

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1427

RIN 0560-AH36

#### Extra Long Staple Cotton Prices

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

**ACTION:** Interim final rule.

**SUMMARY:** This rule amends and requests comment on the Extra Long Staple (ELS) Cotton Competitiveness Payment Program of the Commodity Credit Corporation (CCC). This rule changes the ELS cotton price used to calculate the payment rate from the "average domestic spot price quotation for base quality U.S. Pima cotton" to the "American Pima c.i.f. Northern Europe" price. The change is intended to reduce the cost to the Federal Government of operating the program by incorporating a reference price more indicative of actual ELS cotton world market prices.

**DATES:** This interim rule is effective August 5, 2005. The first announcement of a payment rate under the new price mechanism will be on Thursday, August 4, 2005. Written comments via letter, facsimile, or Internet are invited from interested individuals and organizations and must be received on or before July 20, 2005 in order to be assured consideration.

**ADDRESSES:** FSA invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods:

- **E-Mail:** Send comments to [Steve.Neff@usda.gov](mailto:Steve.Neff@usda.gov). [Include "ELS Cotton Interim Rule," in the subject line of the message].
- **Fax:** Send comments by facsimile transmission to (202) 690-2186.
- **Mail:** Send comments to: Steve Neff, Economic and Policy Analysis

Staff, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., AG STOP 0515, Washington, DC 20250-0515.

• **Hand Delivery or Courier:** Deliver comments to: Steve Neff, Economic and Policy Analysis Staff, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 3741-S, Washington, DC 20250-0515.

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

**FOR FURTHER INFORMATION CONTACT:** Steve Neff at the above address or by telephone at (202) 720-7954.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Commodity Credit Corporation (CCC) has decided to change the regulations governing how payment rates are calculated under its Extra Long Staple (ELS) Cotton Competitiveness Payment Program to provide that the price currently used, "U.S. spot quotes," will be replaced by the "American Pima c.i.f. Northern Europe quote." The current ELS payment rate is determined by the difference between U.S. spot prices, as reported by the Department of Agriculture (USDA), Agricultural Marketing Service (AMS), and the lowest foreign quote, c.i.f. Northern Europe, as published by *Cotton Outlook*, adjusted to U.S. location and quality. Recent payments to ELS producers have increased budget outlays under this program sharply. For example, the payment rate, which averaged a record high of 16.46 cents per pound last year, averaged 80.48 cents per pound for 7 weeks in February and March, 2005. Consequently, fiscal year 2005 outlays through March, 2005, normally budgeted for \$50-55 million per year, exceeded \$150 million.

The increase in the payment rate is attributed principally to increases in U.S. spot market quotes. The market for ELS is susceptible to price swings because it is a thin market. ELS production of 736,000 bales in 2004 is only 4 percent of total U.S. cotton production and 90 percent of ELS is produced in the San Joaquin Valley of California. The ELS market also has relatively few participants. For example, two trading companies have received nearly 60 percent of the payments under

this program in fiscal years 2003 and 2004. Further, growing conditions in 2004 likely contributed to a short supply of high-quality ELS cotton, as excess moisture led to color deterioration and consequent Grade 3 classification. These circumstances exposed a program weakness which allows high prices and high payment rates to influence each other with no market-like, self-correcting mechanism. AMS collects transaction data from market participants whose payments depend on the reported prices. If a sale is made at a relatively low price, the merchant has no incentive to report that transaction. With a high payment rate in effect for a week, the merchant can bid more for existing supplies and report higher transaction prices to AMS, which lead to a higher payment rate in the following week. With the higher payment rate, the merchant can source from the United States and remain competitive in international markets.

This rule is expected to reduce future payment rates by comparing foreign quotes to quotes from *Cotton Outlook* for American Pima c.i.f. Northern Europe to determine the payment rate. American Pima c.i.f. Northern Europe was determined to be the most valid price measure for this program because it is a comparison of foreign and U.S. quotes from the same source within the same geographical area. This measure is a net of the payment rate and based on the export market. FSA believes that this measure is appropriate because 90 percent of U.S.-produced ELS cotton is exported. According to our analysis, the payment rate calculated in this manner would have resulted in a payment of 20.69 cents per pound for the first week of April, about a quarter of the rate CCC actually paid.

This rule makes additional non-substantive changes to the subpart governing this program for clarity, structure, and readability.

#### 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, which includes this rule, shall 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 relating to notices of

proposed rulemaking and public participation in rulemaking. Therefore, this rule is issued as an interim final rule and effective immediately. Nonetheless, the Agency will accept public comments for 60 days after publication of this rule.

#### **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 not applicable to this rule because CCC is not required by 5 U.S.C. 533 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

#### **Environmental Assessment**

The environmental impacts of this rule have been considered in accordance 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 rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws that are inconsistent with it. 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 35 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.

#### **Government Paperwork Elimination Act**

CCC and FSA are committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are available electronically through the USDA eForms Web site at <http://www.sc.egov.usda.gov> for downloading. Applications may be submitted at the FSA county offices, by mail or by FAX. At this time, electronic submission is not available. Full development of electronic submission is underway.

#### **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 1427**

Agricultural commodities, Cotton, Price support programs, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 7 CFR part 1427 is amended as follows:

#### **PART 1427—COTTON**

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

**Authority:** 7 U.S.C. 7231–7237 and 7931 *et seq.*; 15 U.S.C. 714b, 714c.

#### **Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program**

■ 2. Revise subpart G to read as follows:

#### **Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program**

Sec.	
1427.1200	Applicability.
1427.1201	[Reserved]
1427.1202	Definitions.
1427.1203	Eligible ELS cotton.
1427.1204	Eligible domestic users and exporters.
1427.1205	ELS Cotton Domestic User/Exporter Agreement.
1427.1206	Form of payment.
1427.1207	Payment rate.
1427.1208	Payment.

#### **Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program**

##### **§ 1427.1200 Applicability.**

(a) These regulations set forth the terms and conditions under which CCC shall make payments to eligible domestic users and exporters of extra long staple cotton who have entered into an ELS Cotton domestic User/Exporter Agreement with CCC.

(b) CCC will issue payments to domestic users and exporters in any week following a consecutive 4-week period in which:

(1) The LFQ is less than the APNE; and

(2) Adjusted LFQ is less than 134 percent of the current crop year loan level for the base quality U.S. Pima cotton.

(c) CCC shall prescribe the forms and information collections necessary in administering the ELS cotton competitiveness payment program. Additional terms and conditions for the program are set forth in the ELS Cotton Domestic User/Exporter Agreement.

##### **§ 1427.1201 [Reserved]**

##### **§ 1427.1202 Definitions.**

*The following definitions apply as used in this subpart:*

APNE means the Friday through Thursday weekly average of the price quotation for base quality U.S. Pima cotton, as determined by CCC for purposes of administering this subpart, c.i.f. Northern Europe.

(1) *APNEc* means the preceding Friday through Thursday average of the current shipment prices for U.S. Pima cotton, c.i.f. northern Europe.

(2) *APNEf* means the preceding Friday through Thursday average of the forward shipment prices for U.S. Pima cotton, c.i.f. northern Europe.

*Consumption* means the use of eligible ELS cotton by a domestic user in the manufacture in the United States of cotton products.

*Cotton product* means any product containing cotton fibers that result from the use of an eligible bale of ELS cotton in manufacturing.

*Current shipment price* means, during the period in which two daily price quotations are available for the LFQ for the foreign growth, quoted c.i.f. northern Europe, the price quotation for cotton for shipment no later than August/September of the current calendar year.

*ELS* means Extra Long Staple.

*Forward shipment price* means, during the period in which two daily price quotations are available for the LFQ for foreign growths, quoted c.i.f. northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

*LFQ* means, during the period in which only one daily price quotation is available for the growth, the lowest average for the preceding Friday through Thursday week of the price quotations for foreign growths of ELS cotton, quoted cost, insurance, and freight c.i.f. northern Europe, after each respective average is adjusted for quality differences between the respective foreign growth and U.S. Pima, of the base quality.

(1) *Adjusted LFQ* means the LFQ adjusted to reflect the estimated cost of transportation between an average U.S. location and Northern Europe.

(2) *LFQc* means the preceding Friday through Thursday average of the current shipment prices for the lowest adjusted foreign growth, c.i.f. northern Europe.

(3) *LFQf* means the preceding Friday through Thursday average of the forward shipment prices for the lowest adjusted foreign growth, quoted c.i.f. northern Europe.

#### **§ 1427.1203 Eligible ELS cotton.**

(a) For the purposes of this subpart, eligible ELS cotton is domestically produced baled ELS cotton that is:

- (1) Opened by an eligible domestic user on or after October 1, 1999, or
- (2) Exported by an eligible exporter on or after October 1, 1999, during a Friday through Thursday period in which a payment rate determined under

§ 1427.1207 is in effect, and that meets the requirements of paragraphs (b) and (c) of this section;

(b) Eligible ELS cotton must be either:

(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade; or

(2) Loose.

(c) Eligible ELS cotton must not be:

(1) ELS for which a payment, under the provisions of this subpart, has been made available;

(2) Imported ELS cotton;

(3) Raw, unprocessed motes;

(4) Textile mill wastes; or

(5) Semi-processed or re-ginned, processed motes.

#### **§ 1427.1204 Eligible domestic users and exporters.**

(a) For the purposes of this subpart, the following persons shall be considered eligible domestic users and exporters of ELS cotton:

(1) A person regularly engaged in the business of opening bales of eligible ELS cotton to manufacturing such cotton into cotton products in the United States (a domestic user), who has entered into an agreement with CCC to participate in the ELS Cotton Competitiveness Payment Program; or

(2) A person, including a producer or a cooperative marketing association approved under part 1425 of this chapter, regularly engaged in selling eligible ELS cotton for exportation from the United States (an exporter), who has entered into an agreement with CCC to participate in the ELS Cotton Competitiveness Payment Program.

(b) Payment applications must contain the documentation required by this subpart, an ELS Cotton Domestic User/Exporter Agreement and additional information that may be requested by CCC.

#### **§ 1427.1205 ELS Cotton Domestic User/Exporter Agreement.**

(a) Payments under this subpart shall be made available to eligible domestic users and exporters who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions in this subpart, the ELS Cotton Domestic User/Exporter Agreement and CCC-issued instructions.

(b) ELS Cotton Domestic User/Exporter Agreements may be obtained from CCC. To participate in the program authorized by this subpart, domestic users and exporters must execute the ELS Cotton Domestic User/Exporter Agreement and forward the original and one copy to CCC.

#### **§ 1427.1206 Form of payment.**

Payments under this subpart shall be made available in the form of commodity certificates issued under part 1401 of this chapter, or in cash, at the option of the participant, as CCC determines and announces.

#### **§ 1427.1207 Payment rate.**

(a) The payment rate for payments made under this subpart shall be determined as follows:

(1) Beginning the Friday on or following August 1 and ending the week in which the LFQc, the LFQf, the APNEc, and the APNEf prices first become available, the payment rate shall be the difference between the APNE and the LFQ in the fourth week of a consecutive 4-week period in which the APNE exceeded the LFQ each week, and the adjusted LFQ was less than 134 percent of the current crop year loan level for U.S. base quality Pima cotton in all weeks of the 4-week period; and

(2) Beginning the Friday-through-Thursday week after the week in which the LFQc, the LFQf, the APNEc, and the APNEf prices first become available and ending the Thursday following July 31, the payment rate shall be the difference between the APNEc and the LFQc in the fourth week of a consecutive 4-week period in which the APNEc exceeded the LFQc each week, and the adjusted LFQc was less than 134 percent of the current crop year loan level for base quality U.S. Pima in all weeks of the 4-week period. If either or both the APNEc and the LFQc are not available, the payment rate may be the difference between the APNEf and the LFQf.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of LFQ, LFQc, and LFQf for only one to three weeks, such as may occur in the spring when the LFQ is succeeded by the LFQc and the LFQf (spring transition), and at the start of a new marketing year when the LFQc and the LFQf are succeeded by the LFQ (marketing year transition), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year transition periods, the LFQc and APNEc, in combination with the LFQ and APNE, shall, to the extent practicable, be considered during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if either or both APNEc price and the LFQc are not available, the APNEf and the LFQf in combination with the APNE price and LFQ shall be taken into consideration during such 4-week periods to

determine whether a payment is to be issued.

(c) For purposes of this subpart, regarding the determination of the APNE, APNEc, APNEf, the LFQ, the LFQc, and the LFQf:

(1) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(2) If none of the APNE, APNEc, or APNEf prices is available, or if none of the LFQ, LFQc, or LFQf is available, the payment rate shall be zero and shall remain zero unless and until sufficient APNE prices or the LFQ again becomes available, the APNE, APNEc, or APNEf price exceeds the LFQ, the LFQc, or the LFQf, as the case may be, and the LFQ, the LFQc, or the LFQf, as the case may be, adjusted for transportation, is less than 134 percent of the current crop year loan rate for base quality U.S. Pima for 4 consecutive weeks.

(d) Payment rates for loose, re-ginned motes and semi-processed motes that are of a suitable quality, without further processing, for spinning, papermaking or bleaching, shall be based on a percentage of the basic rate for baled lint, as specified in the ELS Cotton Domestic User/Exporter Agreement.

#### **§ 1427.1208 Payment.**

(a) Payments under this subpart shall be determined by multiplying:

(1) The payment rate, determined under § 1427.127, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined under paragraph (b) of this section, of eligible ELS cotton bales that an eligible domestic user opens or an eligible exporter exports during the Friday through Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be based upon:

(1) For domestic users, the weight on which settlement for payment of the ELS cotton was based (landed mill weight);

(2) For re-ginned motes processed by an end user who converted such motes, without re-baling, to an end use in a continuous manufacturing process, the net weight of the re-ginned motes after final cleaning;

(3) For exporters, the shipping warehouse weight or the gin weight if the ELS cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment re-weighed by a licensed weigher and furnishes a copy of the certified weights.

(c) For the purposes of this subpart, eligible ELS cotton will be considered:

(1) Consumed by the domestic user on the date the bale is opened for consumption; and

(2) Exported by the exporter on the date that CCC determines is the date on which the cotton is shipped for export.

(d) Payments under this subpart shall be made available upon application for payment and submission of supporting documentation, as required by this subpart, CCC instructions, and the ELS Cotton Domestic User/Exporter Agreement.

Signed in Washington, DC, on June 2, 2005.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 05-12034 Filed 6-17-05; 8:45 am]

**BILLING CODE 3410-05-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. FAA-2005-21357; Directorate Identifier 2005-CE-29-AD; Amendment 39-14136; AD 2005-12-20]**

**RIN 2120-AA64**

#### **Airworthiness Directives; The Lancair Company Model LC41-550FG Airplanes**

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain The Lancair Company (Lancair) Model LC41-550FG airplanes. This AD requires both visual and dye penetrant inspections of the elevator torque tube assembly for cracks. If a crack is found, this AD requires replacement with a modified assembly that incorporates a steel doubler. This AD also requires replacement of the modified elevator torque tube assembly every 300 hours time-in-service or 18 months (whichever occurs first). This AD results from cracks found in the weld area of the elevator torque tube assembly. We are issuing this AD to detect and correct cracks in the elevator torque tube assembly, which could result in failure of the elevator torque tube assembly and subsequent loss of control of the airplane.

**DATES:** This AD becomes effective on June 21, 2005.

As of June 21, 2005, the Director of the Federal Register approved the

incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by August 10, 2005.

**ADDRESSES:** Use one of the following to submit comments on this AD:

- **DOT Docket Web site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- **Government-wide rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **Mail:** Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- **Fax:** 1-202-493-2251.

- **Hand Delivery:** Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this AD, contact The Lancair Company, 22550 Nelson Road, Bend Oregon 97701; telephone: (541) 330-4191; e-mail: [product\\_support@lancair.com](mailto:product_support@lancair.com).

To view the comments to this AD, go to <http://dms.dot.gov>. The docket number is FAA-2005-21357.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey Morfitt, Program Manager, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055-4065; telephone: (425) 917-6405; facsimile: (425) 917-6590.

#### **SUPPLEMENTARY INFORMATION:**

*What events have caused this AD?* Maintenance personnel found a large crack in the weld area on the elevator torque tube assembly during an elevator disassembly of a Lancair Model LC41-550FG airplane. The airplane had only 54 hours total time-in-service.

This incident prompted an inspection of the elevator torque tube assemblies held in inventory at Lancair. The inspection revealed 70 percent of the factory inventory had cracks.

A combination of design aspects and manufacturing flaws caused the cracks. These flaws lead to rapid fatigue failure of the elevator torque tube assembly.

*What is the potential impact if FAA took no action?* Cracks in the elevator torque tube assembly could cause the elevator torque tube assembly to fail. This failure could result in loss of control of the airplane.

*Is there service information that applies to this subject?* Lancair has issued Mandatory Service Bulletin No. SB-05-005A, dated May 20, 2005.