

# Rules and Regulations

Federal Register

Vol. 71, No. 145

Friday, July 28, 2006

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1425

RIN 0560-AH42

#### Cooperative Marketing Associations

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations for the Commodity Credit Corporation (CCC) governing Cooperative Marketing Associations (CMA's). This rule provides that a CMA is no longer required to distribute Marketing Assistance Loan (MAL) and Loan Deficiency Payment (LDP) proceeds directly to members of the CMA within 15 days of receipt of such proceeds from CCC, and makes additional policy clarifications on CMA distributions to members. The intent of this rule is to remove regulatory requirements that are outdated and unnecessary.

**DATES:** This rule is effective July 28, 2006.

**FOR FURTHER INFORMATION CONTACT:** Chris Kyer, phone: (202) 720-7935; e-mail: [chris.kyer@wdc.usda.gov](mailto:chris.kyer@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion of Final Rule

CCC has made commodity loans available to producers through agricultural marketing cooperatives for over 70 years, beginning in 1934 with loans to cotton cooperatives. Today, there are a total of 30 cooperatives approved for CMA status by CCC to receive MAL's and LDP's on behalf of their producer members. These CMA's receive MAL's and LDP's on grains, oilseeds, rice, and cotton, and disburse marketing loan gains and LDP's to their members who have delivered

commodities to the CMA for marketing on a pool basis, in addition to disbursing marketing proceeds. Members enter into marketing agreements with CMA's, which give the CMA authority to request a CCC loan or LDP on the commodity and to perform marketing functions on behalf of the members. This arrangement gives professional marketing decision making authority to the Cooperative member and optimizes marketing returns. Additionally, according to the terms of the typical CMA marketing agreement, producers receive an advance payment from the CMA soon after delivery of the commodity, at a rate usually equivalent to CCC loan rate. After the CMA has taken title to the commodity, the CMA obtains loans or LDP's from CCC and, if applicable, repays loans at opportune times at rates less than the loan rate, thus potentially maximizing marketing loan gains. Then, periodic subsequent payments may be made during the crop year to members, with final settlement occurring at the end of the crop year at a rate dependent upon the total marketing proceeds, total loan gains, and total LDP's earned by the marketing pool after taking into account advance payments and expenses.

Currently, most CMA marketing agreements permit members to receive deferred payments, such that producers can defer payments from the CMA into a subsequent tax year. This practice conflicts with the regulation at 7 CFR 1425.18 which, in part, states that related CCC loan or LDP proceeds shall be distributed to members participating in the loan pool within 15 work days from the date the CMA receives loan or LDP proceeds from CCC, except when loans are redeemed within 15 work days of the date of the loan.

Reviews of CMA's conducted by CCC staff during 2004 and 2005, revealed that this provision, also known as the "15-day rule," is being interpreted and administered differently from CMA to CMA. For example, one CMA believed that the 15-day rule allowed them to obtain loan gains and hold those gains under a deferred payment contract with the producer because this qualified as constructive receipt of the funds by the member. This CMA stated that use of a deferred payment contract by Cooperatives meets the definition of constructive receipt of income used by the United States Internal Revenue

Service (IRS) because, under IRS tax deferral rules, constructive income is received when proceeds are made available in the producer's CMA account, but the producer may choose when to accept actual payment.

Furthermore, an unanticipated consequence of the 15-day rule is that, if the producer requested a delayed payment from the CMS pursuant to a deferred payment agreement, some cotton CMA's have delayed submitting bales of cotton for loan until after the beginning of the next year, or until the last 15 days of the calendar year. As a result, this places a large amount of cotton under loan at the same time, sometimes as many as 800,000 bales in one evening, significantly stressing the CMA as well as the CCC loan making systems.

To resolve problems and avoid any unnecessary involvement with payments schedules between CMA's and their members, 7 CFR 1425.18 is amended by this rule to specifically permit delayed payment under a deferred payment agreement between the CMA and its members. CCC is not a party to the agreement between the CMA and the member producer, which is governed by a contract between those parties. Therefore, CCC has no privity of contract with the CMA members. As such, failure of a CMA to distribute proceeds to its members in a timely manner is a dispute only between its members and the CMA. Nonetheless, CCC has found that most CMA's distribute loan and LDP proceeds to pool accounts or directly to members well within the 15 work day policy. Furthermore, IRS regulations govern cooperative member accounting and disbursement functions and contain guidance on deferred payments. Any CCC regulation requiring cooperatives to treat payments differently could be contradictory. Therefore, 7 CFR 1425.18(a)(1) will be amended in the manner indicated.

#### Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) requires the Secretary to promulgate the regulations necessary to implement Title I of the 2002 Act, including those which provide for the programs addressed by this rule, without regard to the notice and comment provisions of 5 U.S.C. 553 or

the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final. In addition, section 1601(c)(3) of the 2002 Act provides that the Secretary, in carrying out the rulemaking exception, shall utilize the authority in section 808 of title 5 of the U.S. Code. Accordingly, under 5 U.S.C. 808, it is further found that it would be contrary to the public interest to delay implementation of this rule for the special Congressional review provisions provided for in 5 U.S.C. 802 *et seq.*, to the extent, if any, that they would otherwise apply.

#### 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 (OMB).

#### Regulatory Flexibility Act

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

#### Environmental Assessment

The environmental impacts of this 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 FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

#### Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies set forth at 7 CFR parts 11 and 780 must be exhausted.

#### 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

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

#### 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. Most forms used by CMA's may be submitted to CCC by electronic submission.

#### List of Subjects in 7 CFR Part 1425

Agricultural commodities, Cooperatives, Cotton, Feed grains, Oilseeds, Price support programs.

■ For the reasons set out in the preamble, 7 CFR part 1425 is amended as set forth below.

#### PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

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

**Authority:** 7 U.S.C. 1441 and 1421, 7 U.S.C. 7931–7939; and 15 U.S.C. 714b, 714c, and 714j.

■ 2. Amend § 1425.18 by revising paragraph (a)(1) to read as follows:

#### § 1425.18 Distribution of proceeds.

(a)(1) If CCC makes loans or LDP's for any quantity in a loan pool, the related proceeds shall be distributed or otherwise made available to the members account:

- (i) Based on the quantity and quality of the commodity delivered by each member;
- (ii) Less any authorized charges for services performed or paid by the CMA necessary to condition or otherwise make the commodity eligible for loans or LDP's, according to the marketing agreement provided for in § 1425.13;
- (iii) Within 15 work days from the date the CMA receives loan or LDP proceeds from CCC, or held according to the terms of a deferred payment agreement if requested by the member.

\* \* \* \* \*

Signed in Washington, DC, on July 17, 2006.

**Teresa C. Lasseter,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. E6–12068 Filed 7–27–06; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 366

[Docket No. RM05–32–002, Order No. 667–B]

#### Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005

Issued July 20, 2006.

**AGENCY:** Federal Energy Regulatory Commission, DoE.

**ACTION:** Final Order; Order on Rehearing.

**SUMMARY:** By this order, the Federal Energy Regulatory Commission (Commission) grants clarification and rehearing in part of Order No. 667–A. Order No. 667–A granted rehearing in part and denied rehearing in part of Order No. 667, which amended the Commission's regulations to implement repeal of the Public Utility Holding Company Act of 1935 and enactment of the Public Utility Holding Company Act of 2005.

**DATES:** *Effective Date:* This order is effective on August 28, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Lawrence Greenfield (Legal Information), Federal Energy