

Rules and Regulations

Federal Register

Vol. 68, No. 159

Monday, August 18, 2003

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 1427

RIN 0560-AH03

Outside Storage of Extra Long Staple Loan Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This rule amends cotton loan eligibility, packaging, and storage approval requirements to permit extra long staple (ELS) cotton to be stored outside while pledged as collateral for a Commodity Credit Corporation (CCC) marketing assistance loan. The intent of this rule is to permit producers to reduce storage costs for ELS cotton without increasing risk of quality or value loss to producers, merchants, CCC, or ultimate users of the cotton. This interim rule is effective upon its publication, but provides an opportunity for the public to comment on the administration of the new provisions.

DATES: This rule is effective August 18, 2003. Comments on this rule should be submitted on or before September 17, 2003 to be assured of consideration.

ADDRESSES: Address all comments concerning this interim final rule to John Johnson, Deputy Administrator for Farm Programs, USDA/Farm Service Agency, 1400 Independence Avenue, SW, STOP 0510, Washington, DC 20250-0510. Comments may be submitted by electronic mail to johnjohnson@wdc.usda.gov, or through the Internet at www.regulations.gov. Comments received in connection with this rule may be viewed by contacting Mr. Johnson and arranging a time during normal business hours. Persons with disabilities who require alternative

means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: John Johnson at (202) 720-3175, or via electronic mail at johnjohnson@wdc.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:

Background

Current Rule

Current CCC regulations require a warehouse operator to promptly place cotton stored outside within the warehouse when notified that a loan has been made on such cotton. CCC is amending regulations to allow outside storage of ELS by producers who meet the requirements of this interim rule. All other requirements in 7 CFR part 1427 for cotton loan eligibility will continue to apply.

Reason for Change

CCC is making this change to reduce the costs to producers of storing ELS cotton in areas of the country where outside storage is a cost effective and accepted industry practice. CCC has determined that outside storage may be effective at lowering the costs of ELS cotton storage with minimal increased risk. This rule is effective beginning with 2003-crop ELS cotton and will be effective for subsequent crops. In order to implement this change, the CCC cotton marketing assistance loan agreement (attached to this rule as an exhibit) is also amended to include the following conditions:

Outside Storage Requirements

Eligible Cotton: ELS cotton pledged as collateral for a CCC marketing assistance loan may be stored outside by the producer only if all requirements in CFR part 1427 are met except the cotton must be (1) hermetically sealed to maintain internal bale humidity at a certain level, and (2) packaged using bale ties and bags that meet or exceed industry minimum standards for gauge, gauge tolerance, tensile strength, elongation, tear resistance, impact resistance, slip characteristics, size or length, and rust inhibition, as applicable

to the materials selected for use.

Additionally, the producer must not pledge as loan collateral any bale with a torn bag that is stored outside.

Storage area: The outside storage area must be: (1) Limited to an area identified as suitable for cotton storage; (2) constructed so as to prevent water accumulation under the cotton; and (3) serviced by bale handling equipment that will not damage the sealed bale (no bale hooks); and (4) serviced by bale handling and transport systems that will not degrade the drainage characteristics of the storage area.

Additional limitations: CCC will not pay handling charges to move cotton between inside and outside storage. Also, the producer must deliver all outside-stored forfeited ELS to a site designated by CCC and re-class such cotton within 30 days after the date of delivery. The producer will be responsible for any charges for this delivery, re-classification, receiving charges, weighing, issuance of an electronic warehouse receipt, and other charges as may be levied by the warehouse associated with outside-stored cotton.

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (2002 Act) provides that the regulations needed to implement Title I of the 2002 Act, including those involved here, may be promulgated 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. Because this rule involves technical storage and packaging requirements, it was determined that it was in the public's interest to solicit comments on the rule. The rule is effective upon publication in order to provide its benefit to producers for 2003, and because the rule is consistent with commercial storage practices used, under limited circumstances, for years.

Executive Order 12866

This interim rule has been reviewed by the Office of Management and Budget under Executive Order 12866 and has been designated as "not significant."

Federal Assistance Programs

This final rule applies to the following Federal assistance programs, as found in the Catalog of Federal Domestic Assistance: 10.051—Commodity Loans and Loan Deficiency Payments.

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 for the subject of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered under 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 regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An environmental evaluation was completed and the proposed action has been determined not to have the potential to significantly impact the quality of the human environment and no environmental assessment or environmental impact statement is necessary. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

This rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with it and is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies 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

Section 1601(c) of the 2002 Act provides that these regulations may be promulgated and the programs 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, which requires Federal Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. However, the contract and other information collections required by this rule are not yet fully implemented for the public to conduct business with FSA electronically. CCC will make the Outside Storage Addendum available on the agency's Internet web site. The form may be completed and saved on a computer, but must be printed, signed and submitted to FSA in paper form.

List of Subjects in 7 CFR Part 1427

Agricultural commodities, Cottonseeds, Price support programs, Warehouses.

■ Accordingly, CCC amends 7 CFR part 1427 as follows:

PART 1427—COTTON

■ 1. The authority citation for part 1427 continues to read as follows:

Authority: 7 U.S.C. 7231–7237; and 15 U.S.C. 714b and 714c.

■ 2. Amend § 1427.5 by revising paragraph (b)(3) and (10) to read as follows:

§ 1427.5 General eligibility requirements.

* * * * *

(b) * * *

(3) Be represented by a warehouse receipt meeting the requirements of § 1427.11, except as provided in §§ 1427.10(e) and 1427.23(a)(4);

* * * * *

(10) Be packaged in materials which meet the specifications adopted by the Joint Cotton Industry Bale Packaging Committee sponsored by the National Cotton Council of America for the applicable year or which are identified and approved by the Joint Industry Bale

Packaging Committee as experimental packaging materials for the applicable crop year, except that producers approved for the outside storage of 2003 and subsequent crops of ELS cotton as provided for in § 1427.10(e) must assure that the packaging materials used for bales stored outside must meet the materials, sealing, and humidity specifications contained in the outside-storage addendum to their ELS cotton marketing assistance loan agreement.

* * * * *

■ 3. Amend § 1427.10 by adding paragraph (e) to read as follows:

§ 1427.10 Approved storage.

* * * * *

(e) With respect to 2003 and subsequent crops of ELS cotton, a producer may obtain a loan on cotton that is not stored as otherwise provided in this section if such cotton is stored:

(1) At a commercial entity that is involved in the handling or storage of cotton in a county where the 10-year average level of precipitation is 10 inches or less;

(2) The site is constructed so as to prevent the accumulation of water under such cotton; and

(3) As otherwise provided in the loan agreement. The collateral for such loan shall be as specified in the loan agreement and may include the actual bale of cotton or a document of title representing such cotton.

■ 4. Amend § 1427.18 by adding paragraph (k) to read as follows:

§ 1427.18 Liability to the producer.

* * * * *

(k)(1) Notwithstanding any other provision of this part, for ELS cotton stored as provided in § 1427.10(e), the producer shall be liable for all costs associated with the storage of the cotton while it is stored outside. CCC shall make no storage payment or any other payment with respect to ELS cotton stored as provided in § 1427.10(e).

(2) The producer of ELS cotton which is stored as provided in § 1427.10(e) shall:

(i) Certify the quantity of such cotton on the loan application;

(ii) Be responsible for any loss in quantity or quality of such cotton;

(iii) If the loan is satisfied by forfeiting the cotton to CCC, be responsible for all costs associated with delivering such cotton to a warehouse designated by CCC, all costs associated with any reclassification and repackaging that may be required by CCC or the warehouse operator to whom the cotton is delivered, all charges by the receiving warehouse for receiving the cotton and issuing an electronic warehouse receipt

for the cotton, and other charges as may be levied by the warehouse specific to outside-stored cotton; and

(iv) Not move such cotton after the loan application is submitted to CCC without prior written approval of the county committee. Failure of the producer to receive such permission shall subject the producer to administrative actions.

■ 5. Amend § 1427.21 by adding paragraph (d) to read as follows:

§ 1427.21 Settlement.

* * * * *

(d) With respect to ELS cotton which is stored as provided in § 1427.10(e), settlement of loans shall be made based upon the determination of the quantity and quality made by CCC at the time of acceptance of the cotton by CCC at the warehouse designated by CCC as provided in § 1427.18(k).

Signed in Washington, DC, on August 7, 2003.

Verle E. Lanier,

Executive Vice President, Commodity Credit Corporation.

Note: The following appendix will not be published in the Code of Federal Regulations.

U.S. Department of Agriculture

Commodity Credit Corporation

Outside Storage (Cotton) Appendix to Note and Security Agreement Terms and Conditions

PART A—TERMS AND CONDITIONS

A producer submitting cotton to the Commodity Credit Corporation as collateral for a marketing assistance loan may store such collateral outside subject to the following terms and conditions:

(1) Collateral Identification. The producer must identify all outside-stored cotton loan collateral by providing CCC, for each individual bale, the gin code number (5-digit number) and gin bale number (gin-assigned 7-digit number) as presented to the Agricultural Marketing Service (AMS) for classification services, and the bale net weight.

(2) Collateral Location. The producer must provide CCC the address, and any additional storage location information sufficient to enable a CCC representative to locate the cotton.

(3) Initial Classification Information. The producer must provide that AMS classification information, based on bale samples collected by an AMS-approved sampler, is available to CCC.

(4) Classification Information for Forfeited ELS Cotton. In addition to submitting bale samples as required by paragraph (3) of this appendix, for all outside-stored ELS loan collateral delivered to CCC in satisfaction of the loan obligation, the producer is responsible to provide, within 30 days after the date of delivery of the cotton into a

warehouse designated by CCC, AMS classification information, based on bale samples collected by an AMS-approved sampler.

(5) Settlement. Notwithstanding provisions of paragraph 9(c) of the Note and Security Agreement Terms and Condition (form CCC-601), if the producer elects to forfeit outside-stored loan collateral in satisfaction of the amount due: (i) the value of the collateral for purposes of settlement will be determined using the applicable schedules of premiums and discounts on the basis of the classification information provided after delivery of the cotton to CCC; and, (ii) the collateral shall be delivered to CCC in the original bags with original bale identification as provided by the ginner.

(6) Settlement Charges. If the producer forfeits outside-stored ELS cotton loan collateral to CCC in satisfaction of the amount due, the producer is liable, in addition to charges included in paragraph 4 of the Note and Security Agreement Terms and Condition (form CCC-601), for (i) expenses or charges associated with the storage of the cotton during the period of the loan, and (ii) charges levied by the warehouse associated with receiving, weighing, compression, issuance of an electronic warehouse receipt, other charges as may be levied by the warehouse specific to outside-stored cotton, and for classification services as required under paragraph (4) of this appendix.

PART B—PRODUCER CERTIFICATION

I accept that the terms and conditions of this appendix apply to the cotton pledged as collateral for this loan. I certify that the cotton pledged as collateral for this loan is packaged in a hermetically sealed bag, packaged at a measured internal humidity level established by the gin as appropriate to safeguard cotton quality, using packaging materials that meet or exceed industry minimum standards. I further certify that the storage area is suitable for cotton storage, is constructed to prevent water accumulation under the cotton, is outside a 100-year floodplain, and is serviced by bale handling and transport equipment that will not damage the sealed bag or degrade the drainage characteristics of the storage area.

Signature of Contact Producer Date

Signature of Other Producer Date

Signature of Other Producer Date

[FR Doc. 03-20879 Filed 8-15-03; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1481

RIN 0560-AH04

Sugar Beet Disaster Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements provisions of the Agricultural Assistance Act of 2003, related to the Sugar Beet Disaster Program. This program will assist sugar beet producers who suffered production losses for either the 2001 or 2002 crop year due to weather related disasters which resulted in the prevention of planting or the reduction of quantity or quality while the beets were in the field.

EFFECTIVE DATE: August 18, 2003.

FOR FURTHER INFORMATION CONTACT:

Sharon Biastock, Production, Emergencies, and Compliance Division, Farm Service Agency (FSA), U.S. Department of Agriculture, 1400 Independence Ave. SW., Stop 0517, Washington, DC 20250-0540, telephone (202) 720-6336; e-mail address: sharon_biastock@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements Sec. 208 of the Agricultural Assistance Act of 2003 (Pub. L. 108-7) related to the Sugar Beet Program. The statute provides that the Secretary of Agriculture (Secretary) may use up to \$60 million of the funds of the Commodity Credit Corporation (CCC) to pay producers with sugar beet crops who were adversely affected by weather for in-field losses prior to harvest for either the 2001 or 2002 crop year, but not both, as elected by the producers. Congress set forth a clear separate funding and authorization to accommodate the specific needs of sugar beet growers. Therefore, modifications to the disaster assistance provisions for other crops have been made to meet those needs of sugar beet growers.

CCC is promulgating this rule as 7 CFR part 1481, and replacing the current regulations in that part governing the Limited California Cooperative Insolvency Payment Program (LCCIPP). The LCCIPP was authorized by section 843 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106-387, 114 Stat. 1549) and