the regulatory review described in this Notice are codified in Title 12, Chapter XVII, Subchapters A, C, and D, Parts 1700-1780 of the *Code of Federal Regulations* (CFR). The regulations are listed in the CFR as follows: