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7 CFR Ch. XIV (1-1-05 Edition)

(ii) The previous consecutive 3-year simple average sugar beet or sugarcane yield on that acreage while under contract (years with no production contracted with a producer will not be considered (for first-time producers, however, the previous consecutive 3-year simple average sugar beet or sugarcane yield for all the producers under contract who delivered to the applicable factory will be used);

(iii) The previous 3-year simple average sugar content of the producer's beets or sugarcane (for first-time producers, the previous 3-year simple average sugar content for all beets or cane delivered to that factory will be used);

(iv) The processor's previous 3-year simple average recovery rate (for processors that have not been fully operational during the last 3 years, the simple average for those years that they were fully operational);

(v) The value of CCC sugar to be received as payment; and

(vi) Other information CCC deems necessary for program administration; or

(2) The sugar production capacity to be removed from production by the processor.

(b) The following acreage is ineligible for enrollment in the PIK program:

(1) If planted, acreage not currently under contract for delivery of sugar beets to a sugar beet processor or sugarcane to a sugarcane processor for sugar production.

(2) If planted, acreage that is not harvestable.

(3) Acreage devoted to roads or other non-producing areas, or

(4) If planted, acreage on which a crop insurance indemnity or replant payment was received for the current crop or for which a claim has been, or will be, filed to receive a crop insurance indemnity or replant payment for the current crop, except for replant payments for acreage actually replanted before the end of the normal planting period.

(c) If planted, the diverted acres cannot be grazed until after the sugar beets or sugarcane are destroyed by disking, plowing, or other means of mechanical destruction. In addition, the sugar beets or sugarcane on the di-

verted acres may not be used for any commercial purpose.

(d) The acreage offered must meet the following requirements:

(1) If less than or equal to 15 acres, then the acreage bid must consist of one of the following:

(i) One contiguous area of land,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one contiguous area of land to complete the balance;

(2) If more than 15 acres, then the acreage bid must consist of one of the following:

(i) One or more areas of land of at least 15 contiguous acres each with one remaining area of land of less than 15 contiguous acres to complete the balance,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one area of contiguous land to complete the balance.

(3) Contiguous areas of land must have a minimum width of 3 chains (198 feet).

(e) For a program involving desugaring capacity, or other measures of sugar production, not involving acreage diversion, the bid must contain the information CCC determine necessary to conduct the program.

**§ 1435.402 Bid selection procedures.**

(a) For bids in which the processor offers to remove acreage of sugar beets or sugarcane from production, CCC will rank bids on the basis of the bid amount as a percentage of the expected sugar produced from the retired acreage. Bids with the lowest of such percentages will be selected first. In the case of identical bids, selection may be based on random selection or pro rata shares, as CCC deems appropriate.

(b) CCC will reject bids for which the bid amounts exceed the expected sugar produced from the retired acreage.

(c) For bids in which the processor offers to remove sugar production capacity from production, CCC will rank the bids on the basis of the capacity to be removed from production.

(d) All acceptable bids specified in paragraphs (a) and (c) of this section will be further reviewed by CCC and

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ranked in order of the greatest reduction in sugar program that can be achieved at the lowest cost to CCC.

### § 1435.403 In-kind payments.

(a) CCC will, through such methods as CCC deems appropriate, make payments in the form of sugar held in CCC inventory.

(b) To the maximum extent practicable, CCC will use its inventory in making an in-kind payment based on the following priority:

(1) CCC-owned sugar held in storage by the processor;

(2) CCC-owned sugar held in storage by any other processor in the same region as the producer;

(3) CCC-owned sugar held in storage by any other processor that is not in the same region as the producer; and

(4) CCC-owned sugar held in storage anywhere in the United States, if CCC determines that such sugar is eligible to be used for in-kind payments.

(c) The value of CCC-owned inventory is dependent upon the storage location of the sugar and the type of sugar (raw or refined). CCC will announce the value of its inventory before bid solicitation. Accordingly, the quantity of sugar CCC will provide in terms of an in-kind payment to a processor will be determined by dividing:

(1) The total of the processor's bid amount that CCC accepts, by

(2) The value of CCC's inventory at the storage location at which title will transfer from CCC to the processor.

### § 1435.404 Timing of distribution of CCC-owned sugar.

Distribution of sugar from CCC inventory will occur in such manner as CCC determines appropriate.

### § 1435.405 Miscellaneous provisions.

(a) CCC may permit processors to bid, in lieu of acreage, desugarizing capacity or other measures of sugar production as CCC determines.

(b) The contract shall provide for the payment of liquidated damages if a processor fails to comply with the obligations specified in the CCC production diversion contract.

(c) CCC will transfer title of the sugar to the processor by notifying the processor or assignee that the sugar is

available. CCC will stop storage payments on this sugar on the date of transfer.

## PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

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AUTHORITY: 7 U.S.C. 7971; 15 U.S.C. 714 *et seq.*

SOURCE: 66 FR 4612, Jan. 18, 2001, unless otherwise noted.

### § 1436.1 Applicability.

The regulations of this part provide the terms and conditions under which CCC may provide low-cost financing for producers to build or upgrade on-farm storage and handling facilities. Because liens and security interests related to this activity may be governed by state law, CCC may adapt certain procedures relating to those issues that may vary between States.

### § 1436.2 Administration.

(a) The Farm Storage Facility Loan Program shall be administered under the general supervision of the Executive Vice President, CCC or designee and shall be carried out in the field by FSA State committees, FSA county committees and FSA employees.