

# Proposed Rules

Federal Register

Vol. 76, No. 202

Wednesday, October 19, 2011

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-AH86

#### Sugar Program; Feedstock Flexibility Program for Bioenergy Producers

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

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Credit Corporation (CCC) proposes regulations with respect to general sugar inventory disposition and the establishment of a new Feedstock Flexibility Program (FFP) that requires the Secretary to purchase sugar to produce bioenergy as a means to avoid forfeitures of sugar loan collateral under the sugar loan program. These regulations are as required by the Food Security and Rural Investment Act of 2002 (the 2002 Farm Bill), as amended by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill).

**DATES:** We will consider comments that we receive by December 19, 2011.

**ADDRESSES:** Interested persons are invited to submit comments on this proposed rule. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* (202) 690-1480.
- *Mail:* Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, USDA, FSA, Stop 0516, 1400 Independence Ave., SW., Washington, DC 20250-0516.
- *Hand Delivery or Courier:* USDA FSA Economic Policy and Analysis Staff, Stop 0516, 1400 Independence Ave., SW., Washington, DC 20250-0516.

**FOR FURTHER INFORMATION CONTACT:** Barbara Fecso, phone: (202) 720-4146;

fax: (202) 690-1480. 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

CCC proposes to establish new regulations for the sugar inventory disposition program and FFP for bioenergy producers mandated by Title IX of the 2008 Farm Bill (Pub. L. 110-246).

##### Sugar Program

The sugar program is designed to support the price of sugar above a legislatively specified threshold that has been established by successive Farm Bills. In adding FFP as a new element of the sugar program, it is helpful to understand certain aspects of the existing program and how certain components would relate to FFP. In the sugar program, the level of price support is determined by the sugar loan program. Sugar loans from CCC can be satisfied by repaying the loan or by giving CCC title to the loan collateral, also known as a "forfeiture" of collateral. The sugar program is required, to the maximum extent possible, to operate at no cost to the Federal government by avoiding forfeitures to CCC. To avoid forfeitures, the sugar program limits the domestic sugar supply through a program of marketing allocations and tariff-rate quotas, thereby usually resulting in higher domestic sugar prices than the floor created by the sugar loan program.

##### Sugar Inventory Disposition

CCC proposes new general sugar inventory disposition regulations that are required by the 2008 amendments to 7 U.S.C. 8110. The 2008 amendments restrict the methods CCC may use to dispose of its sugar inventory in non-emergency situations. The purpose of the restrictions is to ensure that disposed inventory only goes to non-food uses (for example, bioenergy production) and does not disrupt the market for sugar for human consumption. If there is an emergency shortage of sugar for human consumption, the Secretary can dispose of the inventory to fill that shortage.

CCC proposes to add a new subpart E on General Disposition of CCC

Inventory to 7 CFR 1435 to implement the 2008 amendments. Subpart E would apply to sugar in inventory that CCC acquired by means other than FFP, such as sugar obtained from forfeited loan collateral.

#### General Disposition of CCC Inventory (Proposed New Subpart E)

Section 9001 of the 2008 Farm Bill amends section 9010 of the 2002 Farm Bill establishing the methods CCC may use to manage inventory acquired by forfeiture or other authorities. Unless CCC has determined that there is an emergency shortage of sugar in the domestic market caused by war, flood, hurricane, other natural disaster, or similar event, CCC can only dispose of its sugar inventory using outlets that do not increase the net supply of sugar available for human consumption in the United States.

The 2008 amendments specifically list methods of disposition as sales under FFP (proposed new Subpart G), the Processor Payment-In-Kind Program (Subpart F in the current regulations), and buybacks of Certificates of Quota Eligibility (identified in the 2008 amendments as certificates of quota entry) issued by the Office of the U.S. Trade Representative, as set forth in 15 CFR part 2011. The 2008 amendments do not limit CCC's ability to dispose of its sugar for nonfood use (or uses that do not increase the supply of sugar for human consumption) under any authority. This is a change from the 2002 Farm Bill (Pub. L. 107-171) as originally enacted and the regulations implementing the 2002 Farm Bill, which allowed CCC to dispose of surplus sugar into the domestic market, including the market for human consumption. Therefore, we are proposing new regulations to specify how CCC would dispose of sugar inventory. The existing Payment in Kind program, specified in subpart F, is one authority CCC uses to dispose of inventory. This proposed rule would not change subpart F.

New subpart E would include general provisions for disposition of inventory that is not acquired through FFP. For example, subpart E would apply to disposition of sugar acquired through forfeiture of sugar loan collateral. Subpart E would specify the options CCC would use to dispose of inventory

in both normal and emergency shortage situations.

The 2008 amendments to section 9010 of the 2002 Farm Bill also specify the methods CCC may use to manage inventory acquired by forfeiture under the sugar loan program or other authorities. Unless, as specified in the 2008 Farm Bill, CCC has determined that “there is an emergency shortage of sugar for human consumption in the United States market that is caused by a war, flood, hurricane, or other natural disaster, or other similar event,” CCC can only dispose of its sugar inventory by methods that do not increase the net supply of sugar available for human consumption in the United States. There should not be much inventory subject to this provision because the main sugar surplus management strategy in the recently amended statute is the removal of sugar surpluses through CCC sugar purchases and disposal through conversion to bioenergy.

CCC can sell sugar for human consumption if an emergency shortage condition exists, and the event is caused by a war, flood, hurricane, or other natural disaster, or other similar event. By including the universe of causes—manmade, natural, and “other similar event,” CCC has great discretion in determining the cause triggering an emergency shortage. Therefore, the only practical limitation on CCC’s ability to sell sugar for human consumption depends on what constitutes the “existence of an emergency shortage.” This concept is important because CCC is required under the sugar marketing allotment program and Harmonized Tariff Schedule to ensure an adequate supply of sugar for domestic consumption. Additionally, the sugar tariff-rate quota management provisions of the 2008 amendments require USDA to increase sugar supplies if an emergency shortage exists.

CCC is requesting comment from the public on establishing a definition of an emergency shortage. Webster’s Dictionary defines an emergency as a sudden or unexpected occurrence demanding prompt action. Some recent examples of unexpected manmade or natural occurrences that reduced domestic refined sugar supplies are the late sugar beet crop of 2005, Hurricane Katrina, and the Imperial refinery explosion in Savannah, Georgia in February 2008. CCC determined that the delayed beet crop and Katrina resulted in sudden shortages that could not be resolved by redistributing available domestic supplies and took immediate action to increase supply. However, with respect to the February 2008 refinery explosion, CCC delayed action

until the following August when it contemplated the threat of a refined shortage, in recognition that shortages are most likely to occur in the August–September period when domestic sugar stocks are at their yearly lowest point. The law directs USDA to take action to increase supplies when an emergency shortage “exists,” not when it is “contemplated.” CCC could define an emergency shortage as a supply failure affecting sugar deliveries and disrupting the ongoing operations of sugar product manufacturers, *i.e.*, defaults or force majeure on contracts affecting 10 percent of average monthly deliveries. Alternatively, CCC could determine an emergency shortage exists when sugar prices spike a certain percentage, *i.e.*, 50 percent above the loan level, or 10 cents above the loan level. Alternatively, CCC could also leave the term undefined so as to maintain maximum flexibility in meeting the needs of the domestic sugar market.

#### **Feedstock Flexibility Program (Proposed New Subpart G)**

Section 9001 of the 2008 Farm Bill amends section 9010 of the 2002 Farm Bill to require CCC to implement FFP to control the domestic sugar supply and avoid forfeitures. Under this program, CCC is required to buy surplus sugar as needed to avoid forfeitures of sugar loan collateral and sell that surplus sugar to bioenergy producers. Bioenergy, as defined by section 9001 of the 2008 amendments, means fuel grade ethanol and other biofuel. The 2008 amendments require the Secretary to annually notify eligible bioenergy sugar sellers and producers of the quantity of sugar to be made available for purchase and sale in the crop year following the date of that notification. The 2008 amendments also require quarterly revised estimates and notification.

CCC proposes to add a new subpart G to establish general provisions for operating FFP. Through FFP, CCC would buy and sell sugar for bioenergy production, based on predictions of sugar surplus conditions months into the future, a process that involves unavoidable uncertainty and risk. CCC proposes general provisions that are intended to provide flexibility in program administration. CCC requests comments on alternative methods to administer the program while meeting the requirements of the 2008 amendments.

FFP will be administered through contracts for the purchase and sale of sugar, and products that yield sugar, when CCC determines that sugar loan collateral is likely to be forfeited under the sugar loan program. The contracts

will include the specific terms and conditions associated with each purchase and sale. CCC expects to amend its contract terms through time as it learns how to most effectively facilitate the diversion of sugar to ethanol and other bioenergy production.

#### **Surplus Determination**

As required by the 2008 amendments, each year CCC will estimate the likelihood of sugar forfeitures by September 1, for the following fiscal year, and announce the quantity of sugar to be purchased and sold for bioenergy production. In addition, CCC will make quarterly announcements of revised estimates. Quarterly revised estimates will be important because the USDA annual estimate reported on September 1 for the following fiscal year’s sugar market will potentially be subject to significant error due to uncertainties in making the estimate. The sugarcane and sugar beet harvest for making sugar in the following fiscal year does not normally begin until after September 1 of the prior year. Very little is known about the condition of the crop on September 1, when USDA is required by the 2008 amendments to make its annual estimate of sugar surplus. The harvest for sugar in Mexico begins in December; therefore, the uncertainties are aggravated by the effect of Mexican imports on the U.S. sugar market. Another major source of potential error is the fact that the current fiscal year is not over by September 1. Any changes to the current year automatically alter the current year’s ending stocks, and the next year’s beginning stocks and supply. CCC’s purchase and sale plans would be affected by the large degree of uncertainty in USDA’s sugar market projections on September 1.

CCC requests comments on how CCC should calculate a sugar market surplus, particularly for the estimate by September 1, when uncertainties are greatest. For example, CCC could calculate the surplus by comparing the World Agricultural Supply and Demand Estimate (WASDE) ending stocks to the ending stocks for an adequately supplied market. In the past, an ending stock of 14.5 percent of expected annual use was considered to predict adequate supply for the following year. Alternatively, CCC could compare WASDE stocks to the stock level expected to result in forfeitures and declare any projected stocks above these amounts to be surplus. However, this method is inadequate for determining surplus by type of sugar, raw versus refined, because the WASDE is an amalgamation of both sugars. Certainly,

current WASDE tight ending stocks-to-use ratios do not reflect the current raw sugar surplus.

There are two possible types of errors with surplus determination: (1) Over-estimating the surplus and buying and selling sugar for bioenergy that results in market shortages later in the year or (2) under-estimating the surplus resulting in excess supply later in the year. The consequences of these two types of errors are different. Sugar used to make bioenergy cannot be recovered to be marketed for human consumption if needed later; however, sugar not sold early in the year can later be sold for bioenergy production. The first type of risk, that of over-estimating the surplus, has more serious consequences and costs than the second type. CCC proposes to reduce the over-estimation risk by staggering purchases of sugar for bioenergy purchases, rather than making one purchase for the entire year. CCC plans to be more conservative in purchasing sugar for bioenergy early in the year than later in the year, when market factors are better known. CCC would calculate the surplus for the whole year as required by the 2008 amendments, but then only tender a percentage of the estimated surplus for bid immediately. The percentage could change with each quarterly revised estimate. CCC would not retract accepted bids.

CCC requests comments on appropriate methods to estimate the likelihood of forfeitures and to determine the quantity of sugar to be purchased in each quarter. How should CCC calculate the annual sugar market surplus and update that estimate? Should a minimum percentage of the expected surplus be tendered for bid each quarter, and should that minimum be set in the regulations?

#### **Eligible Sugar**

CCC is required to purchase raw, refined, or in-process sugar for FFP that would otherwise have been marketed for human consumption in the United States or could otherwise have been used for the extraction of sugar marketed for human consumption. The 2008 amendments define all these forms of sugar as eligible commodities for FFP. For example, in-process sugar products such as beet thick juice or cane syrup are eligible. Since the program objective is to reduce forfeitures of CCC sugar loan collateral, CCC proposes that the in-process sugar products would be evaluated in terms of refined crystalline sugar yield in determining CCC's unit purchase price. For example, if processing the thick juice would yield 70 percent sugar for human

consumption, then CCC would only consider 70 percent of the sugar in the thick juice in evaluating the per unit price. Likewise, raw sugar would be evaluated in terms of its refined equivalent to determine a sales price per unit. This reduction in price is not required by the 2008 amendments, but it is consistent with the 2008 amendments' goal of buying sugar for FFP to manage the market for sugar for human consumption. CCC requests comments on and proposed alternatives to this provision.

CCC proposes that for FFP, it will only purchase sugar products that are eligible to be placed under loan with the federal sugar loan program. Sugar eligible to be placed under loan must be processed in the United States from domestically-grown sugarcane, sugar beets, in-process sugars, or molasses. As an alternative, CCC could allow FFP to purchase sugar products from all sources, including imported sugar and sugar products from eligible domestic sellers. Forfeitures are expected to occur when the total sugar supply for human consumption is greater than the level that can support domestic sugar prices above the price support loan proceeds. That surplus could be caused in part by Mexican imports or by sugar made domestically from non-domestic sources. CCC requests comments on whether eligible sugar for FFP should be limited to sugar located within the United States and derived from domestically produced sugarcane or sugar beets.

#### **Eligible Sugar Sellers and Buyers**

The 2008 amendments require that the entity selling sugar to CCC be located in the United States and that eligible buyers be bioenergy producers. The 2008 amendments define eligible sellers as entities located in the United States, but do not require that eligible buyers be located in the United States. CCC proposes to limit eligible buyers to those bioenergy producers who will use the purchased sugar to produce bioenergy in their facilities in United States. This restriction is intended to ensure that the increase in energy supplies from the program will benefit the American public paying for FFP. CCC requests comments on whether to include bioenergy producers located outside the United States as eligible buyers.

#### **Competitive Procedures**

CCC proposes to announce offers (also referred to as tenders) to the public outlining the terms and conditions of the sugar purchase and sale contracts. CCC also proposes to negotiate contracts

directly with sellers or buyers if CCC determines that such negotiation will result in either reduced likelihood of forfeited sugar compared to alternative means or reduced costs of removing sugar from the market, which will reduce the likelihood of sugar forfeited to CCC. CCC proposes to try several contracting strategies to discover the most efficient and cost-effective strategy to subsidize the production of bioenergy with surplus sugar, given the restrictions specified in the 2002 Farm Bill. CCC requests comments on alternative contracting strategies and on whether those strategies should be specified in the regulation.

CCC is required by the 2008 amendments to store the sugar for no more than 30 days after CCC purchases the sugar. Realistically, this means that the purchasing bioenergy producer must be identified before CCC purchases surplus sugar. CCC does not propose specifically how it would do that, although CCC proposes to specify that the buyer must take delivery of the sugar within 30 days of purchase. CCC could identify (pre-qualify) bioenergy producers willing to take sugar or sugar products under specific terms (price, amount, type of sugar, *etc.*). Alternatively, CCC could require the sugar seller to identify the purchasing bioenergy producer and incorporate a contract of sale between CCC and the bioenergy producer specifying terms, including price, in their offer to sell sugar to CCC. CCC proposes to use both these strategies and evaluate which is more effective. CCC requests comments on alternative strategies.

The 2008 amendments prohibit, to the maximum extent possible, CCC from paying storage fees under FFP. Therefore, as a condition of bid acceptance into FFP, CCC would not pay any storage fees.

#### **Sugar To Be Used for Bioenergy Production**

CCC expects that the selling price for sugar, with the restriction that it only be used for making bioenergy, will be considerably below the market price for sugar that can be used for human consumption. This price differential could create an incentive for FFP sugar to leak into the domestic human consumption market. Therefore, CCC will monitor the contracts to ensure that the FFP sugar is only being used for bioenergy production. CCC proposes to include an audit clause in the contracts to purchase sugar for bioenergy production. The auditors would view the records upon request, as specified in the contract, to verify that sugar

purchased for bioenergy production was only used for bioenergy production.

In addition to auditing records, CCC would send an auditor to the bioenergy factory purchasing surplus sugar under FFP to verify that the quantity purchased is physically entering the factory as an input in accordance with the contract. Examination could be performed for every event or by random checks. In any case, substantial liquidated damages, to be determined, could be imposed for willfully furnishing false information to CCC. CCC requests comment on the auditing or monitoring methods that should be used. For example:

- Are there alternative processes that CCC should use to ensure that the FFP sugar is not sold for human consumption?
- What kinds of documentation, audits, and monitoring would be appropriate?
- Should the methods of proof be specified in the rule, or in the contract between CCC and the bioenergy producer?

#### **Executive Orders 12866 and 13563**

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) initially designated this proposed rule as economically significant under Executive Order 12866 and, therefore, OMB reviewed this proposed rule. Due to increases in sugar prices since the initial designation the current cost benefit analysis shows the annual regulatory impact to be less than the threshold of \$100 million, therefore the rule is a significant regulatory action, but is no longer considered an economically significant regulatory action. A summary of the cost-benefit analysis of this rule is provided below and is available at <http://www.regulations.gov> and from the contact listed above.

#### **Clarity of the Regulation**

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all

rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

#### **Summary of Costs and Benefits**

FFP, along with the impact of higher sugar loan rates than in the 2002 Farm Bill, is expected to cost an average of \$8.7 million per year for the next 10 years. Because of uncertainty about future sugar markets and trade flows, the \$8.7 million average annual cost of FFP is the composite of two scenarios which differ in their assumptions about the Mexican sugar market. The first scenario (with a 75 percent probability) assumes that Mexican sugarcane acreage does not increase and that high fructose corn syrup (HFCS) use in Mexico continues to be strong (but not as strong as in the second scenario), resulting in no FFP costs. The second scenario (with a 25 percent likelihood) assumes larger Mexican sugarcane acreage (partly due to higher U.S. sugar loan rates under the 2008 Farm Bill) and lower Mexican sugar demand compared to the first scenario. With the resulting larger sugar shipments to the U.S., and lower U.S. sugar prices, this second scenario results in FFP activation and FFP costs.

These additional costs are due to two factors. First, the higher U.S. sugar loan rates under the 2008 Farm Bill may encourage increased Mexican sugarcane acreage, as described in the second scenario above, and also mean that if surplus sugar is purchased to prevent forfeitures, the price at which it must be purchased is higher than previously. Second, the returns to the CCC associated with selling sugar for ethanol, if FFP is activated, are significantly lower than if sales could be made for human consumption (a prior mechanism for disposal of sugar inventory that was used but is no longer authorized). Increased sugar program loan rates account for \$35.4 million and restricted CCC disposal options for surplus sugar account for \$26.1 million

of the total \$61.5 million increase in over what disposal of excess sugar inventory would cost if the 2002 Farm Bill were still in effect.

#### **Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, the Agency has determined that there will not be a significant economic impact on a substantial number of small entities. The entities that would be affected by this rule are sugar producers and sugar bioenergy producers. The sugar producers are not small businesses according to the North American Industry Classification System and the U.S. Small Business Administration. There are currently no commercial bioenergy producers in the United States who use sugar as a feedstock. The bioenergy producers in the United States who use other commodities as a feedstock and might be expected to purchase sugar as a feedstock in the future are not small businesses.

#### **Environmental Review**

The environmental impacts of this rule have been considered in a manner consistent 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 Farm Service Agency (FSA) regulations for compliance with NEPA (7 CFR part 799). The changes to the sugar program required by Title IX of the 2008 amendments identified in this proposed rule are considered non-discretionary. Therefore, FSA has determined that NEPA does not apply to this proposed rule and no environmental assessment or environmental impact statement will be prepared.

#### **Executive Order 12372**

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," 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, "Civil Justice Reform." The provisions of this proposed rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect. 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

This rule has been reviewed under Executive Order 13132, "Federalism." The policies contained in this rule will not have any substantial direct effect on States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Nor would this proposed rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### Executive Order 13175

This proposed rule has been reviewed for compliance with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." The policies in this rule do not have Tribal implications that preempt Tribal law.

#### Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) for State, local, and Tribal government or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Paperwork Reduction Act

The information collection for FFP is currently approved under OMB control number 0560-0177. We anticipate that fewer than 10 sugar producers will participate in the bioenergy program in the next three years. Therefore, there are no changes to the current information collection as approved by OMB.

#### 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, FSA proposes to amend 7 CFR part 1435 as follows:

#### PART 1435—SUGAR PROGRAM

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

**Authority:** 7 U.S.C. 1359aa–1359jj, 7272, and 8110; 15 U.S.C. 714b and 714c.

2. Add subpart E to read as follows:

**Subpart E—Disposition of CCC Inventory**  
Sec.  
1435.400 General statement.  
1435.401 CCC sugar inventory disposition.

#### Subpart E—Disposition of CCC Inventory

##### § 1435.400 General statement.

(a) This subpart will be applicable in the event that an eligible commodity is owned and held in CCC inventory and not acquired through the Feedstock Flexibility Program as set forth in subpart G of this part.

(b) An eligible commodity is raw, refined, or in-process sugar that is eligible to be marketed in the United States for human consumption or to be used for the extraction of sugar for human consumption.

##### § 1435.401 CCC sugar inventory disposition.

(a) CCC will dispose of inventory in the following manner, if CCC has not determined there is an emergency shortage of sugar for human consumption in the domestic market:

(1) By sale to bioenergy producers under the Feedstock Flexibility Program as set forth in subpart G of this part,

(2) By transfer to sugarcane and sugar beet processors under the Processor Sugar Payment-In-Kind Program as set forth in subpart F of this part,

(3) Buyback of certificates of quota eligibility, or

(4) Using any other authority for the disposition of CCC-owned sugar that does not increase the net quantity of sugar available for human consumption in the United States.

(b) CCC may use any authority for the disposition of CCC-owned sugar, if CCC has determined there is an emergency shortage of sugar for human consumption in the domestic market caused by war, flood, hurricane, or other natural disaster, or similar event, as determined by CCC.

3. Add subpart G to read as follows:

#### Subpart G—Feedstock Flexibility Program

Sec.  
1435.600 General statement.  
1435.601 Sugar surplus determination and public announcement.  
1435.602 Eligible commodity to be purchased by CCC.  
1435.603 Eligible sugar seller.  
1435.604 Eligible sugar buyer.  
1435.605 Competitive procedures.  
1435.606 Miscellaneous.  
1435.607 Appeals.

#### Subpart G—Feedstock Flexibility Program

##### § 1435.600 General statement.

(a) This subpart will be applicable to any sugar seller located in the United States and any bioenergy producer located in the United States who contracts with CCC to sell or purchase surplus sugar, which may be sold in the United States for the production of bioenergy as set forth in this subpart or other purposes as set forth in subpart E of this part, when CCC determines that such action will reduce forfeitures of sugar pledged as collateral for CCC sugar loans.

(b) [Reserved]

##### § 1435.601 Sugar surplus determination and public announcement.

(a) The Secretary will estimate the quantity of sugar likely to be forfeited to CCC in the following fiscal year by September 1.

(b) Not later than the January 1, April 1, and July 1 of the fiscal year, the Secretary will re-estimate the quantity of sugar likely to be forfeited to CCC in the fiscal year.

(c) The Secretary will announce by press release for the above dates a purchase and sale strategy, which includes the quantity and timing of the sugar to be purchased and sold to bioenergy producers, and that reflects the estimate of sugar likely to be forfeited to CCC and the uncertainty surrounding the estimate.

##### § 1435.602 Eligible commodity to be purchased by CCC.

(a) CCC will only purchase raw sugar, refined sugar, or in-process sugar that is eligible to be used as collateral in the federal Sugar Loan Program.

(1) Sugar may not have been processed from imported sugarcane,

sugar beets, in-process sugars, or molasses; and

(2) Sugar must have been processed in the United States.

(b) Sugar or in-process sugar purchased directly from any domestic sugar beet and sugarcane processor that made the sugar or in-process sugar must be credited against its sugar marketing allocation to be eligible for purchase under this program.

(c) CCC will purchase sugar located in the United States.

(d) CCC will only purchase an eligible commodity if the purchased commodity would reduce the likelihood of forfeitures of CCC sugar loans, as determined by CCC.

(e) CCC will evaluate an offer to sell an eligible commodity to CCC based upon CCC's estimate of the reduction in refined sugar supply available for human consumption due to the purchase. For example, if processing the thick juice would yield 70 percent sugar for human consumption, then CCC will only consider 70 percent of the sugar in the thick juice in evaluating the per unit sales price.

#### § 1435.603 Eligible sugar seller.

(a) To be considered an eligible sugar seller, the sugar seller must be located in the United States.

(b) [Reserved]

#### § 1435.604 Eligible sugar buyer.

(a) To be considered an eligible sugar buyer, the bioenergy producer must produce bioenergy products, including fuel grade ethanol or other biofuels.

(b) The bioenergy producer and its production facilities that use CCC sugar or in-process sugar must be located in the United States.

#### § 1435.605 Competitive procedures.

(a) CCC will generally submit tenders for bids, before entering into contracts with any eligible sugar seller and buyer that minimize CCC net outlays.

(b) CCC may, at times, negotiate contracts directly with sellers or buyers, if CCC determines that such negotiation will result in either reduced likelihood of forfeited sugar under the CCC sugar loan program or reduced costs of removing sugar from the market, which will reduce the likelihood of sugar forfeited to CCC.

#### § 1435.606 Miscellaneous.

(a) As a sugar buyer, the bioenergy producer must take possession of the sugar or in-process sugar no more than 30 days from the date of CCC's purchase.

(b) CCC, to the maximum extent practicable, will not pay storage fees for

sugar or in-process sugar purchased under this program.

(c) Each bioenergy producer that purchases sugar through FFP must provide proof to CCC that the sugar has been used in the bioenergy factory for the production of bioenergy.

#### § 1435.607 Appeals.

(a) The administrative appeal regulations of parts 11 and 780 of this title apply to this part.

(b) [Reserved]

Signed at Washington, DC, on October 13, 2011.

**Bruce Nelson,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 2011-26974 Filed 10-18-11; 8:45 am]

**BILLING CODE 3410-05-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2010-0068; Directorate Identifier 2010-NE-05-AD]

RIN 2120-AA64

#### Airworthiness Directives; General Electric Company Turbofan Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede two existing airworthiness directives (ADs) that apply to General Electric Company (GE) CF6-45 and CF6-50 series turbofan engines with certain low-pressure turbine (LPT) rotor stage 3 disks installed. The existing ADs currently require inspections of high pressure turbine (HPT) and LPT rotors, engine checks, and surveys. Since we issued those ADs, GE has determined that the low-cycle fatigue (LCF) lives of the LPT rotor stage 3 disks affected by those ADs are below the current published engine manual life limits and has introduced a new LPT rotor stage 3 disk part number. This proposed AD would establish a new lower life limit for the LPT rotor stage 3 disks. We are proposing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

**DATES:** We must receive comments on this proposed AD by December 5, 2011.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

• *Fax:* 202-493-2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, *phone:* 513-552-3272; *e-mail:* [gae.aoc@ge.com](mailto:gae.aoc@ge.com). You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (*phone:* 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

#### FOR FURTHER INFORMATION CONTACT:

Tomasz Rakowski, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *phone:* 781-238-7735; *fax:* 781-238-7199; *e-mail:* [tomasz.rakowski@faa.gov](mailto:tomasz.rakowski@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2010-0068; Directorate Identifier 2010-NE-05-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>.