

# Rules and Regulations

Federal Register

Vol. 65, No. 207

Wednesday, October 25, 2000

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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 330

#### Recruitment, Selection, and Placement (General)

##### *CFR Correction*

In Title 5 of the Code of Federal Regulations, parts 1 to 699, revised as of January 1, 2000, on page 210, in the second column, the first §330.702 is removed.

[FR Doc. 00-55516 Filed 10-24-00; 8:45 am]

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

#### Foreign Quarantine Notices

##### *CFR Correction*

In Title 7 of the Code of Federal Regulations, parts 300 to 399, revised as of January 1, 2000, on pages 322 and 323, beginning in the first column, the second §319.74-3 and §319.74-4 should be removed.

[FR Doc. 00-55515 Filed 10-24-00; 8:45 am]

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 735

##### RIN 0560-AF13

#### Amendments to the Regulations for Cotton Warehouses Regarding the Delivery of Stored Cotton

AGENCY: Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule codifies the delivery standard for cotton stored in warehouses licensed under the United States Warehouse Act (USWA) and those warehouses issuing electronic warehouse receipts under the USWA (7 U.S.C. 241 *et seq.*). The final rule adopts, with minor changes based on public comments, a proposed rule published in the **Federal Register** on May 28, 1999, (64 FR 28938) and an advanced notice of proposed rulemaking (ANPRM) published in the **Federal Register** on May 26, 1998 (63 FR 28488). The Department of Agriculture (USDA) is taking this action as the result of two U.S. District Court orders that remanded USDA to define the statutory phrase "without unnecessary delay" as set forth in the USWA. Concurrently, several segments of the cotton industry requested the implementation of a uniform national cotton shipping standard for the delivery of stored cotton. This final rule amends the regulations covering cotton to define the USWA statutory phrase "without unnecessary delay" as used in the USWA, and sets a standard for determining whether a warehouse operator delivers stored cotton timely by establishing a uniform cotton shipping standard for the delivery of stored cotton.

**EFFECTIVE DATE:** October 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Steve Mikkelsen, Deputy Director, Warehouse and Inventory Division, Farm Service Agency, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250-0553; telephone (202) 720-2121 or FAX (202) 690-3123, e-mail: Steve\_Mikkelsen@wdc.fsa.usda.gov. Persons with disabilities who require alternative means for communication of regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

The Office of Management and Budget has reviewed this final rule and determined the rule to be significant for the purposes of Executive Order 12866.

#### Cost-Benefit Assessment

A Cost-Benefit Assessment (CBA) was prepared. The costs associated with the implementation of the rule will be minimal to all parties involved. The CBA summarized the cost and benefit impact of the rule as follows:

The cotton industry will benefit from USDA establishing a shipping standard that it can apply through arbitration or legal proceedings to determine whether a warehouse operator is delivering stored cotton "without unnecessary delay." Establishment of a uniform shipping standard will help: (1) Maintain the competitiveness of U.S. cotton in domestic and world markets; (2) improve the prices that producers receive in those areas affected by delivery delays; (3) eliminate any disruption in commerce due to uncertainty of delivery expectations; and (4) a standard that may be applied to arbitration or legal proceedings to determine whether a warehouse operator is delivering cotton "without unnecessary delay."

Copies of the CBA are available upon request from the Warehouse and Inventory Division, Farm Service Agency, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250-0553.

#### Executive Order 12988

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

#### Environmental Evaluation

An environmental evaluation has determined that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Executive Order 12612

It has been determined that this final rule is consistent with the Federalism principals espoused in Executive Order 12612, and does not warrant the preparation of a Federalism Assessment.

#### Executive Order 12372

This program/activity 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 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

#### **Unfunded Mandates Reform Act of 1995**

This final rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 for State, local, and tribal governments or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **Paperwork Reduction Act**

The amendments set forth in this rule do not affect information collection or record keeping requirements.

#### **Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because this rule will not have a significant effect on a substantial number of small businesses. Licensing under the USWA is strictly voluntary upon the part of each warehouse operator.

#### **Background**

Since the early 1960's, the timely delivery and shipping of stored cotton (cotton flow) has been a persistent problem throughout the cotton industry. While cotton shippers and cotton merchants require timely delivery and shipping to meet the demands of the marketplace, cotton warehouse operators contended that delivery and shipping demands placed on them by shippers and merchants are unreasonable and exceeded warehouse delivery capabilities. When delivery and shipping delays began to occur during the 1995/96 crop year several cotton shippers filed complaints with the Farm Service Agency (FSA). These shippers requested FSA to investigate cotton shipment delays and to suspend the Federal license of those warehouses that had not delivered cotton "without unnecessary delay" as required by the USWA (7 U.S.C. 241 *et seq.*). FSA personnel investigated and found that a lack of common terminology and lack of a standard process for requesting services may have contributed to the confusion and appearance of longer shipping delays than actually occurred.

Besides filing complaints with FSA, several shippers brought action in U.S. District Court against two cotton warehouse operators. In each case the key issue for the courts was that USDA had not issued regulatory guidance on the use and meaning of the statutory phrase "without unnecessary delay"

contained in the USWA. Ultimately, the shippers elected to dismiss their suits opting instead to request that the statutory phrase "without unnecessary delay" as set forth in the USWA be remanded to USDA for further determination under the doctrine of primary jurisdiction. At the same time, several segments of the cotton industry requested USDA to implement a national uniform cotton shipping standard.

As a result of these events, on May 26, 1998, FSA published a ANPRM in the **Federal Register** (63 FR 28488). The ANPRM sought public comments on two options and asked specific questions regarding a proposed National Cotton Flow Standard. Option I contained methods for defining "without unnecessary delay," established both a uniform cotton shipping standard and a dispute resolution mechanism, but limited further government involvement in regulating the standard. In addition to the items contained in Option I, Option II offered standardized definitions, terminologies, dispute mediation, a national cotton flow shipping status report, and operated with user fees under a greater USDA regulatory role. Public comments favored Option I and strongly expressed a conviction that USDA should establish a cotton shipping standard and allow enforcement just to be handled by the cotton industry without; USDA involvement, assessment of user fees, or increased governmental costs. A complete summary of the comments received in response to the ANPRM can be found in the proposed rule in the **Federal Register** of May 28, 1999 (64 FR 28938).

FSA published a proposed rule seeking public comments on setting forth a national cotton shipping standard that defined "without unnecessary delay". See, May 28, 1999, **Federal Register** (64 FR 28938). This standard was based upon weekly deliveries of at least 4.5 percent of a warehouse operator's licensed storage capacity, Commodity Credit Corporation (CCC) approved storage capacity, or other storage capacity as determined to be in effect for the week of the shipment. The industry presented 4.5 percent as the level that would best expedite the delivery and shipment of U.S. cotton. The industry also recommended that CCC's Cotton Storage Agreement (CSA) should be the vehicle of regulatory authority used by USDA to establish the cotton flow standard. USDA believed that a delivery and shipping standard should not be solely based on the CSA, because the CSA and

any standard that grew out of it only applied to cotton in which CCC had an interest. USDA believed that a delivery and shipping standard based on the USWA would have a broader application as the industry receipted about 80 to 90 percent of all cotton under USWA's electronic warehouse receipt authority and the proposed rule reflected that larger applicability.

The proposed rule required an established cotton industry arbitration system to resolve all disputes and compliance without any USDA involvement, user fees or governmental costs. The proposed rule presented a provision that required any party who requested or initiated FSA's involvement in a shipping standard issue would be responsible for any cost incurred by FSA.

#### **Summary of Public Comments Concerning the Proposed Rule**

FSA received 31 responses from four sectors of the trade-industry as follows: six cotton trade associations, 22 cotton warehouse operators, two cotton merchants, and one electronic cotton warehouse receipt provider. Some responses contained multiple comments. One respondent favored a standard based on 4.5 percent of inventory on hand; 23 respondents favored a standard based on weekly deliveries of 4.5 percent of a warehouse operator's storage capacity; 18 respondents favored enforcement by the cotton industry with no USDA involvement; six respondents favored no user fees; six respondents favored no increased governmental costs; seven respondents favored dispute resolution using either a cotton industry voluntary arbitration system or the court system; 12 respondents suggested binding arbitration by the cotton industry; 12 respondents suggested that any initiating or requesting parties should be responsible for all costs incurred by the FSA regarding a shipping standard issue; nine respondents suggested changing the phrase "will be" at 7 CFR 735.202 (a) to "may be"; two respondents suggested deletion of 7 CFR 735.202, Compliance and Dispute Resolution; and one respondent suggested that adherence to the standard should be a CCC condition of eligibility and opposed any restrictions on the issuance of electronic warehouse receipts.

After analyzing the comments, FSA has decided to proceed with the issuance of this final rule, with some slight modifications from the proposed rule in response to the comments. Several respondents specifically objected to USDA's mandated

arbitration for disputes where the parties had not previously agreed to arbitration and would be required to arbitrate. These respondents argued that their constitutional rights would be infringed upon as they would not be free to choose the forum for resolving their disputes, and their property rights could be affected without due process of the law. The respondents' claims as to contra-constitutionality were overstated; however, USDA did believe that they should change this provision to indicate a permissive use of arbitration where the parties so desired. Accordingly, USDA has amended § 735.202 (a) to change "will be" to "may be" to indicate that where the parties are able to arbitrate the issue, they should be allowed to do so, but not required by regulation. In addition, the word "relevant" will be inserted into § 735.201 to clarify that a warehouseman must meet the delivery standard for the week of the shipment in question.

As with the proposed rule, the final rule will define "without unnecessary delay," through the establishment of a uniform cotton delivery standard based upon weekly deliveries of 4.5 percent of a warehouse operator's licensed storage capacity or CCC approved capacity or other capacity in effect for the relevant week in question. However, enforcement of the standard through arbitration is no longer mandatory. The final rule continues to include a provision that requires any party who requests or initiates FSA's involvement in a shipping standard issue to be responsible for any cost incurred by FSA.

USDA believes this final rule provides an identifiable standard for the delivery and shipment of cotton with the option of arbitrating, has minimal FSA oversight, will best meet the trade-industry's aspirations to expedite the delivery and shipment of U.S. cotton into marketing trade channels and enhance prices paid producers while reducing the cost of handling cotton.

The provisions in this final rule are applicable to cotton warehouse operators licensed under the USWA and any warehouse operators who issue electronic warehouse receipts under the USWA.

#### List of Subjects in 7 CFR Part 735

Administrative practice and procedure, Cotton, Delivery, Reporting and record keeping requirements, Shipping, Surety bonds, Warehouses.

Accordingly, the provisions of 7 CFR part 735 are amended as follows:

### PART 735—COTTON WAREHOUSES

1. The authority citation for 7 CFR part 735 continues to read as follows:

**Authority:** 7 U.S.C. 241 *et seq.*

2. Section 735.2 is amended by adding paragraph (jj).

#### § 735.2 Terms defined.

\* \* \* \* \*

(jj) *Force majeure*. Severe weather conditions, fire, explosion, flood, earthquake, insurrection, riot, strike, labor dispute, act of civil or military authority, non-availability of transportation facilities, or any other cause beyond the control of the warehouseman that renders performance impossible.

#### §§ 735.106–735.199 [Reserved]

3. Sections 735.106 through 735.199 are added and reserved.

4. Following § 735.199 an undesignated center heading and §§ 735.200 through 735.202 are added to read as follows:

#### Delivery and Shipping

##### § 735.200 Applicability.

The cotton shipping standard set forth in § 735.201 is applicable to all cotton warehousemen licensed under the Act and to all warehousemen that issue electronic warehouse receipts through an authorized electronic warehouse receipt provider in accordance with part 735 regardless of whether the warehouse is licensed under the Act.

##### § 735.201 Cotton shipping standard.

Unless prevented from doing so by force majeure, a warehouseman identified in § 735.200 shall deliver stored cotton without unnecessary delay. A warehouseman shall be considered to have delivered cotton without unnecessary delay, if for the week in question, the warehouseman has delivered or staged for scheduled delivery at least 4.5 percent of either their licensed storage capacity or Commodity Credit Corporation-approved storage capacity or other storage capacity as determined by the Secretary to be in effect during the relevant week of shipment.

##### § 735.202 Compliance and dispute resolution.

(a) Any claim for noncompliance with the cotton shipping standard may be resolved by the parties involved through established industry, professional, or mutually agreed upon arbitration procedures. The arbitration procedures shall be nondiscriminatory and provide each person equal access and protection relating to the cotton shipping standard.

(b) No arbitration determination or award resulting from noncompliance with the shipping standard shall affect, obligate, or restrict the Service's authority to provide, administer, and regulate the issuance of a license, receipt, contractual agreement, or authorized electronic warehouse receipt provider system in accordance with the Act.

(c) The Service shall not settle unresolved disputes involving the cotton shipping standard or associated damages.

(d) In the event a party requests assistance from or initiates the involvement of the Service in a matter relating to the cotton shipping standard, the initiating party shall be responsible for all costs incurred by the Service. Before any such assistance is provided, the initiating party shall make payment to the Service in an amount equal to the Service's good faith estimate of costs and expenses that will be incurred in fulfilling the request. Costs incurred that exceed the Service's good faith estimate will be the responsibility of the initiating party.

Signed at Washington, D.C., on October 19, 2000.

**Keith Kelly,**

*Administrator, Farm Service Agency.*

[FR Doc. 00-27346 Filed 10-24-00; 8:45 am]

BILLING CODE 3410-05-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1220

[No. LS-00-04]

#### Soybean Promotion and Research: Amend the Order To Adjust Representation on the United Soybean Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule adjusts the number of members for certain States on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the last time the Board was reapportioned in 1997. These adjustments are required by the Soybean Promotion and Research Order (Order). The results of the adjustments are an additional member for Kansas and one less member for Maryland. As a result of these changes, the total Board membership will remain at 62 members. These changes to the Board are effective with the Secretary's 2001 appointments. **EFFECTIVE DATE:** November 24, 2000.