

Rules and Regulations

Federal Register

Vol. 73, No. 215

Wednesday, November 5, 2008

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560-AH81

Cotton Program Changes for Loans, Loan Deficiency Payments, Upland Cotton, and Extra Long Staple Cotton

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is revising regulations as required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) to administer loan and payment programs for upland cotton and extra-long staple (ELS) cotton producers and establishing new regulations to specify payment provisions for domestic users of upland cotton. The 2008 Farm Bill generally extends the existing upland cotton and ELS cotton programs with some changes in calculations of the adjusted world price (AWP) and loan schedules for upland cotton. The new program for economic adjustment assistance for domestic users of upland cotton will pay a statutorily specified rate per pound and provides that such payments may only be used for capital investments (for example, plant, equipment, land, machinery).

DATES: *Effective Date:* October 31, 2008.
Note: Certain provisions start based on crop years or effective dates specified in the 2008 Farm Bill; see the table detailing start dates in the discussion below.

FOR FURTHER INFORMATION CONTACT: Gene Rosera, Cotton Program Manager, Price Support Division, USDA, FSA, Stop 0512, 1400 Independence Ave., SW., Washington, DC 20250-0512; *phone:* (202) 720-8481; *e-mail:*

gene.rosera@wdc.usda.gov; or fax: (202) 690-1536. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule implements provisions in the 2008 Farm Bill (Pub. L. 110-246) for cotton programs administered by CCC. The cotton programs are: (1) Recourse seed-cotton loans for upland and ELS cotton, (2) non-recourse marketing assistance loans that may be repaid at a statutorily set repayment rate and loan deficiency payments for upland cotton, (3) non-recourse marketing assistance loans for ELS cotton that are to be repaid at principal plus interest, and (4) the ELS competitiveness payment program providing payments to domestic users and exporters of ELS cotton. This rule also includes regulations for the new Economic Adjustment Assistance to Users of Upland Cotton Program that provides payments to domestic users of upland cotton.

The regulations in 7 CFR part 1427 specify eligibility and application requirements for cotton program applicants, methods for establishing and announcing upland cotton loan repayment rates, and rates for loan deficiency payments. The loan programs for cotton provide short term financing and improve farm-price stability.

The basic structure of the existing programs is not changing, but the 2008 Farm Bill requires some substantive changes in the regulations, including a change in the way AWP for upland cotton is calculated and a reduction in the rates used for calculating warehouse storage credits. This rule also makes minor changes to the regulations for clarity and to reflect current industry practice, to update the crop years as required by the 2008 Farm Bill, and to remove expired sections that only applied to certain previous crop years. The changes are discussed below.

In general, this rule implements changes in the regulations that are explicitly required by the 2008 Farm Bill. Under the 2008 Farm Bill, for example:

- A new program is required for economic assistance for users of upland

cotton. Through this new program, CCC will make payments to domestic cotton mills for capital investments (to acquire, construct, install, modernize, develop, convert, or expand land, plant, buildings, equipment, facilities, or machinery). The maximum payment rate is 4 cents per pound for all cotton consumed by domestic mills beginning August 1, 2008; the rate will be 3 cents per pound beginning August 1, 2012. The new program pays on both domestic and foreign cotton.

- Storage credits to upland cotton loan repayment values are allowed for the 2008 through 2012 crop years, but reduced by 10 percent from the 2006 rate for the 2008 through 2011 crop years and reduced by 20 percent from the 2006 rate beginning with the 2012 crop year. (Storage is credited when AWP is less than the total of the loan rate plus interest plus storage, which is consistent with the existing repayment provisions.)

- The upland cotton loan schedule is revised to ensure that premiums and discounts are more accurately aligned with prevailing market valuations and facilitate movement of cotton into the market.

In general, the regulatory changes address requirements for (1) the new program for economic adjustment assistance for domestic users of upland cotton, (2) storage and loan rate adjustments, (3) termination of commodity certificates and payment limitations, (4) AWP calculation changes, (5) eligibility, (6) fraud or unauthorized disposition, (7) warehouse receipts, collateral, and storage, and (8) updates and miscellaneous corrections. The regulatory changes are described below by these categories.

Economic Adjustment Assistance for Domestic Users of Upland Cotton

This rule adds a new Subpart C, "Economic Adjustment Assistance to Users of Upland Cotton" (as discussed below, this rule also removes the existing Subpart C, "Upland Cotton User Marketing Certificates"). Section 1207(c) of Subtitle B of Title I of the 2008 Farm Bill requires this new assistance. Eligible domestic users of upland cotton include persons who open bales of upland cotton for spinning, making paper, and processing non-woven cotton fabric in the United States. CCC will pay 4 cents per pound for all cotton consumed by domestic

mills beginning August 1, 2008; the rate will be 3 cents per pound beginning August 1, 2012. Payments may only be used for capital investments (to acquire, construct, install, modernize, develop, convert, or expand land, plant, buildings, equipment, facilities, or machinery). Further, such capital expenditures must be directly attributable to the purpose of manufacturing upland cotton into eligible cotton products in the United States.

The new program payments apply to both domestic and foreign cotton and will be made without regard to world or domestic cotton prices.

Storage and Loan Rate Adjustments

The 2008 Farm Bill requires CCC to adjust upland cotton loan rates so that the resulting loan rates more accurately reflect relative market valuations. Specifically, starting with the 2008 crop, CCC will no longer adjust upland cotton loan rates for location. This provision eliminates premiums previously provided to production near domestic mills. For example, cotton at some South Carolina locations had previously been provided a location premium of 1.9 cents per pound over the base-quality loan rate of 52 cents per pound. To eliminate the location adjustment, this rule removes the mention of "county" in the definition of loan deficiency payment in section 1427.3 and removes the reference to loan rate location adjustment in section 1427.160. These changes are consistent with current marketing of cotton because most domestic cotton is priced based on export price considerations.

Also, section 1204(e) of the 2008 Farm Bill specifically provides for fine count and transportation adjustments to the AWP. This rule has provisions regarding both and to the extent they differ from previous policies for the 2007 crop those new provisions will be applied to outstanding 2007 crop loans. That is, the AWP calculations under this rule for 2009 and 2007 crops will be the same. Provisions of the 2002 legislation that covers the 2007 crop, namely the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-110) is broad enough to allow the 2007 crop adjustments.

The 2008 Farm Bill requires CCC to credit loan repayment values by a portion of warehouse storage charges that accrue during the loan period when AWP is sufficiently low. Under this new authority, the maximum warehouse storage rates established by CCC for calculating storage credits for upland cotton will, as provided in the 2008 Farm Bill, be reduced from the 2006 maximum rate by 10 percent for the

2008 through 2011 crops and by 20 percent beginning with the 2012 crop. This rule changes section 1427.19, "Repayment of Loans," accordingly. The storage payment reduction provisions do not apply to the 2007 crop.

The 2008 Farm Bill requires that a loan deficiency payment (LDP) rate be the rate effective on the date the producer requested the payment. Some cotton users purchase cotton on a "gin-direct" basis that provides for the cotton to be priced and shipped directly after the date of ginning. Under such contracts, any LDP rate is established as the rate effective on the date the cotton is ginned even though the exact date of ginning and any LDP rate may be unknown to both parties at the time the contract is made. To accommodate the sale of cotton under such commercial contracts, if a producer who meets other LDP eligibility and application requirements requests an LDP on "gin-direct" terms, CCC will consider the date the cotton is ginned to be the date of the LDP request.

This final rule implements a provision of the new Average Crop Revenue Election (ACRE) program established by the 2008 Farm Bill. Under that program, during each of the 2009 through 2012 crop years, the loan rate for upland cotton will be reduced by 30 percent for producers who elect to participate in ACRE. This rule amends sections 1427.8, "Amount of loan," and 1427.160, "Applicability," accordingly.

Termination of Commodity Certificates and Payment Limitations

As required by the 2008 Farm Bill, this rule also amends the cotton program regulations to end the availability of commodity certificates and the applicability of payment limitation to gains from marketing assistance loans and loan deficiency payments.

Beginning with the 2010 crop, as provided in section 1607 of the 2008 Farm Bill, CCC will no longer provide commodity certificates for the purpose of exchange for cotton loan collateral. Accordingly, this rule is removing Subpart C from 7 CFR part 1427, which concerns marketing certificates, and revising the references to marketing certificates in other sections of part 1427 so that the provisions are no longer effective after the 2009 crop year.

Starting with the 2009 cotton crop year, CCC will no longer limit the gains from marketing assistance loans and loan deficiency payments. These changes will be implemented in

broader, multi-commodity regulations to be issued later.

AWP Calculation Changes

This rule amends section 1427.25, "Determination of the prevailing world market price and the adjusted world price for upland cotton," to be consistent with provisions of the 2008 Farm Bill. This rule amends the regulations to establish a new fine count adjustment, a new method for calculating the AWP transportation adjustment, and a new process for AWP calculations during the transition between crop years. The fine count adjustment to the upland cotton AWP will apply to any CCC-established loan rate premium factor for a quality higher than Middling 1³/₃₂-inch. The transportation adjustment to the weekly AWP is simplified by this rule to use values provided to CCC from its survey of domestic cotton merchandisers. CCC's process for determining AWP during the transition period between crop years has previously been a process of blending current and forward prices over a six-week period. The revised regulation, consistent with the 2008 Farm Bill, provides for use of forward-crop price quotations prior to July 31 of a marketing year if there are insufficient current-crop prices and the forward-crop price is the lowest available price quotation. Additionally, this rule amends the AWP announcement time from 5 p.m. to 4 p.m. eastern time each Thursday. This rule also amends section 1427.3, "Definitions," to modify the definitions of terms used in the price determination formula, consistent with the AWP changes. Previously, in a rule published May 27, 2008 (73 FR 30274-30277) CCC shifted to the use of Far East prices for setting loan repayment rates.)

Eligibility

This rule amends section 1427.4, "Eligible Producer." As required by section 1603 of the 2008 Farm Bill, States or political subdivisions or their agencies are no longer eligible for loans or loan deficiency payments.

This rule amends section 1427.5, "General eligibility requirements," to provide that effective with the 2009 crop, flat bales are not eligible to be tendered as loan collateral. This amendment is consistent with current industry practice as flat bales are not marketable in normal trade.

Fraud or Unauthorized Disposition

In section, 1427.18, "Liability of the Producer," this rule amends the way CCC values the loan collateral in circumstances of fraud or unauthorized disposition. CCC will value loan

collateral at its loan value rather than its sales price in circumstances of fraud or unauthorized disposition. This amendment is not specifically required by the 2008 Farm Bill; it is being made for clarity and consistency with overall CCC loan settlement and inventory policy. Rather than requiring the relocation of loan collateral, CCC will accelerate the maturity date of cotton if relocation is not accomplished by the producer. Commonly, this provision is used following warehouse closings or storm damage.

Warehouse Receipts, Collateral, and Storage

This rule revises the definition in section 1427.3 of a “warehouse receipt” for cotton as loan collateral. Effective starting with the 2009 crop of cotton, CCC will require warehouse receipts to be submitted to CCC in an electronic format; paper warehouse receipts will not be accepted. Paper warehouse receipts are rarely used for modern commercial transactions and, therefore, are considered unmarketable by CCC. This rule revises the definitions of “warehouse receipt” and “transfer” to include a reference to receipts that are certificated for delivery of a futures pricing contract and revises the definition of “transfer” to include the exchange of electronic warehouse receipts without physically relocating the cotton. This rule updates section 1427.10, “Approved Storage,” accordingly.

This rule amends section 1427.21, “Settlement.” Traditionally, CCC settled cotton loans for which collateral was delivered to CCC based on the weight and quality indicated on the original warehouse receipt. However, for bales that are relocated during the loan period and subsequently delivered to CCC, the original warehouse receipt is cancelled

and a subsequent receipt is delivered to CCC in satisfaction of the loan obligation. For such cases, this rule specifies that CCC may elect to calculate settlement values based on the weight, condition, and classification as reflected on the receipt delivered to CCC rather than based on the original receipt information. CCC will use this new settlement option only when there is significant variation in weights or quality between the original and subsequent bale receipts. This change will ensure that a fair and accurate settlement is made based on the most current and accurate weight and quality.

In addition, clarifying changes are being made to section 1427.21 to identify charges payable by the producer if cotton loan collateral is delivered to CCC to satisfy the loan obligation. These charges include warehouse receiving charges, new bale ties, unpaid warehouse compression, storage charges for any period of yard storage, storage surcharges that apply during or within three months following the period of the loans, and other associated charges that may be levied by the warehouse specific to forfeited cotton. This is an improved statement of existing policy and is not required by the Farm Bill.

This rule adds a provision to section 1427.7, “Maturity of Loans,” to allow CCC to accelerate the maturity date of the cotton stored as collateral in certain situations, such as when the cotton is improperly warehoused and subject to damage. A producer may still transfer cotton loan collateral as provided under section 1427.16, “Movement and Protection of Warehouse-stored Cotton,” but CCC will no longer relocate loan bales at its expense from one CCC-approved warehouse to another. For consistency, therefore, this rule removes

language regarding CCC transfer of cotton from section 1427.16.

This rule removes all references to reconcentration of cotton from 7 CFR part 1427. Reconcentration involves the process of moving CCC-owned cotton from one approved warehouse to another, which is a CCC inventory issue that is not relevant to cotton loan regulations.

This rule revises section 1427.5(b)(2) to clarify that cotton submitted for loan deficiency payments (LDP) is not required to be stored in a warehouse that meet the approved storage requirements of CCC cotton loan collateral. This revision is for clarity and does not imply any change in CCC storage policies. Cotton presented for LDPs has not been required to be receipted by an approved cotton storage warehouse because such cotton is usually shipped from the gin to the user and avoids the warehousing process.

This rule amends section 1427.10(c) to provide that warehouses approved to store CCC cotton loan collateral outside are required to report location indicators and effective dates for any loan bale stored outside. CCC uses such information to compute any denied storage credits. This revision simply states how the information is currently obtained from warehouses through their electronic warehouse receipt providers; the reporting requirement was first established by regulations in 2006.

Start Dates for Various Provisions

This final rule becomes effective when filed for public inspection by the Office of the **Federal Register**. A number of provisions included in these regulatory changes start based on a crop year or date specified in the 2008 Farm Bill.

The following table shows the start times for these provisions:

Regulatory section	Provision
1427.25(f)(1)(i)	The fine count adjustment will be effective for 2007 and 2008-crop loan redemptions effective October 31, 2008.
1427.19(h)(1)	The 10 percent reduction from 2006 rates in warehouse storage credits will be effective for the 2008-crop loan redemptions effective as soon as practicable after October 31, 2008.
1427.19(h)(2)	The 20 percent reduction from 2006 rates in warehouse storage credits will be effective for 2012-crop loan redemptions.
1427.5(b)(5)	Ineligibility of flat bales for loan or LDP will be effective for 2009 and subsequent crops of cotton.
1427.3	Ineligibility of bales represented by paper warehouse receipts will be effective for 2009 and subsequent crops of cotton.
1427.8(e)	The 30 percent reduction of loan rates for upland cotton for producers enrolled in ACRE will be effective for 2009 and subsequent crops of cotton.
1427.22(a)	The termination of use of commodity certificates for redeeming upland cotton marketing assistance loans will be effective August 1, 2010 for loans of any crop year.
1400.1(g)	Payment limitation applicable to loan gains and loan deficiency payments will not apply to loans and LDPs for 2009 and subsequent crops of cotton.
1427.101(a)	The Economic Adjustment Assistance to Users of Upland cotton is applicable to quantities of cotton used starting August 1, 2008.
Subpart G, 1427.101(a)	The 2008 Farm Bill provides that eligibility for payments is provided to bales marketed as of June 18, 2008 for The ELS Competitiveness Payment Program.

Updates and Miscellaneous Corrections

While changing and updating the regulations as required by the 2008 Farm Bill, CCC is also making a number of "housekeeping" changes to clean up the regulations. In general, CCC is making changes to add clarity, make administrative improvements, correct typographical errors, add consistency with current CCC and industry practices, remove expired regulations, and improve organization. These changes do not represent substantive policy or administrative changes.

This rule amends regulations regarding the classification of cotton to require that all cotton tendered for loan or LDP must be classed by the Agricultural Marketing Service (AMS). Previously, the regulations in 7 CFR part 1427 provided that CCC could approve other entities to provide classification information. CCC does not currently perform this function or delegate it to others; current classification is always done by AMS. This rule amends the regulation to be consistent with actual CCC practice. This change is implemented in several sections of the regulations, including the "Definitions" section and the "General Eligibility Requirements" section as well as the "Classification of cotton" section (1427.3, 1427.5, and 1427.9, respectively). Additionally, this rule provides that, for purposes of loan and loan deficiency payment calculations, CCC will only use the classification information received directly from AMS rather than any classification information transmitted by another entity. This policy has reduced transaction errors and delays.

This rule makes several changes to the regulations in 7 CFR part 1427 Subpart D, "Recourse Seed Cotton Loans." This rule deletes a reference to Cooperative Marketing Associations (CMA) requesting seed cotton loans at a central county office. This revision is being made because CCC authorizes seed cotton loans to be made to producer members of a CMA but not directly to a CMA. This change reflects existing CCC policy. The 2008 Farm Bill requires changes in the way that payments are attributed to legal entities. This rule also amends this section of the regulations to update the crop years

This rule adds a provision to section 1427.12, "Liens," to allow CCC to waive lien requirements for loans having a principal value of less than \$50,000. This change will make the regulations consistent with current CCC practice.

This regulation deletes from section 1427.5, in paragraphs (f)(4) and (g)(4), the requirement that a person applying

for a cotton loan or LDP not have received any payment from any party with respect to the cotton. These deletions are made because the prohibition against receipt of a payment is inconsistent with CCC policies regarding beneficial interest (under which a payment may be received as long as it is not for title or control of the cotton) or receipt of loan proceeds from approved cooperative marketing associations.

This rule removes Subpart F, "2004 Cottonseed Payment Program" and Subpart H, "2005 Cottonseed Payment Program," because the authorization for these subparts has expired.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553), as specified in section 1601(c) of the 2008 Farm Bill, which requires that the regulations and administration of Title I of the 2008 Farm Bill be promulgated and administered without regard to the notice and comment provisions of section 553 of title 5 of the United States Code or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking.

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866. A cost-benefit assessment of this rule is summarized below and is available from the contact listed above.

Summary of Economic Impacts

Payments made under the Economic Adjustment Assistance to Users of Upland Cotton Program will be made to domestic users of upland cotton without regard to world or domestic cotton prices. These payments may only be used for statutorily specified capital investments. It is anticipated that these payments will directly assist the domestic spinning and textile manufacturing sector in limiting further market losses, plant closures, and employment declines. For crop year 2008 through 2012, undiscounted net CCC outlays for the Economic Assistance to Users of Upland Cotton program are estimated to be \$360 to 400 million (with an average undiscounted impact of approximately \$76 million per crop year).

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since CCC is

not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule were considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4347, the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The changes to the Cotton program, required by the 2008 Farm Bill that are identified in this final rule are non-discretionary. Therefore, FSA has determined that NEPA does not apply to this final rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988. This rule is not retroactive and it does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Unfunded Mandates

This 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. In addition, CCC was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Section 1601(c)(3) of the 2008 Farm Bill requires that the Secretary use the authority in section 808 of title 5, United States Code, which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. Accordingly, this rule is effective upon filing for public inspection by the Office of the **Federal Register**.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs-agriculture, Price support programs, Reporting and recordkeeping requirements, Warehouses.

■ For the reasons discussed above, this rule amends 7 CFR part 1427 as follows:

PART 1427—COTTON

■ 1. Revise the authority for part 1427 to read as follows:

Authority: 7 U.S.C. 7231–7236; 15 U.S.C. 714b, 714c; and Pub L. 110–246.

■ 2. Amend § 1427.1 as follows:

■ a. Amend paragraphs (a) and (e) by removing the words “2002 through 2007” and adding, in their place, the words “2008 through 2012” and adding two new sentences between the first and second sentences in paragraph (a) to read as set forth below.

■ b. Amend paragraph (b), in the first sentence, by removing the word “rates” and adding, in its place, the word “rate.”

§ 1427.1 Applicability.

(a) * * * Rules codified in this part which are issued after October 1, 2008, will not affect the 2007 and prior crops except that changes in the calculation of loan repayment rates that apply to the

2008 crop also apply to 2007 crop loans outstanding at the time of the changes in 2008 crop calculations. Other adjustments for the 2008 crop, such as storage rate adjustments will not apply.
* * *

§ 1427.2 [Amended]

■ 3. Amend § 1427.2 as follows:

■ a. Remove paragraph (c)(1).
■ b. Redesignate paragraphs (c)(2) and (c)(3) as paragraphs (c)(1) and (c)(2), respectively.

■ c. Amend paragraph (f) by removing the word “Loan” and adding, in its place, the word “loan.”

■ 4. Amend § 1427.3 as follows:

■ a. In the introductory text, amend the second sentence by removing the words “1425 and” and adding, in their place, the words “1423, 1425, and.”

■ b. Add new definitions, in alphabetical order, for the terms “Classification” and “Loan rate” to read as set forth below.

■ c. Amend the definition of “Cotton storage deficit area” by adding the words “less carry-in stocks,” immediately before the words “of warehouses.”

■ d. Remove the definitions of “Current Northern Europe shipment,” “Far East current price,” “Far East forward price,” “Far East price,” “Forward Far East shipment price,” “Forward northern Europe shipment,” “Reconcentration,” “U.S. Far East current price,” “U.S. Far East forward price,” “U.S. Far East price,” “U.S. Northern Europe current price,” “U.S. Northern Europe forward price,” and “U.S. Northern Europe price.”

■ e. Amend the definition of “False packed cotton” by removing the word “indiction” and adding, in its place, the word “indication”.

■ f. Amend the definition of “Loan deficiency payment” by removing the word “county.”

■ g. Amend the definition of “Loan servicing agent” by removing paragraph (3) and by redesignating paragraphs (4), (5), and (6) as (3), (4), and (5), respectively.

■ h. Revise the definition of “Transfer” to read as set forth below.

■ i. Amend the definition of “Upland cotton” by adding the word “in” immediately after the words “variety of cotton.”

■ j. Revise the definition of “Warehouse receipt” to read as set forth below.

§ 1427.3 Definitions.

* * * * *
Base quality upland cotton means Strict Low Middling (SLM) 1¹/₁₆ inch; leaf 4; micronaire 3.5 through 3.6 and 4.3 through 4.9; strength 25/5/ through

29.4 grams per tex; and length uniformity 79.5 through 82.4 percent.
* * * * *

Classification means the measurement results provided by the Agricultural Marketing Service (AMS) of color grade, leaf, staple, strength, extraneous matter and micronaire, and for upland cotton, length uniformity.
* * * * *

Loan rate is the national loan rate for base quality upland cotton and the national average rate for ELS cotton adjusted by any premiums and discounts determined by CCC.
* * * * *

Transfer means, depending on the context, the process for a producer or an authorized agent of the producer to:

- (1) Physically relocate cotton loan collateral from one CCC-approved warehouse to another CCC-approved warehouse,
- (2) Exchange an electronic warehouse receipt for a receipt certificated by a warehouse for delivery under a futures contract without physically relocating the cotton, or
- (3) Do both of the above.

Warehouse receipt means a receipt containing the required information prescribed in this part that may or may not be certificated for delivery for a futures-pricing contract, and is:

- (1) For 2008-crop cotton only, a pre-numbered, pre-punched negotiable warehouse receipt issued under the authority of the U.S. Warehouse Act, a state licensing authority, or by an approved CCC warehouse in such format authorized and approved, in advance, by CCC; or
- (2) For 2008 through 2012-crop cotton, an electronic warehouse receipt record issued by such warehouse recorded in a central filing system or systems maintained in one or more locations that are approved by FSA to operate such system.

■ 5. Amend § 1427.4 paragraph (a)(1) by removing the words “State or political subdivision or agency thereof,”.

■ 6. Amend § 1427.5 as follows:

■ a. Revise paragraph (b)(2) to read as set forth below.

■ b. Amend paragraph (b)(5) by adding the words “and effective for the 2009 crop, not be a flat or modified flat bale;” at the end of the paragraph.

■ c. Amend paragraph (b)(9) by adding the words “net weight” immediately after the words “600 pounds.”

■ d. Amend paragraph (b)(10) removing the phrase “of 2003 and subsequent crops.”

■ e. Amend paragraphs (b)(10) and (b)(11), introductory text, by removing

the word "which" each time it appears and adding, in its place, the word "that."

- f. Remove paragraphs (f)(4) and (g)(4).
- g. Redesignate paragraph (g)(5) as (g)(4).

■ h. Amend paragraph (n) by removing the word "unlicensed" and adding, in its place, the word "unapproved."

§ 1427.5 General eligibility requirements.

* * * * *

(b) * * *

(2) Be in existence and good condition and be covered by fire insurance. Bales pledged as collateral for a CCC loan, must be stored inside an approved storage warehouse unless, as determined under § 1427.10, CCC has approved the warehouse to use outside storage for cotton loan collateral for the period of the loan. Bales submitted to CCC for a loan deficiency payment are not subject to the approved storage requirements contained in § 1423.10.

* * * * *

■ 7. In § 1427.6, amend paragraphs (a), introductory text, and (a)(1) to read as follows:

§ 1427.6 Disbursement of loans.

(a) Individual producers may request loans from:

- (1) FSA County Service Centers;

* * * * *

■ 8. Amend § 1427.7 by adding new paragraph (c) as follows.

§ 1427.7 Maturity of loans.

* * * * *

(c) Following written notice by CCC to the producer and warehouse operator, CCC may advance the maturity date of cotton pledged as collateral for a marketing assistance loan if:

- (1) CCC determines such loan cotton collateral is improperly warehoused and subject to damage,
- (2) Any term of the producer's loan agreement is violated, or
- (3) Carrying charges are substantially in excess of the average of carrying charges available elsewhere and the storing warehouse, after notice, declines to reduce such charges.

■ 9. Amend § 1427.8 by adding new paragraph (e) to read as follows.

§ 1427.8 Amount of loan.

* * * * *

(e) The loan rate as determined under paragraph (a) of this section adjusted for applicable premiums and discounts will be reduced by 30 percent during each of the 2009 through 2012 crop years for producers who make an irrevocable election to receive "Average Crop Revenue Election" program payments as

provided in § 1412 of this title or elsewhere in this title.

■ 10. Amend § 1427.9 by revising paragraphs (a), (b), (c), (e), and (f) to read as follows.

§ 1427.9 Classification of cotton.

(a) All cotton tendered for loan and loan deficiency payment must be classed by an AMS Cotton Classing Office or other entity approved by AMS.

(b) An AMS cotton classification must be based upon a representative sample drawn from the bale by samplers under AMS procedures and instructions.

(c) If the producer's cotton has not been classed or sampled in a manner acceptable by CCC, the warehouse must sample such cotton and forward the samples to the AMS Cotton Classing Office or other entity approved by AMS. Such warehouse must be licensed by AMS or be approved by CCC to draw samples for submission to the AMS Cotton Classing Office.

* * * * *

(e) Where review classification is not involved:

- (1) If through error or otherwise two or more samples from the same bale are submitted for classification, the loan rate will be based on the classification having the lower loan value;
- (2) CCC will use classification information received directly from AMS rather than AMS classification information received from the producer.

(f) CCC will base any cotton loan rate or loan deficiency payment rate on the most recent classification information available before the loan or loan deficiency payment has been calculated. CCC will not adjust such rates based on review classification information submitted subsequent to the original benefit calculation.

■ 11. Amend § 1427.10 as follows:

- a. Amend paragraphs (a), introductory text, by adding the words " , unless the producer agrees to provisions of 1427.5(n)" immediately after the word "CCC"
- b. Amend paragraph (a)(1) by adding the words "Beacon Facility-Mail Stop 8748," immediately after the word "Office,".
- c. Amend paragraph (b) by removing the words "by CCC" the first time they appear.
- d. Revise paragraph (c)(1) to read as set forth below.
- e. Revise paragraph (c)(5) to read as set forth below.
- f. Amend paragraph (f) by removing the words "2003 and subsequent."
- g. Revise paragraph (f)(1) by removing the words "loan collateral;" and adding, in their place, the words "ELS loan collateral; and."

■ h. Revise paragraph (f)(2) by removing the semicolon and the word "and" at the end of the paragraph and adding a period in their place.

■ i. Remove paragraph (f)(3).

§ 1427.10 Approved Storage.

* * * * *

(c) * * *

(1) The warehouse submits a request for approval of outside storage in a format prescribed by CCC. * * *

(5) The warehouse operator provides CCC:

(i) A weekly report in a format prescribed by CCC identifying individual bales of cotton pledged as collateral for a CCC loan that are stored outside, and

(ii) Through their electronic warehouse receipt provider, on a current basis, location indicators and effective dates for any loan bale stored outside.

* * * * *

■ 12. Amend § 1427.11 as follows:

- a. Revise paragraph (c) to read as set forth below.
- b. Amend paragraph (e) by removing the second and third sentences.
- c. Remove paragraph (f).
- d. Redesignate paragraph (g) as paragraph (f).

§ 1427.11 Warehouse receipts.

* * * * *

(c)(1) Each receipt must set out in its terms the tare and the net weight of the bale represented by the receipt. The net weight shown on the warehouse receipt must be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight. The warehouse receipt may show the net weight established at a gin if gin weights are permitted by the licensing authority for the warehouse.

(2) The tare weight shown on the receipt must be the tare weight furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A machine card type warehouse receipt reflecting an alteration in gross, tare weight, or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (gross, tare, or net) weight,
(Name of warehouse),
By (Signature or initials),
Date.

* * * * *

§ 1427.12 [Amended]

■ 13. In § 1427.12, amend paragraph (a) by adding the words “, except that CCC may elect to waive such lien requirements for loans having a principal value of less than \$50,000” at the end of the paragraph.

■ 14. Amend § 1427.13 as follows:

■ a. Revise paragraph (e)(3) to read as set forth below.

■ b. Add a new paragraph (e)(4) to read as set forth below.

§ 1427.13 Fees, charges and interest.

* * * * *

(e)(3) Any warehouse storage charges associated with the forfeited cotton that accrued during the period of the loan and paid by CCC to the warehouse that:

(i) Exceed CCC’s maximum storage credit rate for the warehouse established in § 1427.19 and

(ii) Were paid by CCC for periods subject to denied storage credits due to the cotton being stored outside as specified in § 1427.19(h)(2)(ii).

(4) Unpaid warehouse compression charges.

■ 15. Amend § 1427.16 as follows:

■ a. Remove paragraphs (b), (d), and (e).

■ b. Redesignate paragraph (c) as paragraph (b) and revise newly designated paragraph (b) to read as set forth below.

■ c. Redesignate paragraph (f) as paragraph (c) and redesignate former paragraphs (f)(3) through (f)(5) as paragraphs (c)(2)(i) through (c)(2)(iii), respectively.

■ d. Revise newly designated paragraph (c) to read as set forth below.

§ 1427.16 Movement and protection of warehouse-stored cotton.

* * * * *

(b) A producer may transfer cotton loan collateral subject to the following conditions:

(1) The cotton is represented by an electronic warehouse receipt;

(2) The request is submitted by a producer or a properly designated agent of the producer;

(3) The transfer is agreed to by the receiving warehouse operator;

(4) The CCC marketing assistance loan that is secured by such cotton matures at least 30 days after the date on which the request for the transfer is submitted to CCC; and

(5) Any charges, fees, costs, or expenses incident to the transfer of cotton loan collateral under this paragraph must be paid by the requestor of the transfer.

(c) CCC will exclude from the calculation of any storage credits payable under § 1427.19 the following periods:

(1) The period during which the cotton is in transit between warehouses; and

(2) Any period beyond 75 days starting from the date of transfer from the shipping warehouse, unless the shipping warehouse is:

(i) Not in compliance with any of the terms of its Cotton Storage Agreement,

(ii) Storing cotton loan collateral outside, or

(iii) Under common ownership with the receiving warehouse.

§ 1427.17 [Removed and Reserved]

■ 16. Remove and reserve § 1427.17.

■ 17. Amend § 1427.18 as follows:

■ a. Revise paragraph (a)(2) to read as set forth below.

■ b. Amend paragraph (h)(2)(i) by removing the words “If the marketing assistance loan is called” and adding in their place the words “If CCC accelerates the maturity date for a loan.”

■ c. Amend paragraphs (k)(1) and (k)(2) by removing the reference “§ 1427.10(e)” and adding, in its place each time it appears, the reference “§ 1427.10(f).”

§ 1427.18 Liability of the producer.

(a) * * *

(2) If a producer makes a fraudulent representation or if the producer has disposed of, or moved the loan collateral without prior written approval from CCC, the value of such collateral will be equal to its loan value, plus accrued interest, plus warehouse charges, and liquidated damages, as determined by CCC.

* * * * *

■ 18. Amend § 1427.19 as follows:

■ a. Amend paragraph (a) by adding the words “pledged as collateral for a CCC loan” after the word “receipts.”

■ b. Revise paragraphs (h), (i), and (j) to read as set forth below.

■ c. Add paragraph (k) to read as set forth below.

§ 1427.19 Repayment of loans.

* * * * *

(h) For purposes of calculating loan-period accrued storage charges that CCC may credit to the loan repayment amount under paragraph (i) of this section:

(1) The warehouse storage rates to be used for the 2008 through 2011 crops will be the lower of:

(i) The tariff storage rate for the warehouse for the 2005 crop or, for any warehouse not in existence in 2005, a CCC-assigned average 2005 crop tariff rate for the county or area; or

(ii) For warehouses located in Arizona and California \$3.93 per bale per month and for warehouses located in all States

other than Arizona and California \$2.39 per bale per month.

(2) The warehouse storage rates to be used for the 2012 and subsequent crops will be the lower of:

(i) The tariff storage rate for the warehouse for the 2005 crop or, for any warehouse not in existence in 2005, a CCC-assigned average 2005 crop tariff rate for the county or area; or

(ii) For warehouses located in Arizona and California \$3.50 per bale per month and for warehouses located in all States other than Arizona and California \$2.13 per bale per month.

(3) CCC will not credit the loan repayment amount for a bale for any storage charges that accrued while the cotton was stored outside, except that storage may be credited for up to 15-days of outside storage beginning on the day the warehouse was notified that the bale is under loan if the bale was inside on the 15th day from the date of notification.

(4) The loan period will be determined by CCC to begin:

(i) For loan disbursed by the Farm Service Agency, on the date all loan documents, as determined and announced by CCC, have been received or

(ii) For a loan disbursed by a Cooperative Marketing Association or an authorized loan servicing agent, on the date the loan was disbursed by CCC.

(i)(1) An upland cotton loan repayment rate will not exceed the loan principal plus accrued interest for the period provided in § 1427.19(j).

(2) When the prevailing adjusted world price of upland cotton, as determined under § 1427.25, is less than the combined value of the loan principal, accrued interest, and warehouse storage that accrued during the period of the loan, CCC will permit the loan to be repaid at the adjusted world price less the storage charges that accrued during the period of the loan.

(j) For purposes of calculating interest charges on upland and extra long staple cotton loan principal, the loan period will be the period starting the date after the disbursement of the loan amount to, and including, the loan repayment date, except that interest is not charged for a loan that is disbursed and repaid on the same date.

(k) Repayment of loans will not be accepted after CCC acquires title to the cotton in accordance with § 1427.7.

■ 19. Amend § 1427.21 as follows:

■ a. Revise paragraphs (a) and (b) to read as set forth below.

■ b. Amend paragraph (d) by removing the reference “§ 1427.10(e)” and adding, in its place, the reference “§ 1427.10(f).”

■ c. Add paragraph (f) to read as set forth below.

§ 1427.21 Settlement.

(a) The settlement of cotton loans will be made by CCC on the basis of the quality and quantity of the cotton delivered to CCC by the producer or acquired by CCC subject to the producer being responsible for, if applicable, warehouse receiving charges, new bale ties, unpaid warehouse compression, charges for and related to the certification of a bale and for any subsequent exchange of certificated receipts, storage charges for any period of yard storage, and storage charges in excess of any maximum storage credit rates as determined and announced by CCC.

(b) For purposes of settlements for cotton delivered to CCC in satisfaction of a loan obligation, CCC may elect to calculate such settlement values based on the net weight, condition, and classification as reflected on the warehouse receipt delivered to CCC, whether such receipt is the receipt issued by the original storing warehouse and presented for calculating the loan amount or a receipt issued by a subsequent warehouse due to the transfer of such bale while pledged as collateral for a CCC loan.

(f) CCC will pay to the warehouse any unpaid storage or receiving charges for forfeited loan collateral, not to exceed the amount that accrued from the date that all necessary documents were received by CCC to the loan maturity date, as soon as practicable after the cotton is forfeited.

■ 20. Amend § 1427.22 to revise paragraph (a) to read as follows.

§ 1427.22 Commodity certificate exchanges.

(a) For any outstanding marketing assistance loan provided for upland cotton, a producer may purchase a commodity certificate and exchange that commodity certificate for the marketing assistance loan collateral. This provision terminates effective ending with the 2009 crop and will not be available for subsequent crops.

■ 21. Amend § 1427.23 as follows:

■ a. Revise paragraphs (a)(3) and (e)(1) to read as set forth below.

■ b. Amend paragraph (f) by removing the word “Standard.”

■ c. Remove paragraph (g).

§ 1427.23 Cotton loan deficiency payments.

(a) * * *

(3) Submit, on a form prescribed by CCC, to the FSA Service Center on or before beneficial interest is lost in such quantity and before the final loan availability date for the commodity:

(i) An indication of their intentions to receive a loan deficiency payment on the identified commodity or

(ii) A completed request for a loan deficiency payment for a quantity of eligible cotton under § 1427.5(a).

* * * * *

(e) * * *

(1) Based on the date the cotton was ginned, which CCC will consider to be the date of the LDP request, if payment application is made in the manner prescribed by CCC for obtaining such rate;

* * * * *

■ 22. Revise § 1427.25 to read as follows:

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

(a) CCC will determine the world market price for upland cotton as follows:

(1) During the period when only one daily price quotation is available for each growth quoted for Middling one and three-thirty-second inch (M 1³/₃₂-inch) cotton, CFR (cost and freight) Far East, the prevailing world market price for upland cotton will be based on the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1³/₃₂-inch cotton, CFR Far East.

(2) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (current Far East shipment price) and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (forward Far East shipment price) are available for growths quoted for M 1³/₃₂-inch cotton, CFR Far East, the prevailing world market price for upland cotton will be based on the average of the current Far East shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1³/₃₂-inch cotton, CFR Far East, except as may be determined by the Secretary as specified in paragraph (c)(3)(iv) of this section.

(3) The upland cotton prevailing world market price determined as specified in paragraphs (a)(1) or (a)(2) of this section is referred to as the “Far East price” (FE).

(4) If quotes are not available for 1 or more days in the 5-day period, the

available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price will be based on the best available world price information, as CCC determines.

(b) The upland cotton prevailing world market price, adjusted as specified in paragraph (c) of this section (adjusted world price (AWP)), will apply to the 2008 through 2012 crops of upland cotton and to the 2007 crop to the extent provided in § 1427.1.

(c) The upland cotton AWP will equal the FE determined as specified in paragraph (a) of this section, adjusted as follows:

(1) FE will be adjusted to U.S. location by deducting the average costs to market, including average transportation costs, as determined by the Secretary.

(2) The price determined as specified in paragraph (c)(1) of this section will be adjusted to reflect the price of base quality upland cotton by deducting the difference, as CCC announces, between the applicable loan rate for an upland cotton crop for M 1 3/32-inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton and the loan rate for base quality upland cotton.

(3) The prevailing world market price, adjusted as specified in paragraphs (c)(1) and (c)(2) of this section, may be further adjusted if it is determined that the adjustment is necessary to:

(i) Minimize potential loan forfeitures;

(ii) Minimize the accumulation of stocks of upland cotton by the Federal Government;

(iii) Ensure that upland cotton produced in the United States can be marketed freely and competitively, both domestically and internationally; and

(iv) Ensure an appropriate transition between current-crop and forward-crop price quotations, except that forward-crop price quotations may be used prior to July 31 of a marketing year only if there are insufficient current crop quotations and the forward-crop price quotation is the lowest such quotation available.

(d) The upland cotton AWP, determined as specified in paragraph (c) of this section, and the amount of the additional adjustment determined as specified in paragraphs (e) and (f) of this section, will be announced, to the extent practicable, at 4 p.m. eastern time each Thursday continuing through the last Thursday of March 2014 (March 27, 2014). In the event that Thursday is a non-workday, the determination will be

announced, to the extent practicable, at 8 a.m. eastern time the next work day.

(e)(1)(i) AWP, determined as specified in paragraph (c) of this section, will be subject to a further coarse count adjustment as provided in this section regarding all qualities of upland cotton eligible for loan except the following upland cotton grades with a staple length of $1\frac{1}{16}$ -inch or longer:

(A) White Grades—Strict Middling and better, leaf 1 through leaf 6; Middling, leaf 1 through leaf 6; Strict Low Middling, leaf 1 through leaf 6; and Low Middling, leaf 1 through leaf 5;

(B) Light Spotted Grades—Strict Middling and better, leaf 1 through leaf 5; Middling, leaf 1 through leaf 5; and Strict Low Middling, leaf 1 through leaf 4; and

(C) Spotted Grades—Strict Middling and better, leaf 1 through leaf 2; and

(ii) Grade, leaf, and staple length must be determined as specified in § 1427.9. If no such official classification is presented, the coarse count adjustment will not be made.

(2) The adjustment for upland cotton specified in paragraph (e)(1) of this section will be determined by deducting from AWP:

(i) The difference between FE, and

(A) During the period when only one daily price quotation for each growth quoted for “coarse count” cotton, CFR Far East, is available, the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for “coarse count” cotton, CFR Far East (Far East coarse count price); or

(B) During the period when both current Far East shipment prices and forward Far East shipment prices are available for the growths quoted for “coarse count” cotton, CFR Far East, the result calculated by the average of the current Far East shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for “coarse count” cotton, CFR Far East (Far East coarse count price) minus

(ii) The difference between the applicable loan rate for an upland cotton crop for M $1\frac{3}{32}$ -inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton and the loan rate for an upland cotton crop for SLM $1\frac{1}{32}$ -inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton.

(3) Regarding the determination of the Far East coarse count price specified in paragraph (e)(2)(i) of this section:

(i) If no quotes are available for one or more days of the 5-day period, the available quotes will be used;

(ii) If quotes for three growths are not available for any day in the 5-day period, that day will not be considered; and

(iii) If quotes for three growths are not available for at least 3 days in the 5-day period, that week will not be considered, in which case the adjustment determined as specified in paragraph (e)(2) of this section for the latest available week will continue to be applicable.

(f)(1)(i) AWP, determined as specified in paragraph (c) of this section, will be subject to a further fine count adjustment as provided in this section regarding all upland cotton having a loan schedule premium or discount exceeding that for Middling, leaf 3, staple length $1\frac{3}{32}$ -inch upland cotton, and

(ii) Grade, staple length, and leaf must be determined as specified in § 1427.9. If no such official classification is presented, the fine count adjustment will not be made.

(2) The adjustment for upland cotton specified in paragraph (f)(1) of this section will be determined by deducting from AWP:

(i) The difference between FE, and

(A) During the period when only one daily price quotation for each growth quoted for “fine count” cotton, CFR Far East, is available the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for “fine count” cotton, CFR Far East (Far East fine count price) or

(B) During the period when both current Far East shipment prices and forward Far East shipment prices are available for the growths quoted for “fine count” cotton, CFR Far East, the result calculated by the average of the current Far East shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for “fine count” cotton, CFR Far East (Far East fine count price) minus

(ii) The difference between the applicable loan rate for an upland cotton crop for M $1\frac{3}{32}$ -inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton and the loan rate for an upland cotton crop for SM $1\frac{1}{8}$ -inch, leaf 2, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton.

(3) Regarding the determination of the Far East fine count price under paragraph (f)(2)(i) of this section:

(i) If no quotes are available for one or more days of the 5-day period, the available quotes will be used;

(ii) If quotes for three growths are not available for any day in the 5-day period, that day will not be considered; and

(iii) If quotes for three growths are not available for at least 3 days in the 5-day period, that week will not be considered, in which case the adjustment determined as specified in paragraph (f)(2) of this section for the latest available week will continue to be applicable.

(g) In the determination of FE as specified in paragraph (a)(2) of this section, the Far East coarse count price specified in paragraph (e)(2)(i)(B) of this section, and the Far East fine count price as specified in paragraph (f)(2)(i)(B) of this section, CCC will use either current Far East shipment prices, forward Far East shipment prices, or any combination thereof to determine FE or the Far East coarse count price or the Far East fine count price used in the determination of the adjustment for upland cotton specified in paragraphs (e)(1) and (f)(1) of this section and determined as specified in paragraphs (e)(2) and (f)(2) of this section to prevent distortions in such adjustment.

(h) For particular bales, the AWP determined as specified in paragraph (c) of this section, will be subject to further adjustments to a value no less than zero, as CCC determines, based on the Schedule of Premiums and Discounts as announced for the loan program for an upland cotton crop.

■ 23. Revise Subpart C to read as follows.

Subpart C—Economic Adjustment Assistance to Users of Upland Cotton

- § 1427.100 Applicability.
- § 1427.101 Eligible upland cotton.
- § 1427.102 Eligible domestic users.
- § 1427.103 Upland cotton Domestic User Agreement.
- § 1427.104 Payment rate.
- § 1427.105 Payment.

Subpart C—Economic Adjustment Assistance to Users of Upland Cotton

§ 1427.100 Applicability.

(a) Regulations in this subpart are applicable beginning August 1, 2008. These regulations specify the terms and conditions under which CCC will make payments to eligible domestic users who entered into an Upland Cotton Domestic User Agreement with CCC to participate in the upland cotton domestic user

program under section 1207 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, referred to commonly as the “2008 Farm Bill”).

(b) CCC will prescribe forms used in administering Economic Adjustment Assistance to Users of Upland Cotton.

§ 1427.101 Eligible upland cotton.

(a) For purposes of this subpart, eligible upland cotton is baled upland cotton, regardless of origin, that is opened by an eligible domestic user on or after August 1, 2008, and is either:

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

(2) Loose samples removed from upland cotton bales for classification purposes that have been rebaled;

(3) Semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking, or production of non-woven fabric; or

(4) Re-ginned (processed) motes.

(b) Eligible upland cotton must not be:

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

(2) Raw (unprocessed) motes, pills, linters, or other derivatives of the lint cleaning process; or

(3) Textile mill wastes.

§ 1427.102 Eligible domestic users.

(a) For purposes of this subpart, a person regularly engaged in the business of opening bales of eligible upland cotton for the purpose of spinning, papermaking, or processing of non-woven cotton fabric in the United States, who has entered into an agreement with CCC to participate in the upland cotton user program, will be considered an eligible domestic user.

(b) Applications for payment under this subpart must contain documentation required by the provisions of the Upland Cotton Domestic User Agreement and other instructions that CCC issues.

§ 1427.103 Upland cotton Domestic User Agreement.

(a) Payments specified in this subpart will be made available to eligible domestic users who have entered into an Upland Cotton Domestic User Agreement with CCC and who have complied with the terms and conditions in this subpart, the Upland Cotton Domestic User Agreement, and instructions issued by CCC.

(b) Upland Cotton Domestic User Agreements may be obtained from Contract Reconciliation Division, Kansas City Commodity Office (KCCO), P.O. Box 419205, Stop 8758, Kansas City, Missouri 64141–6205. In order to

participate in the program authorized by this subpart, domestic users must execute the Upland Cotton Domestic User Agreement and forward the original and one copy to KCCO.

§ 1427.104 Payment rate.

(a) Beginning August 1, 2008 and ending July 31, 2012, the payment rate for purposes of calculating payments as specified in this subpart will be 4 cents per pound.

(b) Beginning August 1, 2012, the payment rate for purposes of calculating payments as specified in this subpart will be 3 cents per pound.

§ 1427.105 Payment.

(a) Payments specified in this subpart will be determined by multiplying:

(1) The payment rate, determined as specified in § 1427.104, by

(2) The net weight (gross weight minus the weight of bagging and ties), determined as specified in paragraph (b) of this section, of eligible upland cotton bales an eligible domestic user opens during the immediately preceding calendar month.

(b) For the purposes of this subpart, the net weight will be determined based on the net weight of the cotton used, but not to exceed the last available certified weight;

(c) For the purposes of this subpart, eligible upland cotton will be considered consumed by the domestic user on the date the bale is opened for consumption.

(d) Payments specified in this subpart will be made available upon application for payment and submission of supporting documentation, as required by the CCC-issued provisions of the Upland Cotton Domestic User Agreement.

(e) All payments received by the agreement holder must be used for purposes as specified in section 1207 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, referred to commonly as the 2008 Farm Bill). Authorized expenditures include acquisition, construction, installation, modernization, development, conversion, or expansion of land, plant, buildings, equipment, facilities, or machinery. Such capital expenditures must be directly attributable and certified as such by the user for the purpose of manufacturing upland cotton into eligible cotton products in the United States.

■ 24. Amend § 1427.160 as follows:

■ a. Amend paragraph (a) by removing the words “2002 through 2007” and adding, in their place, “2008 through 2012.”

■ b. Revise paragraph (b) to read as set forth below.

■ c. Amend paragraph (c) by removing the second sentence.

§ 1427.160 Applicability.

* * * * *

(b) Loan rates and the forms that are used in administering the recourse seed cotton loan program for a crop of cotton are available in FSA State and county offices. Loan rates will be based on the base quality loan rate for upland cotton and the national average loan rate for extra long staple cotton.

* * * * *

Subpart F—[Removed and Reserved]

■ 25. Remove and reserve Subpart F.

■ 26. Amend § 1427.1203 as follows:

■ a. Amend paragraphs (a)(1) and (a)(2) by removing the date “October 1, 1999” and adding, in its place, the date “June 18, 2008.”

Subpart H—[Removed]

■ 27. Remove Subpart H.

Signed at Washington, DC, on October 30, 2008.

Thomas B. Hofeller,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E8–26343 Filed 10–31–08; 4:15 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AC13

General Policies, Types of Loans, Loan Requirements—Telecommunications

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service, an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Program, hereinafter referred to as Rural Development and/or the Agency, amends its regulations for the Telecommunications Loan Program (Loan Program). The Agency has reviewed its criteria for approving loans and has determined that modifications to the Loan Program regulations are required in order to ensure that some financially sound applicants are not excluded from the Loan Program.

The Agency is proposing to amend its regulations to modify the Times Interest Earned Ratio (TIER) requirements that