

Proposed Rules

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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 1427

RIN 0560-AF32

Upland Cotton User Marketing Certificate Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1998 (Pub. L. 105-86) and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277) made changes to the Upland Cotton User Marketing Certificate Program. Accordingly, the regulations are revised to conform to the statute and to indicate that, beginning October 1, 1998, payments will be offered under different circumstances from those in effect prior to that date. Obsolete and unnecessary language in the regulations also will be deleted.

DATES: Comments on the proposed rule, as well as comments on alternatives to this proposal, must be received on or before January 8, 1999 to be assured of consideration. Comments on the information collections in this rule must be received on or before February 8, 1999 to be assured of consideration.

ADDRESSES: Submit comments on the proposed rule to: Director of Fibers Analysis (FA), Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), 1400 Independence Avenue, SW, STOP 0515, Washington, DC 20250-0515. E-mail comments may be sent to wayne_bjorlie@wdc.fsa.usda.gov.

FOR FURTHER INFORMATION CONTACT: Wayne Bjorlie, Director, FA, FSA, USDA, Room 3758-S, STOP 0515, 1400 Independence Avenue, SW, Washington, DC 20250-0515 or call (202) 720-7954. A cost benefit

assessment of this proposed rule is available on request. E-mail inquiries also are welcome. Please address them to: wayne_bjorlie@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The titles and numbers of the Federal Assistance Programs, as found in the catalog of Federal Domestic Assistance, to which this proposed rule applies are: Commodity Loans and Purchases—10.051 and Cotton Production Stabilization—10.052.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of the rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1427 set forth in this proposed rule involve a change in the existing information

collection requirements which were previously cleared by OMB under the provisions of 44 U.S.C. 35. In accordance with the Paperwork Reduction Act of 1995, CCC has submitted a request to OMB for a revision to an information collection currently approved in support of the upland cotton user marketing certificate program and related reporting and record keeping requirements.

Title: Upland Cotton Domestic User/Exporter Agreement and Payment Program.

OMB Control Number: 0560-0136.

Expiration Date of Approval: April 30, 2000.

Type of Request: Revision of a Currently-Approved Information Collection.

Abstract: Section 136 of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104-127 (1996 Act), authorizes payments to eligible U.S. domestic users and exporters under the upland cotton user marketing certificate program if, for 4 consecutive weeks, (1) the U.S. Northern Europe price exceeds the Northern Europe price by more than 1.25 cents per pound, and (2) the upland cotton adjusted world price is less than 130 percent of the current-crop base quality loan rate. The 1996 Act further specifies that the certificates will not be available in a week following a consecutive 10-week period in which the U.S. Northern Europe price, adjusted downward for any marketing certificate payment rate in effect, exceeds the Northern Europe price by more than 1.25 cents per pound.

Currently, to participate in the program, domestic users and exporters must sign the Upland Cotton Domestic User/Exporter Agreement (CCC-1045) with CCC. Domestic users must agree to report weekly to CCC their consumption of cotton. Exporters report to CCC their shipments of cotton only during weeks in which a payment is available. CCC provides a suggested format for the reports, but program participants may submit the same information to CCC in a format that is convenient for participants.

Pub. L. 105-86, enacted on November 18, 1997, changed the percentage in criterion (2) above from 130 percent to 134 percent, effective October 1, 1998. Pub. L. 105-86 also repealed the provision that stops certificate payments after the consecutive 10-week period referred to above.

Pub. L. 105-277, enacted on October 21, 1998, changed the threshold for the price triggers from 1.25 cents to 3.00 cents.

The operational implication of these changes is that the user marketing certificate payment program may operate more frequently and for longer periods of time. The payment rate will be 1.75 cents per pound less than the level without the change in the threshold. In claiming payments for cotton consumed or shipped, domestic users and exporters may face additional reporting requirements during periods in which, under the former rules, the program would not have operated. However, because the total of funds to be expended on the payments is fixed by law, no net addition to reporting requirements over the life of the program is anticipated for either domestic users or exporters as a result of this rule.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 12 minutes per response.

Respondents: U.S. cotton exporters and U.S. domestic users of cotton.

Estimated Number of Respondents: 240.

Estimated Number of Responses per Respondent: 36.

Estimated Total Annual Burden on Respondents: 1,940 hours.

Proposed topics for comment on the information collection include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Copies of the information collection may be obtained from Steve Gill at the address below.

Submit comments on the information collection to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Steve Gill, Director, Warehouse and Inventory Division, FSA, USDA, Room 5968-S, STOP 0553, Washington, DC 20250-0553. Comments may be submitted by e-mail to: steve_gill@wdc.fsa.usda.gov. All comments regarding this information

collection will be summarized and included in the request for OMB approval. All comments will also become public records.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Background

This proposed rule would amend the regulations to accomplish four distinct objectives with regard to the administration of the upland cotton user marketing certificate program.

1. Changes to the regulations for the user marketing certificate program are necessitated by statutory changes made by Section 731 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1998 (1998 Agriculture Appropriation Act, Pub. L. 105-86) and by Section 762 of the Omnibus Consolidated and Emergency Appropriations Act, 1999 (Pub. L. 105-277). Both the 1998 and 1999 Agriculture Appropriation Acts amended the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) to change the requisite conditions in the cotton market under which certificates must be made available. The 1996 Act requires that user marketing certificates be made available to domestic users and exporters for raw upland cotton grown in the United States and consumed or exported after four consecutive weeks during which the U.S. price quotation for upland cotton, including cost, insurance, and freight (C.I.F.), delivered in northern Europe, exceeds the average quotation for the five cheapest growths of upland-style cotton quoted for delivery, C.I.F. northern Europe, by 1.25 cents per pound.

If marketing certificates are being made available, the 1996 Act provides for two market circumstances under either of which the availability of such certificates is interrupted:

A. The adjusted world price (AWP) at which upland cotton marketing loan repayments are made rises to a level in excess of 130 percent of the current loan rate; or

B. A period of ten consecutive weeks passes in which the U.S. price quotation for upland cotton, delivered C.I.F. northern Europe, adjusted downward

for any marketing certificate rate in effect, exceeds the average quotation for the five cheapest growths of upland-style cotton quoted for delivery C.I.F. northern Europe by 1.25 cents per pound.

Effective October 1, 1998, the 1998 Agriculture Appropriation Act changed these two circumstances. Effective October 23, 1998, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 changed the price trigger thresholds. Together, these two Acts provide that:

A. User marketing certificates will not be made available if the AWP exceeds 134 percent of the current loan rate; and

B. The Secretary will continue to issue user marketing certificates despite the passage of 10 consecutive weeks during which the U.S. price quotation for upland cotton, delivered C.I.F. northern Europe, adjusted downward for any marketing certificate rate in effect, exceeded the average quotation for the five cheapest growths of upland-style cotton quoted for delivery, C.I.F. northern Europe, by 3.00 cents per pound.

2. About mid-April, each year, price quotations for both the old- (current-) and new- (forward-) crop marketing years become available and are usually published concurrently until the end of the marketing year on August 1. Given the parallel sets of price data, administration of the user marketing certificate program requires a procedure to effect the transition from the old crop to the new crop.

On August 7, 1997, USDA established a transition procedure with respect to the weekly determination as to whether the requisite period of ten consecutive weeks has passed in which U.S. price quotations, C.I.F. northern Europe, have been non-competitive, as referred to above. Under this transition procedure, current-crop price quotations are considered for the 9-week period prior to the first Thursday after July 31 to determine whether each week's data should be counted toward the ten consecutive weeks the passage of which would make user marketing certificates unavailable or cause special import quotas to be opened. The proposed rule sets forth an end-of-year transition procedure for the determination of the 10-week period which is identical to the procedure USDA established on August 7, 1997.

3. Current regulations require, at the end-of-year transition period, that price quotations for the forward crop be considered for the 3 weeks prior to the first Thursday after July 31 to determine whether 4 consecutive qualifying weeks have passed that would require user

marketing certificate payments to be made available. This procedure is inconsistent with the procedure being proposed for the determination regarding the 10-week period. Therefore, the proposed rule will attain consistency by proposing that current-crop price quotations from the weeks prior to the first Thursday after July 31 be used both for the 4-week and the 10-week determinations.

4. Current regulations contain language that was made obsolete by regulatory revisions on July 12, 1996, and applies only to situations which have passed and cannot recur. The language remained following the regulatory revisions so that prior existing claims under the user marketing certificate program could be handled. There is no further need for this language, so it is proposed to be deleted from the regulations.

The upland cotton user marketing certificate program is conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status or handicap.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs/agriculture, Marketing certificate programs, Price support programs, Warehouses.

Accordingly, 7 CFR part 1427 is proposed to be amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 is revised to read as follows:

Authority: 7 U.S.C. 7236 and 15 U.S.C. 714b and 714c.

2. Section 1427.100 is amended by revising the text of paragraphs (b)(1), (b)(2), and (b)(3) and by adding new paragraphs (b)(4) and (b)(5), to read as follows:

§ 1427.100 Applicability.

* * * * *

(b)(1) During the period beginning August 1, 1991, and ending September 30, 1998, CCC shall issue marketing certificates or cash payments to domestic users and exporters in accordance with this subpart in a week following a consecutive 4-week period in which—

(i) The Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling one and three thirty-seconds inch ("M 1³/₃₂ inch") cotton, delivered C.I.F. (cost, insurance and freight) northern Europe, ("U.S. Northern Europe (USNE) price") exceeds the Friday through Thursday average price quotation for the five lowest-priced growths, as quoted for M

1³/₃₂ inch cotton, delivered C.I.F. northern Europe, ("Northern Europe (NE) price") by more than 1.25 cents per pound; and

(ii) The adjusted world price (AWP) for upland cotton, determined in accordance with § 1427.25, does not exceed 130 percent of the current crop loan level for the base quality of upland cotton.

(2) Beginning August 1, 1991, and ending September 30, 1998, notwithstanding the provisions of paragraph (b)(1) of this section, CCC shall not issue marketing certificates or cash payments if, for the immediately preceding consecutive 10-week period, the USNE price, adjusted for the value of any certificates or cash payments issued under paragraph (b)(1) of this section, exceeds the NE price by more than 1.25 cents per pound.

(3) Beginning October 1, 1998, and ending October 22, 1998, CCC shall issue marketing certificates or cash payments to domestic users and exporters in accordance with this subpart in a week following a consecutive 4-week period in which:

(i) The Friday through Thursday average USNE price exceeds the Friday through Thursday average NE price by more than 1.25 cents per pound; and

(ii) The AWP for upland cotton does not exceed 134 percent of the current crop loan level for the base quality of upland cotton.

(4) Beginning October 23, 1998, and ending July 31, 2003, CCC shall issue marketing certificates or cash payments to domestic users and exporters in accordance with this subpart in a week following a consecutive 4-week period in which:

(i) The Friday through Thursday average USNE price exceeds the Friday through Thursday average NE price by more than 3.00 cents per pound; and

(ii) The AWP for upland cotton does not exceed 134 percent of the current crop loan level for the base quality of upland cotton.

(5) Notwithstanding the provisions of this subpart, user marketing certificate program payments shall not exceed \$701,000,000 during fiscal years 1996 through 2002. Any outstanding obligations incurred by CCC to exporters under this program before April 5, 1996, will not be subject to the \$701,000,000 limitation. Obligations incurred by CCC under this program on or after April 5, 1996, will be charged against the \$701,000,000.

* * * * *

3. Section 1427.102 is amended by removing the definition of "optional origin export contract."

4. Section 1427.103 is amended by revising paragraph (a) to read as follows:

§ 1427.103 Eligible upland cotton.

(a) For purposes of this subpart, eligible upland cotton is domestically produced baled upland cotton which bale is opened by an eligible domestic user on or after August 1, 1991, and on or before July 31, 2003, or exported by an eligible exporter on or after July 18, 1996, and on or before July 31, 2003, during a Friday through Thursday period in which a payment rate, determined in accordance with § 1427.107, is in effect, and which meets the requirements of paragraphs (b) and (c) of this section.

* * * * *

5. Section 1427.105 is amended by revising paragraph (b) to read as follows:

§ 1427.105 Upland Cotton Domestic User/ Export Agreement.

* * * * *

(b) Upland Cotton Domestic User/ Exporter Agreements may be obtained from Cotton and Rice Branch, Warehouse Contract Division, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141-6205. Telephone requests for copies of the agreement will be accepted at (816) 926-6662. In order to participate in the program authorized by this subpart, domestic users and exporters must execute the Upland Cotton Domestic User/Exporter Agreement and forward the original and two copies to KCCO.

6. Section 1427.107 is amended by removing paragraphs (f) through (g), by revising paragraphs (a)(1), (a)(2), and (b) through (e), and by adding paragraph (a)(3), to read as follows:

§ 1427.107 Payment rate.

(a) * * *

(1) Beginning August 1, 1991, and ending September 30, 1998, for exporters for cotton shipped on or after July 18, 1996, and for domestic users:

(i) Beginning the Friday following August 1 and ending the week in which the Northern Europe current (NEc) price and the Northern Europe forward (NEf) price first become available, the payment rate shall be the difference between the USNE price, minus 1.25 cents per pound, and the NE price in the fourth week of a consecutive 4-week period in which the USNE price exceeded the NE price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent; and

(ii) Beginning the Friday through Thursday week after the week in which

the NEc price and the NEf price first become available and ending the Thursday following July 31, the payment rate shall be the difference between the USNEc price, minus 1.25 cents per pound, and the NEc price in the fourth week of a consecutive 4-week period in which the USNEc price exceeded the NEc price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent. If either or both the USNEc price and the NEc price are not available, the payment rate may be the difference between the USNEf price, minus 1.25 cents per pound, and the NEf price.

(2) Beginning October 1, 1998, and ending October 22, 1998, for exporters and for domestic users, the payment rate shall be the difference between the USNE price, minus 1.25 cents per pound, and the NE price in the fourth week of a consecutive 4-week period in which the USNE price exceeded the NE price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 134 percent.

(3) Beginning October 23, 1998, and ending July 31, 2003, for exporters and for domestic users:

(i) Beginning the Friday following August 1 and ending the week in which the NEc price and the NEf price first become available, the payment rate shall be the difference between the USNE price, minus 3.00 cents per pound, and the NE price in the fourth week of a consecutive 4-week period in which the USNE price exceeded the NE price each week by more than 3.00 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 134 percent; and

(ii) Beginning the Friday through Thursday week after the week in which the NEc price and the NEf price first become available and ending the Thursday following July 31, the payment rate shall be the difference between the USNEc price, minus 3.00 cents per pound, and the NEc price in the fourth week of a consecutive 4-week period in which the USNEc price exceeded the NEc price each week by more than 3.00 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 134 percent. If either or both the USNEc price and the NEc price are not available, the payment rate may be the difference between the USNEf price,

minus 3.00 cents per pound, and the NEf price.

(b) Beginning August 1, 1991 and ending September 30, 1998, notwithstanding the provisions of paragraph (a) of this section, no payment rate shall be established in a week following a consecutive 10-week period in which the USNE price, adjusted for the value of any certificate or cash payment issued in accordance with paragraph (a) of this section, exceeds the NE price by more than 1.25 cents per pound.

(c) Whenever a 4-week period under paragraph (a) of this section or a 10-week period under paragraph (b) of this section contains a combination of NE prices only for 1 to 3 weeks, or for 1 to 9 weeks, and NEc prices and NEf prices only for 1 to 3 weeks, or for 1 to 9 weeks, such as occurs in the spring when the NE price is succeeded by the NEc price and the NEf price ("spring transition") and at the start of a new marketing year when the NEc price and the NEf price are succeeded by the NE price ("marketing year transition"), under paragraphs (a) and (b) of this section, during both the spring transition and the marketing year transition periods, to the extent practicable, the NEc price and the USNEc price in combination with the NE price and the USNE price shall be taken into consideration during such 4-week periods and such 10-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 the USNEc price and the NEc price are not available, the USNEf price and the NEf price in combination with the USNE price and the NE price shall be taken into consideration during such 4-week periods and such 10-week periods to determine whether a payment is to be issued.

(d) For purposes of this subpart—

(1) With respect to the determination of the USNE price, the USNEc price, the USNEf price, the NE price, the NEc price, and the NEf price:

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

(ii) CCC will not take into consideration a week in which no daily quotes are available for the entire 5-day period for either or both the USNE price and the NE price during the period when only one daily price quotation is available for each growth quoted for M 1-3/32 inch cotton, delivered C.I.F. northern Europe, or the USNEc price and the NEc price, or the USNEf price and the NEf price. In that case, CCC may

establish a payment rate at a level it determines to be appropriate, taking into consideration the payment rate determined in accordance with paragraph (a) of this section for the most recent available week; and

(iii) Beginning July 18, 1996, if no daily quotes are available for the entire 5-day period for either or both the USNEc and the NEc price, the marketing year transition shall be implemented immediately as provided for in paragraph (c) of this section.

(2) With respect to the determination of the USNE price, the USNEc price, and the USNEf price, if a quotation for either the U.S. Memphis territory or the California/Arizona territory as quoted for M 1-3/32 inch cotton, delivered C.I.F. northern Europe, is not available for each day or any day of the 5-day period, the available quotation(s) will be used.

(e) Payment rates for loose, reginned motes and semi-processed motes that are of a quality suitable, 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 Upland Cotton Domestic User/Exporter Agreement.

* * * * *

7. Section 1427.108 is amended by removing paragraph (c)(3) and by revising paragraph (c)(2), to read as follows:

§ 1427.108 Payment.

* * * * *

(c) * * *

(2) Through July 31, 2003, exported by the exporter on the date CCC determines is the date on which the cotton is shipped.

* * * * *

8. Section 1427.109 is removed.

Signed at Washington, D.C., on December 2, 1998.

James C. Kearney,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98-32653 Filed 12-8-98; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98-028-1]

Importation of Poultry Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.