

# Rules and Regulations

Federal Register

Vol. 70, No. 170

Friday, September 2, 2005

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1405

RIN 0560-AH35

#### Collection of State Commodity Assessments

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

**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth the Commodity Credit Corporation's (CCC) policy with respect to implementation of the discretionary authority provided to it by Public Law 108-470. This act allows for the collection of assessments levied on the marketings of agricultural commodities. Generally, these assessments are required, under State and Federal law, to be paid from CCC marketing assistance loan proceeds by a producer who markets the commodity or are required to be collected by the first purchaser of the commodity. This final rule adopts, with changes, the proposed rule published in the **Federal Register** on June 7, 2005 (70 FR 33043).

**DATES:** This rule is effective September 2, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Kimberly Graham, 202-720-9154, e-mail: [Kimberly.Graham@usda.gov](mailto:Kimberly.Graham@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:**

#### Discussion of Final Rule

On June 7, 2005, CCC issued a proposed rule with respect to the manner in which it proposed to collect agricultural commodity assessments owed by a producer to a State or State agency when the producer had obtained

a CCC marketing assistance loan. (70 FR 33043). The rule provided that CCC would deduct from marketing assistance loan proceeds an amount equal to any assessment required under State or Federal law to be paid by a producer who markets the commodity, or by the first purchaser of the commodity. The preamble of that rule described the history of CCC's role in collecting commodity assessments, the statutory authority allowing CCC to engage in the collection of commodity program assessments, and the necessity to codify the process for collecting commodity assessments. With respect to the collection of State assessments, the major provisions of the proposed rule included: (1) A request for CCC to engage in the collection activity must initially be submitted by the Governor of the State; (2) such request must identify the entity that the Governor has designated to enter into the collection agreement with CCC; (3) a statement from the Attorney General, at any time prior to final execution of the agreement, that the agreement is in compliance with applicable State laws and the provisions of section 1(a) of Public Law 108-470; (4) collection of the assessment, as requested by the Governor, may be at either the time the marketing assistance loan is disbursed to the producer or at the time of forfeiture of the commodity to CCC, but not both; and (5) the State agrees to indemnify CCC for any costs incurred in collecting the assessment, including costs relating to resolution of disputes arising from the requested collection of the assessment.

With respect to assessments collected under Federal statutes, the proposed rule provides that collections will be made as provided in such manner as may be agreed upon by CCC and the entity to whom the Secretary has delegated responsibility to otherwise engage in collection activities.

#### Comments and Changes to Final Rule

The 30-day comment period for the proposed rule closed on July 7, 2005. CCC received 36 responses from entities or persons, which included 22 agricultural commodity associations, nine producers, two Agency employees, two Designated Marketing Associations (DMA's), one State Department of Agriculture and one State Senator. In general, the majority of the responses

support the intent and implementation of the proposed regulation. Seven commenters opposed the collection and deduction of commodity assessments from a producer's marketing assistance loan proceeds and five commenters support the proposed regulation as written. These comments were submitted without any additional explanations. CCC analyzed the public comments received and has decided to adopt the proposed rule, with some slight modifications as discussed below based on these comments.

One respondent requested specific information regarding the number of forfeited loans in the State of South Dakota. This comment did not address provisions of the proposed rule and was not within the scope of the proposed rule.

One commenter stated producers are better served by collecting the assessments at forfeiture rather than at loan disbursement. The commenter identified two specific reasons for collecting the assessment at the time of forfeiture rather than at loan disbursement. The first reason suggested that certified farm-stored marketing assistance loans may not accurately reflect the producer's harvested quantity; therefore, the assessment amount collected may not be accurate. The actual quantity delivered in satisfaction of the marketing assistance loan is determined at the time the commodity is sold or forfeited. The quantity delivered may differ from the quantity pledged as collateral for the marketing assistance loan. Collection of additional assessment amounts may be necessary. The second reason suggested producers may oppose the collection of commodity assessments at the time of loan making because the producer is responsible for the repayment of the full loan amount disbursed plus interest, if the producer repays the marketing assistance loan at principal plus interest. Therefore, the producer would be paying interest on the assessment amount deducted from the loan proceeds. CCC believes the proposed rule supports Public Law 108-470; therefore, these comments are not adopted and no changes were made.

One commenter suggested that, in the case of an approved Cooperative Marketing Association (CMA) or Designated Marketing Association (DMA), the entire marketing assistance

loan be disbursed to the CMA or DMA and the CMA or DMA be responsible for deducting the applicable commodity assessment and remitting the commodity assessment to the State entity. An approved CMA or DMA is eligible to receive marketing assistance loans or LDP's on behalf of their eligible producer members. CCC agrees with the commenter and believes it would be more difficult and complex to handle individual producer members' multi-state commodity assessment deductions. Since the CMA and DMA have administrative processes in place to monitor producer members' marketing assistance loan and LDP amounts and cooperative pool sale amounts for its' members amounts, CCC believes the CMA and DMA will ensure that fair and accurate distribution of the commodity assessment deductions will be made to the specific State entity. Therefore, the comments are adopted and such changes are included in the final rule.

More specific responses addressed particular provisions of the rule with respect to the collection of State commodity assessments. Some responses contained multiple comments. These comments are discussed below on a section-by-section basis, along with the changes that have been made to the interim rule.

#### *Section 1405.9(b)(1)–(2)*

Nine respondents opposed the provisions in section 1405.9(b)(1) and (2) that require the Governor of the State to request that the assessment be collected and the Attorney General of the State, or a person authorized to act on behalf of the Attorney General, provide CCC an opinion that the collection activity is authorized by State law and complies with the provisions of section 1(a) of Public Law 108–470. Most of the respondents suggested that the request from the Governor was superfluous since the state commodity commissions are created by State statute and are agencies of the State. It was suggested that a request from a state commission and a copy of the enabling legislation should be deemed sufficient for the purpose of making the initial request. Commenters also believe that obtaining a separate opinion from the Attorney General would be costly, time consuming, and redundant. In prior years, CCC has routinely required that approval from the Office of the Attorney General for a State be obtained by the party entering into such an agreement with CCC in order to ensure that such party has the authority to bind the State with respect to all of the provisions of the agreement. Specifically, CCC is concerned that such party must be able

to obligate the State to reimburse CCC for any costs it may incur in the event CCC is sued by a party who objects to the collection of the assessment on behalf of the State. Accordingly, CCC will continue to require that such approval has been obtained before CCC will enter into an agreement to collect the assessment.

#### *Section 1405.9(c)(1)–(2)*

Several comments opposed the provisions in sections 1405.9(c)(1) and (2) that requires the State to indemnify CCC for any costs incurred in collecting the commodity assessment and that the producer have the ability to request from the State a refund of the assessment collected from the producer's marketing assistance loan. Several respondents expressed uncertainty as to whether the costs would include CCC administrative costs associated with routinely collecting and processing assessments. Commenters also expressed opposition towards the indemnification provision, if the provision included those types of administrative costs. The action of CCC in collecting State authorized commodity assessments provides no benefit to CCC and results in the expenditure of funds appropriated to FSA; the loss of these expenditures directly affects the ability of FSA to undertake its own activities. Accordingly, CCC has determined, since the beneficiary of this action is the State or State agency requesting the assessment be collected, that the costs of such action should not be borne by CCC or FSA.

With respect to allowing the producer to request from the State a refund of the collected assessment, CCC is required by statute to provide a certain levels of assistance to producers. By deducting state commodity assessments from the marketing assistance loan proceeds and not at the time of actual marketing increases the risk of the producer paying double assessments. A double assessment would result in a reduction of the statutory level of assistance required to be provided by CCC. Also, CCC is not responsible for tracking double assessments or for making refunds of double assessment collections to the producer. For that reason the final rule retains this requirement for the agreement; however, the final rule will clarify that the mandatory refund is applicable to refunds of double assessment collections.

#### **Executive Order 12866**

This rule is issued in conformance with Executive Order 12866, was

determined to be not significant, and has not been reviewed by the Office of Management Budget.

#### **Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is applicable to this final rule.

#### **Environmental Assessment**

The environmental impacts of this final rule have been considered consistent with the provisions of 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 the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA concluded that the rule requires no further environmental review because it is categorically excluded. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

#### **Executive Order 12988**

This final rule has been reviewed in accordance with Executive Order 12988. This final rule preempts State laws that are inconsistent with it. This rule is not retroactive. Before any legal action may be brought regarding a determination under this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 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 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

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

The 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 governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **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 made 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 OMB under the Paperwork Reduction Act.

#### Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

#### 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.

#### List of Subjects in 7 CFR Part 1405

Agricultural commodities, Feed grains, Grains, Loan programs—agriculture, Oilseeds, Price support programs, Reporting and record keeping requirements.

■ Accordingly, 7 CFR part 1405 is amended as follows:

#### PART 1405—LOANS, PURCHASES, AND OTHER OPERATIONS

■ 1. The authority citation for part 1405 is revised to read as follows:

**Authority:** 7 U.S.C. 1515; 7 U.S.C. 7991(e); 15 U.S.C. 714b and 714c; and Public Law 108–470.

■ 2. Add § 1405.9 to read as follows:

##### § 1405.9 Commodity assessments.

(a) CCC will deduct from the proceeds of a marketing assistance loan an amount equal to the amount of an assessment otherwise required to be remitted to a State agency under a State statute by the producer of the commodity pledged as collateral for such loan or by the first purchaser of such commodity subject to the requirements of paragraph (b) of this section.

(1) The assessment will be collected in one of the following ways, as requested by the State, but not both:

(i) When the proceeds of the loan are disbursed; or

(ii) When the commodity pledged as collateral for the loan is forfeited to CCC, in which case CCC will collect from the producer the amount of the assessment submitted by CCC to the State.

(2) CCC will deduct from the proceeds of a marketing assistance loan an amount equal to the amount of an

assessment otherwise authorized to be remitted to a federally authorized entity under a Federal statute by the producer of the commodity pledged as collateral for such loan or the first purchaser of such commodity in the manner agreed to by CCC and the entity to whom the Secretary of Agriculture has authorized to collect such assessments.

(b) CCC will collect commodity assessments authorized under a State statute when:

(1) The State entity has:

(i) Requested that the assessment be collected;

(ii) Identified whether the assessment is to be collected at the time the loan proceeds are disbursed or at the time the commodity is forfeited to CCC;

(iii) Identified the person who may enter into an agreement with CCC that sets forth the obligations of the State and CCC with respect to the collection of the assessment; and

(iv) Provided an opinion from the Office of the Attorney General to CCC that concludes the person signing the agreement may obligate the State to comply with the agreement and the provisions of Public Law 108–470 have been met.

(2) The agreement described in paragraph (c) of this section has been executed by the appropriate State official and CCC.

(c) CCC will enter into an agreement with an authorized State official to collect commodity assessments when the actions set forth in paragraphs (b)(1) and (2) of this section have been completed. Such agreement will contain the obligations and responsibilities of the State and CCC. All such agreements will include provisions that provide:

(1) The State will indemnify CCC for any costs incurred in the collection of the assessment including costs incurred with respect to resolution of disputes arising from the requested collection of the assessment and for administrative costs incurred by CCC in the collection of the assessment;

(2) The State, in cases where an assessment has been collected two or more times with respect to the same quantity of the commodity subject to the assessment, will refund the amount of the excess collection to the producer.

(3) The agreement may be terminated by either party upon 30 days notice.

(4) The State, in cases where the marketing assistance loan is made by a cooperative marketing association or a designated marketing association approved by CCC, or any other similar entity that is approved by CCC, to obtain such a loan on behalf of its members may enter into individual arrangements with such entity to facilitate the

collection of the assessment with the approval of CCC.

Signed in Washington, DC, on August 17, 2005.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 05–17500 Filed 9–1–05; 8:45 am]

BILLING CODE 3410–05–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2004–19536; Directorate Identifier 2004–NM–86–AD; Amendment 39–14247; AD 2005–18–07]

RIN 2120–AA64

**Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; DC–8–50 Series Airplanes; DC–8F–54 and DC–8F–55 Airplanes; DC–8–60 Series Airplanes; DC–8–60F Series Airplanes; DC–8–70 Series Airplanes; and DC–8–70F Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD), which applies to certain McDonnell Douglas transport category airplanes. That AD currently requires repetitive inspections for cracking of the lower cargo doorjamb corners, and corrective action if necessary. That AD provides for optional terminating action for certain repetitive inspections for certain airplanes. For certain other airplanes, that AD requires modification of the lower cargo doorjamb corners. This new AD adds airplanes to the applicability. The existing AD was prompted by reports of fatigue cracks in the fuselage skin in the lower cargo doorjamb corners; this AD is prompted by the inadvertent omission of certain airplanes from the existing applicability. We are issuing this AD to ensure that the unsafe condition will be addressed on all affected airplanes so that cracking in the lower cargo doorjamb corners is detected and corrected before it can result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

**DATES:** Effective October 7, 2005.

On April 29, 2004 (69 FR 15234, March 25, 2004), the Director of the