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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560-AH86

Sugar Program

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is amending regulations as required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) to administer the sugar loan and sugar marketing allotment program through 2012. The 2008 Farm Bill generally extends the existing sugar program with some changes, including new loan rates for raw cane sugar and beet sugar, new provisions to guarantee domestic suppliers an 85 percent market share, and revised procedures for granting new allocations for new entrants.

DATES: *Effective Date:* April 6, 2009.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

This rule implements all the changes to the sugar loan and sugar marketing allotment programs mandated by Title I of the 2008 Farm Bill (Pub. L. 110-246).

The provisions of Title IX of the 2008 Farm Bill, concerning the Feedstock Flexibility Program for Bioenergy, will be implemented at a later date as a proposed rule. We are separating these regulatory provisions into two rules because the 2008 Farm Bill requires us to promulgate the regulations to implement the Title I changes and exempts the regulations from notice and comment rulemaking, while Title IX must be implemented subject to notice and comment rulemaking. Also, we need to implement the Title I changes now in order to provide sugar loans and marketing allotments for fiscal year (FY) 2009. In contrast, it is unlikely given current supply and demand conditions that we will be required to implement provisions of the Feedstock Flexibility Program in FY 2009. The Feedstock Flexibility Program is triggered by the prospect of sugar forfeitures, which are unlikely to occur in FY 2009. The U.S. Department of Agriculture's (USDA) December 2008 World Agricultural Supply and Demand Estimate (WASDE) report projected sugar ending stocks for FY 2009 of 60 percent of the level USDA normally considers necessary to provide for a balanced domestic sugar market, making forfeitures quite unlikely.

The sugar program is a collection of Federal programs designed to support the return from raising sugarcane and sugar beets above a threshold established by statute. The price of sugar, rather than the price of sugar beets and sugarcane, is supported, because the growers' return from the crop is proportional to the price of sugar and the crops are not storable, which makes them unsuitable loan collateral for CCC price support loans. The price level supported is determined by the sugar loan program. Regulations for this program are in subpart B in 7 CFR part 1435. Sugar beet and sugarcane processors can receive loans from CCC on their sugar production, which can be fully satisfied by giving CCC title to their loan collateral, also known as a "forfeiture" of collateral. Thus, sugar processors always have the opportunity to receive at least the loan proceeds from their crop, which becomes a floor on the market price of domestic sugar.

The sugar program has had a mandate, since the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171, commonly known as the 2002 Farm Bill), to avoid the federal costs

associated with sugar loan collateral forfeitures. The sugar program minimizes forfeiture expenditures by limiting domestic supply, resulting in higher domestic sugar prices than the floor created by the sugar loan program. Thus, the cost of the program falls upon domestic purchasers of sugar, not the federal government. USDA can control supply by limiting the quantity of sugar that domestic sugar beet and sugarcane processors can sell under the Sugar Marketing Allotment program, and by limiting the quantity of foreign sugar on the domestic market via sugar tariff-rate quotas (TRQ), subject to the minimum access levels established by international treaties.

While some price support aspects of the sugar program may not be needed in 2009 due to the predicted tight U.S. sugar market, other aspects of the Sugar Loan and Marketing Allotments for Sugar program will be implemented in FY 2009 and need this rule in order to operate. All of the changes in this rule are required by the 2008 Farm Bill, for which USDA has little or no discretion in when and how to implement. This rule makes changes to subparts A, B, C, D, and E of 7 CFR part 1435, "Sugar Program." The Payment in Kind Program in subpart E will be moved to a new subpart F. A new subpart E on General Disposition of CCC Inventory and subpart G will be added in the subsequent Title IX rule and used to implement the Feedstock Flexibility Program.

Changes to General Provisions (Subpart A)

The extension of the domestic sugar program through the 2012 crop year is reflected in the revised section 1435.1, "Applicability." Also added to this section is the administration of a program to dispose of surplus sugar to bioenergy fuels production.

Section 1435.2, "Definitions," is updated and modified to reflect changes required by the 2008 Farm Bill. The definition of beet sugar is revised to implement the requirement in the 2008 Farm Bill that sales of sugar processed from in-process beet sugar, such as thick juice, whether imported or domestic, used for domestic human consumption is subject to the processor's sugar marketing allocation. This change also resulted in changes to the definitions of "in-process beet sugar," "in-process

cane sugar,” “overall allotment quantity,” “sugar,” and “sugar beet processor.” A definition for “human consumption” is added, using the definition in the 2008 Farm Bill. A definition for “proportionate share State” is added for clarification. The definition of “marketing” is revised to reflect the 2008 Farm Bill requirement that a sale of sugar to the Feedstock Flexibility Program is a marketing subject to a processor’s sugar marketing allocation. A definition of “cane sugar refiner” is modified to be consistent with Foreign Agricultural Service (FAS) regulations.

Section 1435.3, “Maintenance and Inspection of Records,” is modified to reflect that CCC has no authority to inspect processor records and has instituted a data audit process, in lieu of inspection, to verify processor records. This audit process is explained in section 1435.200, “Information Reporting.”

Changes to Sugar Loan Program (Subpart B)

The regulations governing the Sugar Loan Program are modified to reflect the changes required by the 2008 Farm Bill.

Section 1435.101, “Loan Rates,” sets forth the increased loan rates under the 2008 Farm Bill. The national average loan rate for raw cane sugar produced from domestically-grown sugarcane is unchanged for the 2008 crop year, at 18 cents per pound, but increases as follows for the subsequent years:

- 18.25 cents per pound for the 2009 crop year;
- 18.50 cents per pound for the 2010 crop year;
- 18.75 cents per pound for the 2011 crop year; and
- 18.75 cents per pound for the 2012 crop year.

The national average loan rate for refined beet sugar produced from domestically-grown sugar beets remains unchanged for the 2008 crop year, but increases to 128.5 percent of the loan rate per pound of raw cane sugar for each of the crop years 2009 through 2012.

The eligibility requirements in section 1435.102, “Eligibility Requirements,” are modified to exclude sugar processed from imported in-process sugars from eligibility for the loan program. The 2008 Farm Bill now treats in-process beet sugar just like sugar beets; that is, as an input into the production of sugar. Since sugar produced from imported beets is not eligible for the loan program, neither is sugar produced from imported in-process beet sugar. Section 1435.103, “Availability, Disbursement, and Maturity of Loans,” is revised to

reflect the change in loan rate for supplemental loans. Instead of getting the loan rate in effect at the time the supplemental loan is made, supplemental loans will receive the loan rate that was in effect at the time the original loan was made. Section 1435.105, “Loan Settlement and Foreclosure,” is updated to reflect that premiums or discounts may result from any differences in the sugar characteristics identified on the loan certification versus at the time of actual loadout of forfeited sugar. Storage payment rates paid by CCC on forfeited sugar loan collateral have also been added to section 1435.105. The minimum rate set by the 2008 Farm Bill is 15 cents per hundredweight for refined sugar and 10 cents per hundredweight for raw sugar, significantly above the rates administratively set by USDA of 10 cents per hundredweight for refined sugar and 8 cents per hundredweight for raw sugar.

Changes to Information Reporting and Recordkeeping Requirements (Subpart C)

Subpart C, “Information Reporting and Recordkeeping Requirements,” is revised to reflect the 2008 Farm Bill’s requirement that USDA publish Mexican supply data and use estimates in its monthly WASDE report. The 2008 Farm Bill also requires the WASDE report to include publicly available data on Mexican high fructose corn syrup production, consumption, and trade data. This rule also replaces the requirement in the regulation that all processors, refiners and importers must submit an annual audit to CCC. The new regulation allows CCC to select some, but not necessarily all, for audit.

Changes to the Flexible Sugar Marketing Allotment Program (Subpart D)

The 2008 Farm Bill significantly modified the Flexible Sugar Marketing Allotment Program. All of the changes to subpart D in this rule described below are required to implement the 2008 Farm Bill. This section discusses the overall changes in the program and the implications of those changes first, then discusses the changes to specific sections of the regulations.

The 2002 Farm Bill required USDA to set the overall allotment quantity (OAQ) by a formula that permitted domestic producers to receive a market share equal to the amount of domestic demand, less an import share of 1.532 million tons. This allotment quantity had to be reduced, if necessary, to avoid the cost of potential forfeitures of sugar

loan collateral. Allotments were to be suspended if the import share exceeded the 1.532 million tons allotted to it. Suspending allotments was expected to increase the likelihood of CCC expenditures as forfeitures under the price support loan program were constrained by the program—forefeitures are marketings credited against a processor’s allocation of the marketing allotment. Without an allotment program, processors could forfeit their entire sugar supply, if they so chose.

The 2008 Farm Bill added another objective to the domestic allotment program, reinforcing USDA’s function to use the sugar program to provide for a balanced domestic sugar market. USDA must now set the domestic allotment quantity, subject to specific constraints, to ensure that there is an adequate supply of raw and refined sugar for the domestic market. This new objective in the domestic program complements the existing authority in chapter 17 of the Harmonized Tariff Schedule maintained by the United States International Trade Commission permitting USDA to increase the sugar TRQs if supply is determined to be “inadequate to meet domestic demand at reasonable prices.” Thus, USDA must continue to use the sugar program authorities, to the extent possible, to keep supply limited enough to avoid forfeitures, but large enough to provide an adequate supply.

The Sugar Marketing Allotment program divides the domestic sugar market between sugar importers and domestic sugar beet and sugarcane processors. Importers are always expected to fill their share because the U.S. price of sugar is usually considerably above the world sugar price. If the domestic processors’ supply is inadequate to fill their allotment, then CCC must fill the deficit with its inventory; if it has no inventory, then CCC must reassign the unfilled market share to importers. The maximum market share reserved for imports under the 2002 Farm Bill, 1.532 million tons, was also the allotment program suspension threshold and did not include imports needed to make up for deficit domestic production.

Under the 2002 Farm Bill, all types of imported sugar were eligible for reassignment of the deficit, including, but not limited to, TRQ raw sugar, TRQ refined sugar, Mexican imports, Central America Free Trade Agreement (CAFTA) imports, and other high-tier imports. At times, a reassignment meant new access to the U.S. sugar market, for example an increase in the TRQ. At other times, a reassignment meant acknowledging an existing import category that resulted in no new access,

such as Mexican sugar. USDA reassigned the surplus allotment to an import source consistent with the objective of balancing the domestic market, avoiding forfeitures and providing adequate supply at reasonable prices. If USDA determined that the

market was not adequately supplied, then USDA would increase access through a TRQ increase. If USDA determined that the market would be adequately supplied with the imports already expected, then USDA would reassign the surplus allotment to those

imports. The following is a table of the sources of reassigned surplus allotment during administration of the Sugar Marketing Allotment program under the 2002 Farm Bill.

REASSIGNMENT HISTORY

	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
	(short tons, raw value)					
OAQ	8,663,000	8,250,000	8,680,000	9,350,000	8,750,000	8,950,000
Beet Sugar	4,534,340	4,483,875	4,717,580	4,776,380	4,755,625	4,864,325
Cane Sugar	3,954,660	3,766,125	3,670,208	2,981,620	3,540,375	3,626,533
Reassignments:						
Reassign Cane Shortfall to CCC	174,000	0	17,120	0	0	0
Reassigned to Total Imports	0	0	275,092	1,592,000	454,000	459,142
Raw World Trade Organization (WTO) TRQ	0	0	84,447	745,000	250,000
Refined WTO TRQ	0	0	69,933	509,921	58,581	70,000
Mexico TRQ	0	0	0	276,000	86,419	0
Mexico Non TRQ	0	0	120,713	0	0	389,142
Non Program Imports	0	0	0	61,079	59,000	0

The 2008 Farm Bill changes the market sharing arrangements embodied in the Sugar Marketing Allotment program. The new objective that it must ensure adequate sugar supply means that when USDA sets the overall allotment quantity, it must be comfortable that the remaining share of domestic demand, up to 15 percent, will be satisfied. USDA cannot reassign surplus allotment to imports that would permit the non-allotment market share (15 percent) to be unfulfilled. Thus, for the new allotment program, USDA cannot reassign surplus allotment to imports that would count against the 15-percent import market share. The 2008 Farm Bill also specifically requires that surplus allotment be reassigned to raw cane sugar imports only. Thus, the raw sugar TRQ, or raw sugar portion of CAFTA or Mexican imports, are now eligible as a source for reassignment. This still permits USDA significant flexibility in balancing the domestic market as these categories are expected to range between 1 to 2 million tons per year. Any imported refined sugar must be credited against the 15-percent import market share because it is not eligible for reassignment if domestic producers cannot fill their allotment.

It should be noted that USDA's increases in access to the domestic market do not necessarily mean domestic supplies will increase and prices will fall. Sugar must be physically available to fill the access. Likewise, USDA's ability to restrict supply and raise prices is hampered by storage capacity. CCC sugar is stored in processor warehouses and storage

capacity limits will cause the processors to reduce prices to avoid paying for expensive short term storage as the new crop is processed. CCC purchased sugar for considerably less than the forfeiture proceeds in 2000.

The USDA budget baseline projects substantial costs to the sugar program because USDA's ability to limit supply was curtailed by NAFTA, which deregulates sweetener trade across the U.S.-Mexican border. The U.S. advantage in high fructose corn syrup (HFCS) production was expected to result in an increased flow of U.S. HFCS into Mexico, creating a Mexican surplus in sugar that would result in increased Mexican sugar imports into the United States. The increased Mexican imports were expected to result in prices below the federal support level and forfeiture of sugar price support loan collateral. The 2008 Farm Bill addressed CCC's options to dispose of surplus sugar in the new Feedstock Flexibility Program, located in Title IX of the 2008 Farm Bill.

Section 1435.300, "Applicability," now provides that marketings of sugar made from in-process beet sugar will be counted against a processor's sugar marketing allocation. Before this change, which is required by the 2008 Farm Bill, CCC considered in-process beet sugar as a sugar and counted marketings of in-process beet sugar against a processor's allocation. This rule considers in-process beet sugar a feedstock from which sugar can be made, just as sugar beets or sugarcane are considered feedstocks for producing sugar. This change required minor edits for consistency to many sections in this

subpart, as well as changes to the definitions section.

Section 1435.302 is modified to reflect not only the 85 percent market share guarantee to domestic producers, but also CCC's policy of requiring a processor to use its marketing allotment to participate in USDA's sugar re-export, sugar containing products re-export, or polyhydric alcohol programs, and to sell sugar to CCC under the new Feedstock Flexibility Program.

Section 1435.303, "Overall Allotment Quantity," is removed from the regulations because it is now obsolete, and subsequent sections are renumbered accordingly.

Section 1435.303, "The Adjustment of the Overall Allotment Quantity," (formerly section 1435.304) has been modified to reflect the change in the 2008 Farm Bill which restricts CCC from reducing the OAQ below 85 percent of human consumption. The 2002 Farm Bill, as mentioned earlier, allowed CCC to reduce the domestic share in times of a demand decrease, without a lower limit.

Sections 1435.306, "Allocation of Marketing Allotments to Processors," and 1435.307, "Transfer of Allocation," have been reorganized for clarification and to reflect changes from the 2008 Farm Bill. The provisions in these sections were formerly in §§ 1435.307 and 1435.308.

The updated § 1435.306, "Allocation of Marketing Allotments to Processors," includes new provisions that exempt sugar made in FY 2009 from in-process beet sugar purchased in FY 2008. The marketing of domestic in-process beet

sugar in FY 2008 was subject to a processor's FY 2008 allocation because, under the 2002 Farm Bill, in-process sugar was considered sugar subject to a processor's allotment. After September 30, 2008, the marketings of in-process beet sugar are no longer considered sugar subject to a processor's allotment due to a change made by the 2008 Farm Bill. Section 359b(c)(1) of the Agricultural Adjustment Act of 1938, as amended by the 2008 Farm Bill, includes the marketing of sugar processed from in-process beet sugar in the section describing the coverage of allotments. The new provision in § 1435.306 is required so that companies that purchased in-process sugar, sold under a FY 2008 allocation, are not caught in the transition to the new definition of sugar subject to allotment. Some of these companies may not have been beet processors with allotments. Without this new provision, these companies would be prevented from marketing the sugar processed from the in-process beet sugar. In the future, any company wishing to process in-process beet sugar into refined sugar must be a beet processor with an allocation of the beet sugar marketing allotment.

The updated § 1435.307, "Transfer of allocation," provides that for proportionate share States, growers may now move allocation between facilities as they change their sugarcane deliveries. Under the previous regulation, growers needed permission from the processor they were leaving to move allocation commensurate with their cane deliveries. CCC is establishing the signup period for growers to request CCC to move allocation as the month of May for the following cane harvest season. During that signup month, CCC expects the grower to reach agreement with its original facility as to the amount of production history the grower is requesting and entitled to move. If the petitioning grower does not supply CCC during the month of May with its history for the crop years 1997 through 2003, certified by its original facility, CCC will refuse the grower's petition to transfer allocation. Since growers in proportionate share States do not need permission from the facility they are leaving to move allocation associated with their production, provisions for them are no longer included in the "Transfer of Allocation" section regarding facility closures.

In light of proceedings in a court case, *Amalgamated Sugar, LLC v. Vilsack, et al.*, the updated § 1435.307 (formerly § 1435.308) is being amended to permit CCC wider discretion to determine that a processor has permanently terminated

operations. In a decision dated February 11, 2009, the U.S. Court of Appeals for the Ninth Circuit reversed a determination made by the Department transferring the sugar marketing allocation from one sugar processor to another sugar processor. The amendment permits CCC to make a determination that a sugar processor has permanently terminated operations, and transfer the allocation on the basis of a CCC determination, in addition to the other specified circumstances.

This section also reflects an addition in the 2008 Farm Bill that allows the buyer and seller of a facility, rather than CCC, to choose the allocation amount to be transferred upon sale of the facility. Finally, § 1435.307 is modified to add a provision that was effective in the 2002 Farm Bill, but not specified in the previous regulation, that a buyer of facilities may fill a production shortfall of its purchased facilities with beet sugar produced in other beet facilities it owns, if necessary.

Section 1435.308, "New Entrants," now specifies that in subsequent years after being assigned its initial allocation, the new entrant cane processor will be assigned an allocation that provides a fair, efficient, and equitable distribution of allocations from the allotment of the State within which the new entrant is located. In the case of cane processors in proportionate share States, the new entrant's allocation in subsequent years will include any allocation acquired through the voluntary allocation transfer provisions of § 1435.307, "Transfer of Allocation." This "New Entrants" section also implements a change from the 2008 Farm Bill that requires CCC to assign to a new entrant constructing a new or reopening an existing facility that has no allocation an allocation that enables it to achieve a facility utilization rate similar to other sugar beet processors. The 2002 Farm Bill specified a formula to determine the new allocation that is removed in this rule. This section also now provides that a new entrant acquiring a facility with production history and the company holding its allocation must agree on the allocation to be transferred; otherwise CCC will deny the new entrant an allocation.

Section 1435.309, "Reassignment of Deficits," is changed in this rule to restrict reassignment of production shortfall, after it has been determined that CCC cannot fill the allocation, to imports of raw cane sugar only.

Section 1435.313, "Permanent Transfer of Acreage Base Histories Under Proportionate Shares," now incorporates a new process to restore sugarcane base acreage lost to

nonagricultural uses before May 13, 2002 in proportionate share States. USDA will notify affected landowners within 90 days of USDA becoming aware of the conversion that the landowner has 90 days to transfer the base. It is not USDA's responsibility to keep a vigilant watch for sugarcane base acreage converting to a nonagricultural use. If the landowner does not exercise his transfer rights, the grower of record will have 90 days after being notified by USDA to transfer the base. If the landowner or grower does not transfer the base, then the FSA county committee will take requests for the base and randomly assign to sugarcane farms in the county that are eligible and capable of accepting the acreage base. Any base remaining will go to the State FSA committee for dispersal.

Section 1435.318, "Penalties and Assessments," is also changed by this rule to include a provision for liquidated damages that was previously specified in section 1435.307.

Redesignation of Subpart E, "Processor Sugar Payment-in-Kind (PIK) Program"

The subpart on PIK is not changing with this rule. We will implement minor changes to PIK with the subsequent rule implementing Title IX to include provisions of the Feedstock Flexibility Program. This rule merely moves the PIK subpart from E to F, and reserves part E for a new subpart on "General Disposition of CCC Inventory" that will be added with the Title IX rule. It makes sense to have the General disposition subpart appear in the CFR before the PIK subpart, because PIK is a specific kind of disposition program. This rule also reserves subpart G for the Feedstock Flexibility program sections that will be added with the Title IX rule.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553), as specified in section 1601(c) of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of section 553 of title 5 of the United States Code 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.

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866 and, therefore, OMB reviewed this final rule. A cost-

benefit assessment of this rule is summarized below and is available from the contact information above.

Summary of Economic Impacts

This rule implements two major changes in the sugar program resulting from the 2008 Farm Bill: Higher loan rates and a guaranteed market share. These are expected to have zero impact on federal costs for FY 2009 and FY 2010. This is because baseline assumptions project FY 2011 to be the first year of surplus sugar in the marketplace. However, over the course of FY 2009 through FY 2018, federal net expenditures are expected to be \$1.055 billion more than if the 2002 Farm Bill provisions were still in place. This result is mostly driven by the increase in loan rates that increases the NAFTA floor price. While higher sugar prices in Mexico cause its manufacturers and consumers to substitute high fructose corn syrup for sugar, they also increase the grower incentive to plant more acreage to sugarcane. As a result, Mexican sugar exports to the U.S. are likely to increase over time, on average by 33 percent between 2009 and 2018. At the same time, U.S. production is likely to increase in response to high support levels. The loan rate increase is expected to increase sugar costs to consumers and sugar users by \$1.4 billion from 2009 to 2018. This cost is the increase in the loan rate multiplied by sugar use; the demand for sugar is assumed to be perfectly inelastic.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since CCC is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

FSA has determined that these changes would not constitute a major Federal action that would significantly affect the quality of the human environment. Therefore, in accordance with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA, specifically 7 CFR part 799.10(b)(2)(vii), no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the

Federal Register on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988. This rule is not retroactive and it does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

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.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal government or the private sector. In addition, CCC was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Section 1601(c)(3) of the 2008 Farm Bill requires that the Secretary use the authority in section 808 of title 5, United States Code, 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. Accordingly, this rule is effective upon publication in the **Federal Register**.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act, 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.

List of Subjects in 7 CFR Part 1435

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

■ For the reasons discussed above, this rule amends 7 CFR part 1435 as follows:

PART 1435—SUGAR PROGRAM

■ 1. Revise the authority for part 1435 to read as follows:

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

Subpart A—General Provisions

■ 2. Amend § 1435.1 as follows:

■ a. Amend the introductory text by removing the years “2002–2007” and adding in their place the years “2008 through 2012,” and

■ b. Revise paragraph (d) to read as set forth below.

§ 1435.1 Applicability.

* * * * *

(d) Administer an inventory disposition program to sell CCC inventory to bioenergy producers and exchange CCC inventory for processor reductions in production or certificates of quota entry.

■ 3. Amend § 1435.2 as follows:

■ a. Add new definitions, in alphabetical order, for “CCC,” “facility,” “human consumption,” “in-process beet sugar,” “in-process cane sugar,” and “proportionate share State,” to read as set forth below,

■ b. Remove the definition for “in-process sugar,” and

■ c. Revise the definitions of “beet sugar,” “cane sugar refiner,” “market or marketing,” “overall allotment quantity,” “sugar,” and “sugar beet processor” to read as set forth below.

§ 1435.2 Definitions.

* * * * *

Beet sugar means sugar that is processed directly or indirectly from sugar beets, sugar beet molasses, or in-process beet sugar, whether produced domestically or imported.

* * * * *

Cane sugar refiner means any person in the U.S. Customs Territory that refines raw cane sugar through affination or defecation, clarification, and further purification by absorption or crystallization.

* * * * *

CCC means the Commodity Credit Corporation.

* * * * *

Facility means a factory, mill, or plant.

* * * * *

Human consumption means sugar for use in human food, beverages, or similar products.

* * * * *

In-process beet sugar means the intermediate sugar-containing product, as CCC determines, produced from processing sugar beets. Like sugar beets, it is considered an input into the production of sugar regardless of whether it is produced domestically or imported.

In-process cane sugar means the intermediate sugar-containing product, as CCC determines, produced from the processing of sugarcane. It is not raw sugar, nor is it suitable for direct human consumption.

Market or marketing means the transfer of title associated with the sale or other disposition of sugar for human consumption in United States commerce. A marketing also includes a sale of sugar under the Feedstock Flexibility Program, the forfeiture of sugar loan collateral under the Sugar Loan Program, exportation of sugar from the United States Customs Territory eligible to receive credits under reexport programs for refined sugar or sugar-containing products administered by the Foreign Agricultural Service, or the sale of sugar eligible to receive credit for the production of polyhydric alcohol under the Polyhydric Alcohol program (see part 1530 of this title) administered by the Foreign Agricultural Service, and for any integrated processor and refiner, the movement of raw cane sugar into the refining process.

* * * * *

Overall allotment quantity means, on a national basis, the total quantity of domestically produced sugar, raw value, processed from sugarcane, sugar beets or in-process beet sugar (whether the sugar beets or in-process beet sugar are produced domestically or imported), 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.

* * * * *

Proportionate share State means a State with an established allotment and more than 250 sugarcane producers in the State, other than Puerto Rico.

* * * * *

Sugar means any grade or type of saccharine product derived, directly or

indirectly, from sugarcane, sugar beets, sugarcane molasses, sugar beet molasses or in-process beet sugar whether domestically produced or imported and consisting of, or containing, sucrose or invert sugar, including raw sugar, refined crystalline sugar, edible molasses, edible cane syrup, liquid sugar, and in-process cane sugar.

Sugar beet processor means a person who commercially produces sugar, directly or indirectly, from sugar beets, sugar beet molasses, or in-process beet sugar.

* * * * *

§ 1435.3 [Amended]

- 4. Amend § 1435.3 as follows:
a. In the heading, remove the words "and inspection,"
b. Remove paragraph (a),
c. Redesignate paragraph (b) as paragraph (a),
d. In newly redesignated paragraph (a) introductory text, remove the words "the records shall" and add the words "records required by CCC to operate the sugar program must" in their place, and
d. Reserve paragraph (b).

Subpart B—Sugar Loan Program

- 5. Revise the heading of Subpart B to read as set forth above.
6. Amend § 1435.101 by revising paragraphs (a) and (b) to read as follows:

§ 1435.101 Loan rates.

(a) The national average loan rate for raw cane sugar produced from domestically grown sugarcane is: 18 cents per pound for the 2008 crop year; 18.25 cents per pound for the 2009 crop year; 18.50 cents per pound for the 2010 crop year; 18.75 cents per pound for the 2011 crop year; and 18.75 cents per pound for the 2012 crop year.

(b) The national average loan rate for refined beet sugar from domestically grown sugar beets is: 22.90 cents per pound for the 2008 crop year; and a rate equal to 128.5 percent of the loan rate per pound of raw cane sugar for each of the crop years 2009 through 2012.

* * * * *

§ 1435.102 [Amended]

- 7. Amend § 1435.102 in paragraph (c)(3) by adding the words "in-process sugars," immediately after the word "beets,".
8. Amend § 1435.103 by revising paragraph (f) to read as follows:

§ 1435.103 Availability, disbursement, and maturity of loans.

* * * * *

(f) Processors receiving loans in July, August, or September may repledge the

sugar as collateral for a supplemental loan. Such supplemental loan must:

- (1) Be requested by the processor during the following October;
(2) Be made at the loan rate in effect at the time the first loan was made; and
(3) Mature in 9 months less the number of months that the first loan was in effect.

§ 1435.104 [Amended]

- 9. Amend § 1435.104 as follows:
a. Remove paragraph (c)(2) and
b. Redesignate paragraphs (c)(3) and (c)(4) as paragraphs (c)(2) and (c)(3), respectively.
10. Amend § 1435.105 as follows:
a. Revise paragraph (b) to read as set forth below,
b. In paragraph (c)(2), add the word "before" immediately before the words "the processor,"
c. In paragraph (f), add the word "next business" before the word "day," and
d. Add paragraph (j) to read as set forth below.

§ 1435.105 Loan settlement and foreclosure.

* * * * *

(b) Forfeiture of sugar loan collateral will be accepted as payment in full of the principal and interest due under a nonrecourse loan, subject to applicable premiums and discounts based on the difference between specifications reported on the sugar loan certification report and actual loadout characteristics.

* * * * *

(j) The CCC rates for the storage of forfeited sugar to approved warehouses for each crop year of 2008 through 2011 will be at least:

- (1) For refined sugar, 15 cents per hundredweight of refined sugar per month; and
(2) For raw cane sugar, 10 cents per hundredweight of raw cane sugar per month.
(3) For 2012 and subsequent crop years, rates for the storage of forfeited sugar will revert to those used before June 18, 2008.

(4) For sugar located in space not approved by CCC for storage, the payment rate will be zero until such time as the processor delivers such sugar to a CCC-approved warehouse.

Subpart C—Information Reporting and Recordkeeping Requirements

- 11. Amend § 1435.200 as follows:
a. In paragraph (a), second sentence, remove the words "made by" and add, in their place, the word "due,"
b. Revise paragraph (e) to read as set forth below,

- c. Redesignate paragraphs (f), (g), and (h) as (h), (i), and (j), respectively,
- d. Add paragraphs (f) and (g) to read as set forth below, and
- e. Revise newly redesignated paragraph (i) to read as set forth below.

§ 1435.200 Information reporting.

* * * * *

(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 must report such information as CCC requires, including the quantities of the products imported and the sugar content or equivalent of the products.

(f) The Secretary will collect information on the production, consumption, stocks and trade of sugar in Mexico and publish the data in each edition of the World Agricultural Supply and Demand Estimates report.

(g) The Secretary will collect publicly available information on the production, consumption, and trade of high fructose corn syrup in Mexico and publish the data in each edition of the World Agricultural Supply and Demand Estimates report.

* * * * *

(i) By November 20 of each year, sugar beet processors, sugarcane processors, sugarcane refiners, and importers of sugars, syrups, and molasses, as selected by CCC, 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.

* * * * *

§ 1435.201 [Amended]

- 12. Amend § 1435.201 in paragraph (a) by removing the reference “§ 1435.200” and adding, in its place, the references “§ 1435.200(a) through (e).”

Subpart D—Flexible Marketing Allotments for Sugar

- 13. Amend § 1435.300 as follows:
 - a. Revise paragraphs (a)(1) and (b) to read as set forth below and
 - b. In paragraph (a)(2), remove the words “domestically produced.”

§ 1435.300 Applicability.

(a) * * *

(1) Processor marketings of sugar domestically processed from sugar beets or in-process beet sugar, whether such sugar beets or in-process beet sugar were produced domestically or imported,

* * * * *

(b) This subpart does not apply to marketing imported raw or refined sugar.

* * * * *

- 14. Amend § 1435.301 as follows:

- a. Revise paragraphs (a)(1) and (a)(4) to read as set forth below and

- b. Amend paragraph (a)(3) by removing the words “available for consumption from” and adding in their place the words “used for human consumption in the United States from.”

§ 1435.301 Annual estimates and quarterly re-estimates.

(a) * * *

(1) Quantity of sugar that will be subject to human consumption in the United States during the crop year;

* * *

(4) Quantity of sugar that will be available from domestically processed sugarcane, sugar beets, and in-process beet sugar; and

* * * * *

- 15. Revise § 1435.302 and its heading to read as follows:

§ 1435.302 Establishment 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 sugarcane, sugar beets, or in-process beet sugar, whether the sugar beets or in-process beet sugar is domestically produced or imported at a level:

(1) That is sufficient to maintain raw and refined sugar prices above minimum prices to avoid forfeiture of loans to the CCC, but

(2) Not less than 85 percent of estimated quantity of sugar for domestic human consumption for the crop year.

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

- 16. Remove § 1435.303 and redesignate §§ 1435.304 through 1435.308 as §§ 1435.303 through 1435.307, respectively.

- 17. Amend newly redesignated § 1435.303 by revising paragraphs (a) and (b) to read as follows:

§ 1435.303 Adjustment of the Overall Allotment Quantity.

(a) The overall allotment quantity may be adjusted, as CCC determines appropriate, but never to a quantity less than 85 percent of the estimated quantity of sugar for domestic human consumption for the crop year:

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

(2) Ensure adequate supplies of raw and refined sugar in the domestic market, and,

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

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

* * * * *

§ 1435.305 [Amended]

- 18. Amend newly redesignated § 1435.305, in paragraph (b), by removing the reference “§ 1435.308(f)” and adding, in its place, the reference “§ 1435.308.”

- 19. Amend newly redesignated § 1435.306 as follows:

- a. In paragraph (a) introductory text, add the words “, other than a new entrant’s,” before the words “of the beet allotment,”

- b. Revise paragraphs (b), (e) introductory text, (e)(1), and (e)(2) to read as set forth below,

- c. Revise paragraph (g) to read as set forth below, and

- d. Add paragraph (h) to read as set forth below.

§ 1435.306 Allocation of marketing allotments to processors.

* * * * *

(b) Each sugarcane processor’s, other than a new entrant’s, 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 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 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.

* * * * *

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

(1) Any sugar marketings to facilitate the export of sugar or sugar-containing products as long as such exports are not eligible to receive credits under reexport programs administered by the Foreign Agricultural Service for refined sugar or sugar-containing products;

(2) Any sugar marketings for nonhuman consumption, except for the sale of sugar for the production of ethanol or other bioenergy under the

Feedstock Flexibility program or the sale of sugar for the production of polyhydric alcohol under the Polyhydric Alcohol program administered by the Foreign Agricultural Service; and

* * * * *

(g) Paragraph (d) of this section also will not apply to the marketing of beet sugar processed from purchased in-process beet sugar if the processor purchased the in-process beet sugar before October 1, 2008.

(h) 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 only use cane sugar to fill such allocation.

■ 20. Revise newly redesignated § 1435.307 to read as follows:

§ 1435.307 Transfer of allocation.

(a) If a sugarcane processing facility is sold or transferred to another owner or is closed as part of a corporate consolidation CCC will transfer the allotment allocation to the purchaser or successor.

(b) In proportionate share States, allocations, based on the number of acres of sugarcane base being transferred and the pro rata amount reflecting the grower's contribution to allocation of the processor for the sugarcane base being transferred, will be transferred between facilities if the transfers are based on:

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

(2) Written certification from the processor that will accept the additional sugarcane deliveries that its processing capacity will not be exceeded,

(3) CCC will only consider requests for transfer of allocation submitted during the month of May. The request must include the grower's sugar production history for crop years 1997 through 2003. The facility with the grower's history will be required to certify the history when requested by the grower, and

(4) Allocation transfers will be effective for the next fiscal year after the request is submitted to CCC, that is beginning October 1.

(c) If a sugar beet processing facility or a sugarcane processing facility located in a non-proportionate share State 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 approves transfer of the allocations, it will distribute the closed facility's allocation based on the contribution of the growers' production history to the closed facility's allocation. CCC may grant the allocation transfer upon:

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

(2) Written approval of the processor that will accept the additional deliveries,

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

(4) Determinations by the CCC will be made within 60 days after the filing of the petition.

(d) Subject to a transfer of allocation, if any, described in paragraph (c) of this section being completed, CCC will consider a processor to be permanently terminated and 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,

(3) Has not processed sugarcane or sugar beets for 2 consecutive crop years,

(4) Has notified CCC that the processor has permanently terminated operations, or

(5) Has been determined by CCC to have permanently terminated operations.

(e) If a processor of beet sugar purchases all the assets of another processor, then CCC will immediately transfer allocation commensurate with the purchased facilities' production history, unless the allocation has already been transferred under paragraph (d) of this section.

(f) If a processor of beet sugar purchases some, but not all, of the assets of another processor, then CCC will assign a pro rata portion of the allocation to the buyer to reflect the historical contribution of the sold facilities, unless the buyer and seller have agreed upon a different allocation amount.

(1) The assignment of the allocation will apply to the crop year in which the sale occurs and for each subsequent year.

(2) The buyer of the facilities as specified in paragraph (e) of this section may fill the assigned allocation with production from other facilities it owns if the purchased facilities lack the production to fill the assigned allocation.

■ 21. Add § 1435.308 to read as follows:

§ 1435.308 New entrants.

(a) The Secretary may assign a new entrant sugarcane processor an allocation that provides a fair, efficient, and equitable distribution of allocations:

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

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

(3) CCC will conduct a hearing on a new entrant application if an interested processor or grower requests a hearing,

(4) A new entrant's allocation is limited to no more than 50,000 short tons, raw value, for the first crop year, and

(5) A new entrant will be provided, as determined by CCC:

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

(ii) A share of the overall mainland cane allotment if the processor is located in any mainland State not listed in paragraph (a)(5)(i) of this section.

(b) For proportionate share States, CCC will establish proportionate shares for the sugarcane required to fill the allocation.

(c) If a new entrant beet processor constructs a new facility or reopens a facility that currently has no allocation, but last produced beet sugar from sugar beets and sugar beet molasses prior to the 1998 crop year, CCC will:

(1) Assign an allocation to the new entrant to enable it to achieve a facility utilization rate comparable to other similarly-situated sugar beet processors and

(2) Reduce all other beet processor allocations by a like amount on a pro rata basis.

(d) If a new entrant acquires an existing facility with production history that processed sugar beets for the 1998 or subsequent crop year, CCC will:

(1) Assign the allocation to the buyer to reflect the historical contribution of the sold facilities, unless the buyer and seller have agreed upon a different allocation amount, or

(2) If the new entrant and the processor holding the allocation of the existing facility cannot agree on an allocation amount, the new entrant will be denied a beet sugar allocation.

§ 1435.309 [Amended]

■ 22. Amend § 1435.309, paragraphs (c)(4) and (e)(3), by adding the words "of raw cane sugar" at the end of each paragraph.

■ 23. Amend § 1435.310 as follows:

■ a. In paragraph (b)(1)(i)(A), add the word "or" at the end,

■ b. In paragraph (b)(1)(i)(B), remove the word "or",

- c. Remove paragraph (b)(1)(i)(C) and
- d. Remove paragraph (b)(2) and redesignate paragraph (b)(3) as paragraph (b)(2).

§ 1435.312 [Amended]

- 24. Amend § 1435.312, paragraph (a), first sentence, by adding the words “(meaning only those varieties dedicated to the production of sugarcane to produce sugar for human consumption)” immediately after the word “seed.”
- 25. Amend § 1435.313 as follows:
 - a. Redesignate paragraphs (b) and (c) as paragraphs (a)(1) and (a)(2), respectively, and
 - b. Add paragraph (b) to read as set forth below:

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

* * * * *

(b) Sugarcane acreage base that has been converted to nonagricultural use on or before May 13, 2002, may be transferred to other land suitable for the production of sugarcane under the following terms:

- (1) CCC must notify 1 or more affected landowners within 90 days of becoming aware of the conversion, of their rights to transfer the base to 1 or more farms owned by the landowner;
- (2) The landowner has 90 days from the date the landowner was notified to transfer the base;
- (3) If the landowner does not exercise this transfer right, the grower of record will have 90 days after being notified by CCC to transfer the base to 1 or more farms owned by the grower;
- (4) If the transfers as specified under paragraphs (b)(2) or (3) of this section are not accomplished during the specified periods, FSA county committee will place the base into a pool for possible reassignment to other farms;
- (5) After providing notice to farm owners, operators and growers of record in the county, the committee will accept requests from farm owners, operators, and growers in the county;
- (6) The county committee will assign the base to other sugarcane farms in the county that are eligible and capable of accepting the acreage base, based on a random drawing among requests received under paragraph (b)(5) of this section;
- (7) Any unassigned base will be made available to the State FSA committee and be allocated to remaining FSA county committees in the State representing counties with farms eligible for assignment of the base, based on a random drawing; and
- (8) After the acreage base has been reassigned, the acreage base will remain

on the farm and subject to the transfer provisions of paragraph (a) of this section.

- 26. Amend § 1435.318 as follows:
 - a. Revise paragraph (a) to read as set forth below,
 - b. Redesignate paragraphs (b) through (e) as paragraphs (c) through (f), respectively, and
 - c. Add paragraph (b) to read as set forth below.

§ 1435.318 Penalties and assessments.

(a) Any sugar beet or sugarcane processor who knowingly markets sugar or sugar products in excess of the processor's allocation will 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) CCC may assess liquidated damages, as specified in a surplus allocation survey and agreement, with respect to a surplus allocation still existing after the end of a crop year if the processor had a surplus allocation because the processor provided incomplete or erroneous information to CCC.

Subpart E—[Redesignated and Reserved]

- 27. Redesignate subpart E, consisting of §§ 1435.400 through 1435.405, as subpart F and reserve subpart E.

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

§§ 1435.400 through 1435.405 [Amended]

- 28. In newly redesignated subpart F, redesignate §§ 1435.400 through 1435.405 as §§ 1435.500 through 1435.505, respectively.

Subpart G—[Added and Reserved]

- 29. Reserve subpart G.

Signed at Washington, DC, on March 31, 2009.

Dennis J. Taitano,

Acting Executive Vice President, Commodity Credit Corporation.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 208

[CIS No. 2440-08; DHS Docket No. USCIS 2008-0022]

RIN 1615-AB59

Forwarding of Affirmative Asylum Applications to the Department of State

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations to alter the process by which it forwards Form I-589, Application for Asylum and Withholding of Removal, for asylum applications filed affirmatively with U.S. Citizenship and Immigration Services (USCIS) to the Department of State (DOS). The affirmative asylum process allows individuals, who are physically present in the United States, regardless of their manner of arrival and regardless of their current immigration status, to apply for asylum. The current regulation requires USCIS (formerly Immigration and Naturalization Service (INS)) to forward to DOS a copy of each completed asylum application it receives. This rule provides that USCIS will no longer forward all affirmative asylum applications to DOS. Instead, USCIS will send affirmative asylum applications to DOS only when USCIS believes DOS may have country conditions information relevant to the case. This change will increase the efficiency of DOS' review of asylum applications. Additionally, in accordance with the Homeland Security Act, this rule revises references to legacy INS in 8 CFR 208.11.

DATES: *Effective date:* This final rule is effective April 6, 2009.

Comment date: Written comments must be submitted on or before June 5, 2009 in order to be assured of consideration.

ADDRESSES: The public may submit comments, identified by DHS Docket No. USCIS-2008-0022, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111