

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560-AH50

Reassignment of Sugar Allocation Shortfalls

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) proposes to clarify Sugar Program regulations for the sugar marketing allotment program. This rule proposes to clarify eligibility requirements for processors to receive reassigned sugar marketing allocations deducted from other processors with insufficient supply to fill their allocations. The intent of this rule is to elaborate upon CCC's broad discretion to conduct allocation reassignments in the current regulations.

DATES: Comments on this rule must be submitted by January 12, 2007 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.

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. 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

The Sugar Program is authorized by section 359 of the Agricultural Adjustment Act of 1938, as amended by the Farm Security and Rural Investment Act of 2002 ("2002 Act") (7 U.S.C. 1359aa *et seq.*). The 2002 Act requires CCC to periodically analyze market factors and establish a national sugar marketing allotment to limit the quantity of sugar that processors can market. The goal is to achieve a price level that will minimize sugar loan collateral forfeitures to CCC. Once the overall marketing allotment is established, it is allocated between the beet sugar and cane sugar sectors (54.35 and 45.65 percent, respectively). The beet sugar allotment is allocated directly to beet processors, while the cane sugar allotment is allocated to four cane-producing states (Florida, Louisiana, Hawaii and Texas). The cane allotment is further allocated among sugar cane processing companies within each state.

This rule proposes to alter 7 CFR 1435.309(b) regarding reassignment of allocations among processors. Section 359e(a) of the 2002 Act requires CCC to periodically determine if processors have sufficient supplies to fill their allocations. If CCC determines that a processor has insufficient supply, the CCC is required to redistribute the surplus allocation among the processors that can use it. A major distinction between initial allocations and reassignments is that CCC has no discretion in determining a company's initial allocation. However, CCC, based on its analysis of current market and processor conditions, determines which processors receive the reassigned allocation. This rule proposes to emphasize CCC discretion to deduct allocation from companies and reassign

it to other companies by adding a clarifying sentence in 7 CFR 1435.309(b) to affirm that such reassignments, as they always have been, are based on CCC's determination of market and processor needs.

This rule will correct a situation where reassignment, contrary to its objective, fails to add sugar to the market in the current year and increases the sugar supply beyond the allotment in the following year. For example, on August 19, 2005, to release more sugar into the marketplace, CCC increased the Overall Allotment Quantity (OAQ) by 250,000 tons. At that time, CCC and the sugar industry recognized that there would be transportation and other difficulties in delivering the extra sugar into the marketplace. Given the extreme tightness in the sugar market at that time, CCC wanted to avoid reassigning allotment to processors that would merely transfer title of their new reassigned allocation and not actually deliver the sugar until Fiscal Year 2006. It is common for beet sugar processors, with allocation available at the end of the fiscal year, to fill their allocation by transferring title to stocks that will be delivered to users at the beginning of the following fiscal year.

When CCC found that a beet processor had 25,000 tons of allocation that it could not fill due to a production shortfall in August and September 2005, the agency exercised its discretion to reassign this quantity to companies with the greatest capacity to physically deliver the portion of the deficit assigned to it. CCC surveyed beet processors with extensive sugar supply to determine if these companies could physically deliver the sugar in fiscal year 2005. Several companies could not deliver all their supply and CCC reduced their portion of the reassignment accordingly.

Also, for this reassignment of 25,000 tons in 2005, CCC established a fiscal year carryover threshold level at which it was decided that a processor would not be given a share of the reassignment. CCC decided that a processor with more than an estimated 8 percent fiscal year 2005 carryover would not receive any of the 25,000 tons being reassigned. The 8 percent carryover cut-off was used because processors have indicated that they prefer to hold at least a month's supply of sugar, or 8 percent of a year's supply, to meet the next month's

delivery demands. The presumption is that a company will deliver sugar, from an increase in its allocation, into the marketplace in September only if its ending stocks are greater than its October commitments. Thus, it follows that a processor with 8 percent or more of a year's allocation on hand did not need any portion of the reassignment being distributed by CCC in that month.

The carryover limitation had not been used for reassignments prior to this action in 2005. Subsequently, some industry participants disagreed with the CCC determination and suggested that the agency solicit public comment on the reassignment process. For this rule, CCC considered proposing specific eligibility guidelines, such as using a historic date range in an explicit formula, to calculate reassignments. However, because of the constant state of flux in the domestic sugar market, this rule proposes reassignment eligibility rules that maintain the flexibility for CCC to adapt to market changes as necessary.

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 consistent with 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 through 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.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act, 44 U.S.C. 3501, note, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-GOV compliance related to this rule, please contact the person named above under the information contact section.

List of Subjects in 7 CFR Part 1435

Agricultural commodities, Loan programs—agriculture, Marketing quotas, Price support programs, Sugar.

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

PART 1435—SUGAR PROGRAM

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

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

Subpart D—Flexible Marketing Allotments for Sugar

2. In § 1435.309, paragraph (b) is revised to read as follows:

§ 1435.309 Reassignment of deficits.

* * * * *

(b) Sugar beet and sugar cane processors will report to CCC current inventories, estimated production, expected marketings, transportation restrictions, and any other pertinent factors CCC deems appropriate to determine a processor's ability to market and deliver their allocation. Reassignment decisions are made at the discretion of CCC based on the determination of CCC of sugar market and processor needs.

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Signed in Washington, DC, on October 25, 2006.

Thomas B. Hofeller,

Acting Executive Vice President, Commodity Credit Corporation.

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