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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR 1427

RIN 0560–AH29

Cottonseed Payment Program

AGENCIES: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule codifies portions of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005, enacted on October 13, 2004 Public Law 108–324 (''2004 Act'') to provide assistance to producers and first-handlers of the 2004 crop of cottonseed in counties declared a disaster by the President of the United States due to 2004 hurricanes and tropical storms. Other 2004 Act disaster provisions for other crops were implemented under separate rules.

DATES: This rule is effective January 26, 2006.

FOR FURTHER INFORMATION CONTACT: Chris Kyer, phone: (202) 720–7935; e-mail: *chris.kyer@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Final Rule

In a proposed rule published in the **Federal Register** at 70 FR 36536 (June 24, 2005), the Commodity Credit Corporation (CCC) proposed regulations for administering the 2004 Cottonseed Payment Program authorized by Division B, Section 104 of the 2004 Act (Pub. L. 108–324). The 2004 Act requires CCC to provide assistance to producers and first-handlers (cotton gins) of the 2004 crop of cottonseed in counties declared a disaster by the President of the United States due to hurricanes and appropriated $10 million for these payments. As amended, by Section 789 of Division A of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447), Section 104 provides:

> The Secretary of Agriculture shall use $10,000,000 to provide assistance to producers and first handlers of the 2004 crop of cottonseed located in counties declared a disaster by the President of the United States in 2004 due to hurricanes or tropical storms.

The proposed rule described how the program was last administered for the 2002 crop year and how the 2004 program will be operated differently from the 2002 program. To summarize, the 2002 program used 2002 crop year production as a basis for payment because all gins in the nation were eligible and the intent of the program was to offset the effect on producers of low cottonseed prices. However, because the 2004 program is tied to legislation that involves hurricanes and tropical storms, the agency's intent with the 2004 Cottonseed Payment Program was to base payments on a loss of cotton lint (to be converted to a cottonseed equivalent), not actual lint production. Therefore, the rule proposed that the applicant's quantity for payment will be calculated by a gin by comparing each of their eligible producer's 2003 lint production to their 2004 lint production and adjusting the difference to reflect changes in planted acreages between the two years. The gin would then add up their producer's losses to arrive at a total quantity for which to request payment. The rule also provided for situations where the cotton producer did not produce 2003 cotton or when the producer may have delivered 2004 cotton to a different gin than for 2003. Other key provisions of the rule provided regulations for eligible cottonseed, eligible applicants, available funds, agency calculation of the total payment quantity, determining the payment rate, and liability of first handler.

Comments and Changes to Final Rule

The 30-day comment period for the proposed rule closed on July 25, 2005. FSA received comments from 28 entities or persons which included 4 cotton associations, 2 gins, 10 United States Senators, and 10 Congressmen. In general, the respondents consistently expressed concerns about how the proposed rule will place administrative burden on gins, particularly at a time when cotton is being harvested and ginned, and recommended that USDA identify a more efficient and less burdensome way to deliver the program. However, two cotton associations conceded that while the proposed rule is much more complicated than previous cottonseed assistance programs and puts a much heavier administrative burden on cotton ginners, it does seem to be the most equitable way to distribute assistance to producers who suffered production losses.

Specifically, the letters from 10 Senators and Congressmen cited the additional administrative burden placed upon gins by the proposed rule but did not offer alternative recommendations. One ginner expressed concern about the administrative burden, plus the potential for conflict created by the proposed rule between the gin and the producer where the gin cannot control the outcome of the rules but is blamed for the results nonetheless. Another ginner specifically recommended a distribution of assistance based on 2003 crop year lint production which would be more equitable and less burdensome to producers and ginners. Two associations stated that cotton ginners are willing to gather data from producers but suggested an extended application time of 45 to 60 days. These two associations also suggested use of a standard form that producers can use to provide production and acreage data to their gins that also provides a certification by producers that they are responsible for the accuracy of the data on the form. Two additional associations submitted similar recommendations and suggested the use of a form by producers with a self-certification clause that would shift liability from gins to producers, an application period of at least 45 days, clarification of provisions regarding producers who did not plant cotton in either 2003 or 2004, and the use of a lint-to-cottonseed conversion factor based on the national average as in past programs. Further, these associations requested that all gins in states with eligible disaster counties receive disaster application information and the eligible county list.

More specific comments are discussed below section by section, along with minor changes that will be made in the final rule.

Section 1427.1100 Applicability

Three cotton associations suggested that gins in states with disaster-declared counties should receive application information and an eligible county list in order to account for all eligible production. While there was no recommendation as to how to carry out the suggestion, CCC agrees that program information must be easily available and will, therefore, make the instructions, forms and list of eligible counties available to gins electronically on the internet or by electronic mail. This provision will be handled administratively. Therefore, the section is adopted as proposed.

Section 1427.1105 Payment Application and Deadline

Four associations stated that in order to administer the program as USDA proposes they will need additional time to gather data from producers, perform necessary calculations and prepare applications to CCC. One association suggested an application deadline of 45 to 60 days, and three associations suggested at least 45 days. CCC agrees that additional time may be necessary for gins to gather data from producers that are not currently on file, to compile such data, and prepare an application. Thus, the final rule provides that gins have 60 calendar days from the date the program is announced in the **Federal Register** to file applications with CCC.

Section 1427.1107 Applicant Payment Quantity

All of the respondents cited the additional burden the proposed rule would place on gins as compared to previous Cottonseed Payment Programs. Specifically, the proposed rule provided that gins must differentiate production from producers located in eligible and non-eligible counties, gather data from producers or other gins if a producer ginned cotton at a different gin in 2003, calculate expected production for new producers who did not produce cotton in 2003, and calculate lint production losses for each producer based on 2003 and 2004 production, adjusting such losses for differences in acreage between the two years. This required gins to gather from producers data not already on file such as planted acreages and data for producers new to the gin. CCC recognizes that, compared to past programs, gins will be required to perform additional work and thoroughly explored other options to ease the burden, such as simply using 2003 production as a basis for payment or comparing 2003 production to 2004 production without considering the difference in acreages between the two years. After consideration, both options were determined to be fiscally irresponsible ways to operate a disaster-related program. Therefore, the section will be adopted as proposed. However, CCC will make every effort to assist gins in obtaining the data necessary that they do not currently have on file and will provide additional time for the gins to gather data and to prepare applications for submission to CCC.

Section 1427.1108 Total Payment Quantity

Two associations recommended that the eligible quantity of cottonseed for payment be determined using a conversion factor based on the national average and cited the national average seed-to-lint ratio as used for past programs. CCC did propose a different formula for computing the seed-to-lint ratio from what was done in the past, except for using the five years preceding 2004. Thus, CCC adopts § 1427.1108(b) as proposed.

Section 1427.1111 Liability of First Handler

Two cotton associations cited the need for a shift in data liability from the gin to the producer when additional data must be gathered by the gin that the gin does not already have, such as acreage data. It was suggested that data be provided by producers on a form containing a self-certification clause that would shift liability and also provide documentation if an audit is necessary or if a dispute arises. CCC disagrees that liability should be shifted to the producer because the gin is the applicant and recipient of program benefits. Therefore this section is adopted as proposed.

Executive Order 12866

This rule has been determined to be ''Not Significant'' under Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

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 with respect to the subject of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent 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 FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12988. This proposed rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies set forth at 7 CFR Parts 11 and 780 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 of 1995

A request for comments on the information collection needed for this program was part of the proposed rule. As stated above, several respondents commented that the proposed rule is much more complicated than previous cottonseed assistance programs and puts a much heavier administrative burden on cotton ginners, and requested that this burden be reduced. CCC explored options to ease the burden but all were determined to be fiscally irresponsible. However, CCC will assist gins in obtaining the data necessary and will provide time to gather data and to prepare applications for submission. The final information collection package has been approved by OMB and assigned OMB Control Number 0560–0256.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and the FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Because of the need to publish these regulations quickly, the forms and other information collection activities required to be utilized by a person subject to this rule are not yet fully implemented in a way that would allow the public to conduct business with CCC electronically. Accordingly, at this time, all forms required to be submitted under this rule may be submitted to CCC by mail or FAX.

List of Subjects in 7 CFR Part 1427

Agriculture, Cottonseed.

■ For the reasons set out in the preamble, 7 CFR 1427 is amended as set forth below.

PART 1427—COTTON

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

Authority: 7 U.S.C. 7231–7239; 15 U.S.C. 714b, 714c; Pub. L. 108–324, Pub. L. 108–447.

■ 2. Revise the heading to subpart F to read as follows:

Subpart F—2004 Cottonseed Payment Program

■ 3. Revise § 1427.1100 to read as follows:

§ 1427.1100 Applicability.

(a) Subject to the availability of funds, this subpart sets forth the terms and conditions under which the Commodity Credit Corporation (CCC) will provide payments under the cottonseed payment program for the 2004 crop year of cottonseed. Additional terms and conditions may be set forth in the application or other forms which must be executed to participate in the cottonseed payment program.

(b) Payments shall be available only as provided in this subpart and only with respect to cottonseed in counties declared a disaster by the President of the United States due to hurricanes or tropical storms.

§ 1427.1102 [Amended]

■ 4. In § 1427.1102 remove the definitions ''Number of ginned cotton bales'' and ''Running bale.''

■ 5. Revise § 1427.1103 to read as follows:

§ 1427.1103 Eligible cottonseed and counties.

To be eligible for payments under this subpart:

(a) Counties must have been declared a disaster by the President of the United States due to 2004 hurricanes or tropical storms.

(b) Cotton must not have been destroyed or damaged by fire, flood, or other events such that its loss or damage was compensated by other local, State, or Federal government or private or public insurance or disaster relief payments.

■ 6. Amend § 1427.1104 by revising the section heading, revising paragraph (a) and in paragraph (c) by removing the term ''low cottonseed prices'' and adding ''the loss of cottonseed,'' in its place to read as follows:

§ 1427.1104 Eligible applicants (first handlers).

(a) An eligible first handler of cottonseed shall be a gin that has an eligible payment quantity as determined under § 1427.1107. Only an eligible first handler of cottonseed shall be eligible to file an application for payment under this subpart.

* * * * *

■ 7. Amend § 1427.1105 by revising the section heading and paragraph (b) to read as follows:

§ 1427.1105 Payment application and deadline.

* * * * *

(b) The application deadline shall be 60 calendar days after the rules in this subpart become effective unless otherwise announced by CCC. Applications received after such application deadline will not be accepted for payment.

* * * * *

■ 8. Revise § 1427.1106 to read as follows:

§ 1427.1106 Available funds.

The total available program funds for the 2004-crop cottonseed program provided for in this subpart shall be $10 million.

■ 9. Revise § 1427.1107 to read as follows:

§ 1427.1107 Applicant payment quantity.

(a) The applicant's payment quantity of cottonseed will be calculated by the applicant and submitted on the Cottonseed Payment Application and Certification for approval for by CCC. An applicant must be an eligible gin and the applicant's payment eligibility will be based on the determination of the amount of lint deliveries by cotton producers in eligible counties which were lost to the gin because of the qualifying hurricane or tropical storm as calculated under this section.

(1) The lost lint determination will be made on a producer-by-producer and farm-by-farm basis, based on producer certification, ginning records and other relevant information as applicable.

(2) The loss determination will be limited to losses related to 2004-crop cotton production in eligible counties. A cotton producer's gross loss of lint shall be determined based on a comparison of lint deliveries for 2003 and 2004 by the producer from the eligible farm to all gins. That difference will be adjusted to reflect changes in the acreage planted in the two years by the producer on the eligible farm and adjusted for losses due to reasons other than hurricane or tropical storm.

(b) The producer will certify the gin or gins to which the lost lint production as so determined would have been delivered. Also, the producer will certify the relevant percentages of the losses that would have been delivered to each gin if more than one gin would have received the deliveries. Apportionment of the loss may be made by CCC between gins on that basis.

(c) If the producer delivered 2004-crop cotton to a gin different than the gin to which the producer delivered 2003-crop cotton, or delivered cotton to more than one gin in either 2003 or 2004, the gin receiving 2004-crop cotton shall contact the other gins for production information or obtain other proof of the eligible quantity from the cotton producer so as to make or verify the calculation called for in paragraph (a) of this section.

(d) If the cotton producer did not produce 2003-crop cotton the producer shall be considered a new producer. A new producer's eligible lost quantity will be determined as provided in paragraph (a) of this section except that the amount of loss of lint will be made by comparing the producer's actual 2004 per-acre yield with the 2003 USDA, National Agricultural Statistics Service county average yield for the applicable county.

(e) The gin's lint eligibility will be calculated individually with respect to all eligible cotton producers and those individual eligibilities for the gin will then be added together to determine the total lint eligibility of the gin. From that amount of lint eligibility, the applicant gin's payment quantity of cottonseed shall be calculated by CCC by multiplying:

(1) The applicant gin's eligible weight of lint for which payment is requested, as approved by CCC, and as determined

in paragraphs (a) through (d) of this section by;

(2) The Olympic average of estimated pounds of cottonseed per pound of ginned cotton lint, as determined by CCC, for the five years preceding the 2004 crop year.

■ 10. Revise § 1427.1108 to read as follows:

§ 1427.1108 Total payment quantity.

The total quantity of 2004-crop cottonseed eligible under this subpart shall be based on the total payment quantity of cottonseed as determined under this subpart for which timely applications are filed. Eligible cottonseed for which no application is received according to announced application instructions shall not be included in the total payment quantity of cottonseed. The total payment quantity of cottonseed (ton-basis) shall be calculated by multiplying:

(a) The total weight of cotton lint, converted to tons, for which payment is requested by all applicants, as approved by CCC, by

(b) The Olympic average of estimated pounds of cottonseed per pound of ginned cotton lint, as determined by CCC for the five years preceding the 2004 crop year.

■ 11. Revise § 1427.1109 to read as follows:

§ 1427.1109 Payment rate.

The payment rate (dollars per ton) shall be determined by CCC by dividing the total available program funds by the total eligible payment quantity of cottonseed. However, in no event may the total payment to an eligible applicant exceed $114 per ton of cottonseed multiplied by the applicant's total eligible payment quantity.

■ 12. Amend § 1427.1111 by revising paragraph (d) to read as follows:

§ 1427.1111 Liability of first handler.

* * * * *

(d) For 3 years after the date of the application for 2004-crop payments, the applicant shall keep records, including records supporting the quantity of cottonseed for which payment was requested, and furnish such information and reports relating to the application to CCC as requested. Such records shall be available at all reasonable times for an audit or inspection by authorized representatives of CCC, United States Department of Agriculture, or the Comptroller General of the United States. Failure to keep, or make available, such records may result in refund to CCC of all payments received, plus interest thereon, as determined by CCC. In the event of a controversy concerning payments, records must be kept for such longer period as may be specified by CCC until such controversy is resolved. Destruction of records at any time is at the risk of the applicant.

Signed in Washington, DC, on January 12, 2006.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 06–742 Filed 1–25–06; 8:45 am]

BILLING CODE 3410–05–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Uninsured Secondary Capital

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) is adopting modifications to its rules on uninsured secondary capital accounts to allow low-income designated credit unions to begin redeeming the funds in those accounts when they are within five years of maturity, and to require prior approval of a plan for the use of uninsured secondary capital before a credit union can begin accepting the funds.

DATES: This rule is effective February 27, 2006.

FOR FURTHER INFORMATION CONTACT: Steven W. Widerman, Trial Attorney, Office of General Counsel, at 703/518–6557; or Margaret Miller, Program Officer, Office of Examination and Insurance, at 703/518–6375.

SUPPLEMENTARY INFORMATION:

A. Background

1. *Uninsured secondary capital accounts.* Under conditions prescribed by the NCUA Board, credit unions serving predominantly low-income members are permitted by law to receive payments on shares from non-natural persons. 12 U.S.C. 1757(6). In 1996, the NCUA Board authorized low-income designated credit unions (''LICUs''),[1] including State-chartered credit unions to the extent permitted by State law, to accept uninsured secondary capital (''USC'') from non-natural person members and nonmembers. 12 CFR 701.34(b) (2005). The purpose of USC is to provide a further means—beyond setting aside a portion of earnings—for LICUs to build capital to support greater lending and financial services in their communities, and to absorb losses and thus protect LICUs from failing. 61 FR 3788 (Feb. 2, 1996); 61 FR 50696 (Sept 27, 1996).

To ensure the safety and soundness of LICUs that accept USC, the existing rule imposed multiple restrictions that also apply to State-chartered LICUs. 12 CFR 741.204. Before accepting USC, a LICU must submit a written plan for the use and repayment of USC. § 701.34(b)(1). USC accounts must have a minimum maturity of five years and may not be redeemable prior to maturity. § 701.34(b)(3)–(4). The accounts must be established as uninsured, non-share instruments. § 701.34(b)(2) and (5). And most importantly, USC funds on deposit (including interest paid into the account) must be available to cover operating losses in excess of the LICU's net available reserves and undivided earnings. § 701.34(b)(7). Funds used to cover such losses may not be replenished or restored to the USC accounts. *Id.*

2. *Impact of Prompt Corrective Action.* Since the inception of USC, existing § 701.34(c)(1) has required LICUs to discount a USC account's original capital value (now called ''net worth value'')—essentially recategorizing the discounted portion as subordinated debt—in 20 percent annual increments beginning at five years remaining maturity. Even as its capital value is discounted, however, the full amount of USC must remain on deposit to cover losses. § 701.34(c)(2) (2005).

In 2000, pursuant to Congressional mandate, NCUA adopted a system of ''prompt corrective action'' (''PCA'') consisting of mandatory minimum capital standards indexed by a credit union's ''net worth ratio'' to five statutory net worth categories.[2] 12 U.S.C. 1790d; 12 CFR part 702; 65 FR 8560 (Feb. 18, 2000). As a credit union's net worth ratio falls, its classification among the net worth categories declines below ''well capitalized,'' thus exposing it to an expanding range of mandatory and discretionary supervisory actions

[1] The NCUA Board is authorized by law to define ''credit unions serving predominantly low-income members.'' 12 U.S.C. 1757(6). To be so designated by the appropriate Regional Director, the NCUA Board generally requires the majority of a credit union's members to earn less than 80 percent of the average national wage as determined by the Bureau of Labor Statistics, or to have annual household incomes below 80 percent of the national median as determined by the Census Bureau. 12 CFR 701.34(a)(2)–(3).

[2] The ''net worth'' of a LICU is defined by law as its retained earnings under GAAP plus any USC on deposit. 12 U.S.C. 1790d(o)(2); 12 CFR 702.2(f). The ''net worth ratio'' of a credit union is the ratio of its net worth to its total assets. 12 U.S.C. 1790d(o)(3); 12 CFR 702.2(g) and (k).